

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-17-90015

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 that the magistrate judge assigned to his civil matter engaged in misconduct. He generally alleges that the judge was biased against him and lacked

impartiality. Among other things, complainant asserts that the judge relied on erroneous information, that the judge formed personal opinions about the complainant before he presented evidence, that the judge demonstrated bias by stating that the complainant “frustrated the legal system . . . ,” and that the judge wrongly ruled on a statute of limitations issue. Complainant also filed a supplement to his complaint, in which he alleges that he was not permitted to file additional documents in his case, supporting a claim of bias against him.

Most of complainant’s assertions 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”).

Allegations of bias and lack of impartiality can state a valid claim for misconduct even when the claims relate to a judge’s ruling, *see* Commentary to JCD Rule 3, but 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). Although complainant does a thorough job of citing to the record, these citations do not support his claims of bias, but rather demonstrate complainant’s disagreement with the merits of the judge’s rulings. Even complainant’s citation to the judge’s language does not support his claim of bias. *See* Commentary to JCD Rule 3 (stating “[i]f the judge’s language was relevant to the case at hand . . . then the judge’s choice of language is presumptively merits-related”).

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 22nd day of September, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich  
Chief Circuit Judge