

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-16-90032 & 10-16-90033

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, a civil litigant, filed a complaint against the district and magistrate judges assigned to his civil rights case. Complainant alleges that the subject judges have delayed making a ruling in his case and ignored his request for an injunction.

Complainant contends that the delay, at least on the part of the district judge, is a result of the district judge's bias stemming from the judge's previous work for a senator and as a U.S. Attorney.

A review of the docket does not support a claim of delay rising to the level of misconduct. Further, it does not appear that the district judge's previous experience is in any way connected to the law that complainant is challenging and complainant does not present evidence to the contrary. While allegations of delay and bias can state valid claims for misconduct even when the allegations relate to a judge's ruling, *see* Commentary to JCD Rule 3, these claims fail because they are 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 28th day of November, 2016.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge