

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-15-90035

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 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).

Complainant, an attorney who appeared before the subject judge, alleges the subject judge engaged in misconduct while presiding over his clients' civil matter. Specifically, complainant alleges the subject judge ignored evidence and deliberately denied his clients' constitutional rights by dismissing their pleadings. 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).

Complainant contends, however, that the subject judge's actions were not in error, but instead were a result of the judge's bias and prejudice toward complainant's clients. To support his claim of bias, complainant provides excerpts from a book on evidence co-authored by the subject judge. The book contains a footnote citing to complainant's clients' state case. While allegations of bias can state a valid claim for misconduct even when the alleged bias relates to a judge's ruling, *see* Commentary to JCD Rule 3, this claim fails because the citation does not support a reasonable inference that misconduct has occurred. *See* JCD Rule 11(c)(1)(D). Rather, the citation is to a state case, to which the subject judge had no affiliation, and the citation merely summarizes the state court's ruling, the substance of which can be found on a legal database.

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, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge