

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-17-90014

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 that the district judge assigned to complainant’s criminal case engaged in misconduct. Complainant contends that the judge improperly allowed the

charges against him, failed to address factual distortions and misinformation, unreasonably denied complainant's motion for ineffective assistance of counsel, and improperly penalized complainant with sentencing guideline points. 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 also asserts that the judge knowingly had or forced complainant to commit perjury in signing his plea agreement. Complainant contends that the judge's conduct was either caused by a disability or was intentional. While allegations of a disability or an improper motive can state a 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). Further, a review of the record in this matter did not provide evidence to support complainant's assertion.

Finally, complainant makes several claims against his attorney. These claims are not cognizable misconduct. *See* JCD Rule 4 (providing that a complaint may concern the actions only of judges).

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 4th day of August, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge