

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-15-90040

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 alleges the subject judge engaged in misconduct while presiding over his criminal case. Specifically, he contends the subject judge did not properly consider the evidence in his case and relied on the prosecution's personal opinion. He further asserts the subject judge "failed to consider, ignored, and selectively disregarded Federal Rules of Procedure." Complainant appears to take issue with several of the subject judge's rulings, including, but not limited to: how to classify a witness, whether to allow a witness's testimony, and the procedure by which the complainant's diagnosis was presented. 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).

It is unclear whether complainant is also alleging that the subject judge's rulings were a result of prejudice or an improper motive. But even if that is his assertion, he does not support that contention 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 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 9th day of February, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich  
Chief Circuit Judge