

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-17-90042

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a magistrate judge 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 judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges the subject magistrate judge engaged in misconduct while presiding over his civil rights matter. The bulk of complainant’s allegations are against

the AUSA representing the opposing party in complainant's case. He asserts that the subject judge has fully supported the AUSA's behavior given that they were former colleagues. Complainant also contends that the subject judge knew his complaint was valid, but delayed ruling on it, accepted the AUSA's lies, and improperly ruled against him. Finally, complainant alleges the subject judge indicated that she would issue sanctions against complainant if he continued to file complaints.

Complainant's allegations regarding the judge's delay and rulings 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").

I conducted a limited inquiry, pursuant to JCD Rule 11(b), to determine whether there was anything on the record to support complainant's remaining claims of conspiracy and bias. I found no evidence of bias; in fact, a review of the order complainant cites to indicates that, rather than the judge threatening sanctions for filing complaints, as complainant suggests, the judge warned complainant that sanctions would be imposed if he continued to file *ex parte* communications. While allegations of conspiracy and bias can state a valid claims for misconduct even when the allegations relate to a judge's ruling, *see* Commentary to JCD Rule 3, these claims fail because they are 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 judge 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