

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-16-90006 & 10-16-90007

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 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: <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 the district and magistrate judges presiding over his civil matters engaged in misconduct. Specifically, complainant contends the subject judges

improperly dismissed his case and ruled in favor of the opposing party despite complainant's request for an extension of time. 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); see also Commentary to JCD Rule 3 ("Any allegation that calls into question the correctness of an official action of a judge—without more—is merits-related").

Complainant surmises there is a conspiracy to dismiss his cases. 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).

Finally, complainant contends his attorney is indifferent toward him and the prison administration is withholding his mail and denying him access to the courts. Complainant's allegations against his attorney and the prison administration, however, are not cognizable misconduct and, thus, will not be addressed in this order. *See* JCD Rule 4 ("A complaint . . . may concern the actions . . . only of judges of the United States courts of appeals, . . . district courts, . . . bankruptcy courts, . . . magistrate judges, and judges of the courts specified in 28 U.S.C. § 363.).

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 19th day of July, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge