

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-17-90025

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, an attorney, alleges that a district judge engaged in misconduct while presiding over separate civil and criminal matters. First, complainant reiterates

allegations he made in a 2008 complaint in which he alleged, in part, that the district judge made improper campaign contributions and engaged in ex parte communications. In the 2008 complaint, complainant also seemed to assert that the judge's ex parte communications and campaign contribution were part of a conspiracy motivated by a shared religious faith. As part of a limited inquiry, the subject judge admitted that he had contributed to the campaign years earlier and thought, at the time, it was proper, but later realized that it was improper and would not do it again. The Chief Judge dismissed the campaign contribution allegation after determining that the subject judge had taken voluntary corrective action and dismissed the ex parte allegation as unsupported by sufficient evidence. Complainant filed a petition for review and the Judicial Council affirmed the Chief Judge's order.

Complainant once again challenges the Chief Judge's dismissal of the misconduct order. He contends the Chief Judge made improper factual findings. 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* See Commentary to JCD Rule 3 (providing "a complaint challenging the correctness of a chief judge's determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related—in other words, as challenging the substance of the judge's administrative determination to dismiss the complaint—even though it does not concern the judge's rulings in Article III litigation").

Complainant also alleges that less than a year after his complaint was dismissed, the same subject judge made an inappropriate comment during a sentencing hearing,

which he seems to suggest supports his earlier conspiracy allegation based on faith. I conducted a limited inquiry into the veracity of this allegation by reviewing the district and appellate dockets, sentencing hearing transcripts, and related orders. The transcript contains a statement by the subject judge that seems to relate to the defendants shared faith and culture with his victims. But, complainant appears to have mischaracterized the statement. When taken in context, the subject judge seems to opine that it was shameful that the defendant abused his position of trust as a member of a community in order to take advantage of the victims in the case. This does not rise to the level of misconduct. 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 it is 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 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 30th day of October, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge