

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-15-90037 & 10-15-90038

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge and a magistrate 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges two judges engaged in misconduct while presiding over his civil action. Specifically, complainant alleges one of the subject judges “constantly rejected the court case.” A review of the record reveals that the magistrate judge in complainant’s case recommended the case be dismissed for failure to serve. It appears complainant bases his allegation on this recommendation. Nonetheless, this claim is not cognizable as misconduct because it is “directly related to the merits of a decision or procedural ruling.” JCD Rule 11(c)(1)(B).

Complainant also alleges the two judges “are engaged in criminal activity.” Complainant indicates that he has proof of his allegations, but he does not indicate what that proof is or how it can be obtained. While allegations of conspiracy can state a valid claim for misconduct even when the alleged conspiracy relates to a judge’s ruling, *see* Commentary to JCD Rule 3, this conspiracy claim fails because it is completely unsupported. The JCD Rules require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” *See* JCD Rule 11(c)(1)(D).

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 judges 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 9th day of February, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge