JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: COMPLAINT UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT	No. 10-22-90019

Before **HOLMES,** Chief Judge

MEMORANDUM & ORDER

Complainant has filed a complaint of judicial misconduct against an appellate 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: https://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 a circuit judge engaged in misconduct by failing to timely review complainant's previously filed misconduct complaints against two judges in the circuit. Complainant asserts that the subject judge failed to fulfill his judicial responsibilities and violated his ethical duties. Complainant also asserts that by ignoring the complaints, the subject judge benefited his colleagues who were the subject of the complaints.

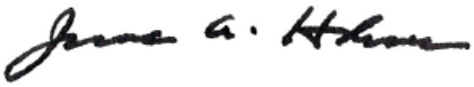
Under the JCD Rules, "a complaint of delay in a single case is excluded as merits-related. Such an allegation may be said to challenge the correctness of an official action of the judge, i.e., assigning a low priority to deciding the particular case." JCD Rule 4 cmt. However, "an allegation of a deliberate delay in a single case arising out of an improper motive, is not merits-related." *Id.* Complainants, however, must also support their allegations, including an allegation of an improper motive, with "sufficient evidence to raise an inference that misconduct has occurred." *See* JCD Rule 11(c)(1)(D).

Here, although complainant appears to contend that the subject judge was improperly motivated by a desire to help his colleagues, those allegations are wholly unsupported and are dismissed pursuant to JCD Rule 11(c)(1)(D). Complainant's remaining allegations, that the subject judge failed to fulfill his judicial responsibilities and violated his ethical duties by delaying complainant's previously filed complaints, are challenges to the correctness of the subject judge's official action and are dismissed pursuant to 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 6th day of November, 2023.



Honorable Jerome A. Holmes
Chief Circuit Judge