

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-16-90019 through 10-16-90022

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against three circuit judges and a district 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 a district judge, three circuit judges, a retired judge, and three court staff engaged in misconduct in connection with his habeas case. Complainant contends that the judges and court staff applied procedures outside the substantive and procedural limits of due process and were improperly motivated to act in concert with the district court to preclude a review of complainant's case on the merits. As an initial matter, the retired judge and court staff are not covered by the Act, and, thus, the allegations against them will not be considered. *See* JCD Rule 4 (stating “[a] complaint under these Rules may concern the actions or capacity only of judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363”).

Complainant makes several allegations regarding the conduct of the remaining judges, but it is unclear what allegations he attributes to each judge. Complainant appears to allege that both the district and circuit judges erroneously failed to reach the merits of his case and issued orders in contravention of Supreme Court and Tenth Circuit precedent. Complainant also contends that the filing restrictions imposed on him are void and the monetary sanction imposed on him is so burdensome as to deny him meaningful access to the courts. Even assuming these allegations are attributable to the subject judges, 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”).

Insofar as complainant alleges that the district and circuit judges acted in concert to preclude a review of his case on the merits, that allegation is dismissed as unsupported. 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 complainant fails to support his allegation 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 17th day of August, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge