

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-17-90039 through 10-17-90041

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against three circuit judges in this circuit. My consideration of this complaint is governed by the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “JCD Rules”), the federal statutes addressing judicial conduct and disability, 28 U.S.C. § 351 *et seq.*, and relevant prior decisions of the full Judicial Council of this circuit that are consistent with those authorities.

The JCD Rules and this circuit’s local misconduct rules are available to complainants on the Tenth Circuit’s web page at: <http://www.ca10.uscourts.gov/ce/misconduct>. Paper copies are also furnished by the Circuit Executive’s Office upon request. In accordance with those rules, the names of the complainant and subject judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges that the three subject appellate judges engaged in misconduct while assigned to his habeas appeal. Complainant explains that he attempted to terminate

his attorney and proceed pro se several times, but that the clerk's office would not allow him to file his own brief while he had an attorney of record. He contends that the court did not fully address his arguments in their opinion and did not liberally construe his reply brief. He asserts that the judges improperly “sanctioned” him for not citing authority with one of his arguments. These claims are not cognizable as misconduct because they are “directly related to the merits of a decision or procedural ruling.” JCD Rule 11(c)(1)(B); *see also* Commentary to JCD Rule 3 (stating that “[a]ny allegation that calls into question the correctness of an official action of a judge—without more—is merits-related”).

Although complainant also contends that he was treated demonstrably egregiously and in a hostile manner, this claim fails because it is completely unsupported. The JCD Rules require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” *See* JCD Rule 11(c)(1)(D).

Accordingly, this complaint is dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judges and the Judicial Conference Committee on Judicial Conduct and Disability. *See* JCD Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in JCD Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 42 days after the date of the chief judge’s order. *Id.*

So ordered this 13th day of November, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge