

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-20-90035

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a district 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).

As an initial matter, this is the sixth complaint against the subject judge stemming from the same underlying criminal case. All five of the previous complaints were

dismissed and any petitions for review were denied and affirmed. In the most recent dismissal, I warned complainants that another complaint with similar or identical allegations would result in a restriction from filing further complaints pursuant to JCD Rule 10 (providing “[w]hen many essentially identical complaints from different complainants are received and appear to be part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order . . . refus[ing] to accept additional complaints.”). Because this complaint presents a new issue, I reviewed the allegations before me. Any future complaints may be restricted in accordance with my previous warning.

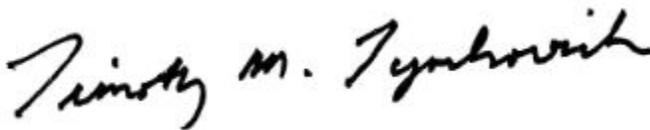
In the present complaint, complainant, an interested party in a habeas case, alleges that the subject judge treated the complainant in a demonstrably egregious and hostile manner while presiding over the case. Briefly, complainant contends that the judge delayed a directive from the court of appeals and made claims about the complainant, which complainant asserts demonstrated bias.

“If the judge’s language was relevant to the case at hand . . . then the judge’s choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive.” JCD Rule 4 cmt. A limited inquiry was conducted to determine the veracity of the bias allegations. *See* JCD Rule 11(b). Although, it is true that the judge made statements about complainant, those statements were relevant to the case. Complainant even admits that the judge’s statements were “made in the serious discourse of [the judge’s] discussion regarding the Complainants and their alleged impact upon the [habeas matter before her].” There is

nothing else in the record to support a claim of bias. Furthermore, when complainant raised the issue of bias on appeal, the Court of Appeals also concluded that the judge's language was relevant to the issues before the court. Accordingly, 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).

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 1st day of April, 2021.

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