

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-15-90036 and 10-15-90039

Before **TYMKOVICH**, Chief Judge

**ORDER**

Complainants have filed similar complaints of judicial misconduct and disability against a bankruptcy judge in this circuit. The complaints involve conduct in the same bankruptcy proceeding assigned to the bankruptcy judge. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “JCD Rules”); and 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.* To the extent that there are any relevant prior decisions of the full Judicial Council of this circuit which are consistent with those authorities, they may also govern my consideration of this complaint.

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).

Complainants allege the subject judge engaged in misconduct and may have been affected by a disability while presiding over their bankruptcy proceeding. Complainants appear to take issue with the subject judge's rulings against them. Among other allegations, they allege the subject judge: overlooked evidence and creditors, failed to hold a hearing after a stay order, and "dismissed" credible witnesses. 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).

One of the complainants also alleges that the subject judge "slandered" the complainant's company in attempt to ruin complainant's business. To support the allegation, complainant alleges the subject judge indicated that complainant's documents were "highly questionable." If, however, "the judge's language was relevant to the case at hand – for example, a statement that a claim is legally or factually 'frivolous' – then the judge's choice of language is presumptively merits-related and excluded." Commentary to JCD Rule 3. As the alleged comment was relevant to complainant's case and the credibility of complainant's documents, this allegation can be dismissed as directly related to the merits of the judge's ruling, pursuant to JCD Rule 11(c)(1)(B).

Finally, complainants also appear to question the subject judge's competence. Complainants contend the subject judge was in pain from a recent surgery and taking medication when the judge issued the final judgment in the matter. While an allegation of a judge's temporary mental impairment can state a valid claim, *see* JCD Rule 3(e), this disability claim fails because it is completely unsupported. The JCD Rules require

complainants to support their allegations with “sufficient evidence to raise an inference that . . . a disability exists.” *See* JCD Rule 11(c)(1)(D).

Accordingly, these complaints are 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 19th day of May, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich  
Chief Circuit Judge