

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-17-90003

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 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 judge engaged in misconduct while presiding over his civil rights case. Complainant takes issue with the subject judge’s dismissal of

complainant's case. 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 (stating that "[a]ny allegation that calls into question the correctness of an official action of a judge—without more—is merits-related").

Complainant alleges that the subject judge's rulings were racially motivated. To support this assertion, complainant contends that it is "reasonable to assume" that the subject judge ruled against complainant in favor of the opposing parties because they are Caucasian and he was advocating for African-American rights. While allegations of bias and/or prejudice can state valid claims for misconduct even when those allegations relate to a judge's ruling, *see* Commentary to JCD Rule 3, this claim fails because it is conclusory in nature and 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); *see also* Commentary to JCD Rule 11 (stating that dismissal of a complaint as "frivolous" is appropriate "when the allegations are facially incredible or so lacking in indicia of reliability that no further inquiry is warranted.")

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 8th day of May, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge