

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-19-90065

Before **TYMKOVICH**, Chief Judge

ORDER

Complainants have filed a complaint of judicial misconduct 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 complainants and subject judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainants challenge an administrative decision made by one of the district courts in the Tenth Circuit. The subject judge is named on behalf of all the district court judges who participated in making the administrative decision. Complainants allege the

court's decision raises an appearance of impropriety and is prejudicial to the effective and expeditious administration of the business of the courts. Essentially, complainants contend the decision was unjustified and made improperly.

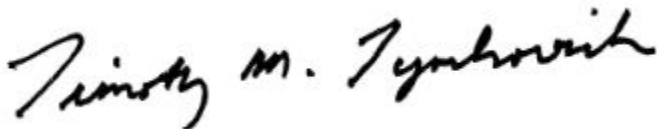
Complainants provide a list of reasons why they believe the court's decision was unjustified. Those allegations are not cognizable misconduct because they relate to the merits of the judges' "[d]ecision or [p]rocedural ruling." JCD Rule 11(c)(1)(B); *see also* JCD Rule 4 cmt. (stating that "[a]ny allegation that calls into question the correctness of an official decision or procedural ruling of a judge—without more—is merits-related"). Significantly, "[t]he phrase 'decision or procedural ruling' is not limited to rulings issued in deciding Article III cases or controversies." *See* JCD Rule 4(b) cmt. (advising that both a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint and the determination to decline to approve a Criminal Justice Act vouchers are merits-related under the JCD Rules).

Insofar as complainants may suggest an improper motive, that allegation should also be dismissed. A limited inquiry was conducted to determine the veracity of the allegations in the complaint pursuant to JCD Rule 5(b) (permitting a chief judge to communicate with the subject judge, and any others who may have knowledge of the matter, to determine what action to take). I have reviewed the process undertaken by the judges in making their decision. Although one judge voted on the decision in error, it did not affect the outcome of the courts' decision. Further, any allegation of the decision being made with an improper motive is 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 complainants 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, complainants 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 20th day of April, 2020.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive, flowing style.

Honorable Timothy M. Tymkovich
Chief Circuit Judge