

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-20-90022 through 10-20-90024

Before **TYMKOVICH**, Chief Judge

ORDER

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

Complainant, an attorney and pro se litigant, alleges the three subject judges engaged in abusive or harassing conduct in connection with complainant’s civil matter by

demonstrating bias against complainant and treating him in a demonstrably egregious and hostile manner. Complainant contends that one of the district judges engaged in misconduct when he “threatened [complainant] with sanctions because [complainant] made a good-faith, relevant effort to preserve the record for appeal.” Complainant contends the magistrate judge engaged in hostile conduct when he “threatened [complainant] with sanctions because [complainant] made objections regarding Defendants using a speakerphone to conduct . . . [a conference].” Complainant asserts that these judges did not require opposing party to take certain procedural actions and that, in effect, those judges were “acting like personal attorneys for the defendants.” Complainant also takes issue with the magistrate judge’s orders regarding scheduling and the district judge’s orders regarding summary judgment.

In addition to his initial complaint, complainant filed several supplemental materials. The complaint and all of complainant’s supplemental materials have been reviewed. A limited inquiry was also conducted, including, *inter alia*, a review of transcripts and relevant orders on the docket and all other relevant materials. *See* JCD Rule 11(b) (permitting a chief judge to “obtain and review transcripts and other relevant documents” in determining what action to take).

A review of these materials indicates that the only basis for complainant’s allegations of the judges’ bias and hostility are merely that the judges ruled against him. There is no other support for the allegation that the judges demonstrated bias or hostility toward complainant.

Complainant's allegations regarding the correctness of the judges' 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 4 (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").

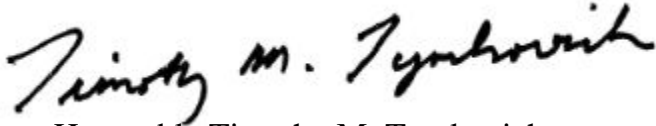
Further, while allegations of bias and hostility can state valid claims for misconduct even when the allegations relate to a judge's ruling, *see* Commentary to JCD Rule 4, these claims fail because they are completely unsupported. The JCD Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." *See* JCD Rule 11(c)(1)(D).

Finally, complainant contends that a third judge acted in a hostile manner toward complainant by "failing to intervene to correct the misconduct by the judges in his district." There is no evidence, however, to support the allegation that this subject judge acted in a hostile manner toward complainant, let alone had any obligation to intervene even if there were a finding of misconduct, which there is not. Accordingly, complainant's allegations regarding the third subject judge are not cognizable as misconduct. *See* JCD Rule 11(c)(1)(D).

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 28th day of December, 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