

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-20-90037

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).

Complainant alleges that the subject judge engaged in misconduct while assigned to his habeas matters. Complainant asserts that the judge had a prior relationship with the

district attorney in complainant's underlying criminal case. Complainant sought the subject judge's recusal and contends that, as a result, the judge "mocked" him and "retaliated" against him by imposing filing restrictions.

As an initial matter, complainant's allegations against those individuals named in the complaint that are not federal judges do not constitute cognizable misconduct. *See* JCD Rule 1(b) (providing "[a] covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363").

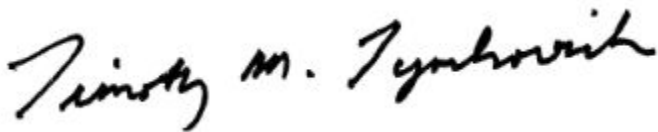
A limited inquiry was conducted to determine the veracity of the remainder of complainant's allegations pursuant to JCD Rule 11(b). A review of the relevant documents does not support a claim of bias or retaliation. Rather the judge's language, as provided by the complainant, pertains to the law and the facts in the case and there is no other indication of bias or retaliation on the record.

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 4 (stating that "[i]f 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").

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 style with a large, prominent initial "T".

Honorable Timothy M. Tymkovich
Chief Circuit Judge