

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-16-90008

Before **TYMKOVICH**, Chief Judge

**ORDER**

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

Complainant alleges the subject magistrate judge engaged in misconduct while assigned to complainant’s civil matter. Complainant first alleges the subject judge made

“overt threats on the record by admonishing [him] to refrain from further allegations against the [opposing party’s attorney].” A review of the record, however, indicates that the subject judge’s reproaches were related to the complainant complying with the Federal Rules of Civil Procedure. Complainant also alleges the subject judge ignored legal precedent. Neither of these claims are 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 also asserts the subject judge is biased against him and has delayed ruling on complainant’s motions. While an allegation of delay can state a valid claim for misconduct when the allegation concerns improper motive, such as bias, *see* JCD Rule 3(h)(3)(B), complainant’s claim fails because the bias allegation 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 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 19th day of July, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich  
Chief Circuit Judge