

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-17-90038

Before **KELLY**, Circuit Judge

**ORDER**

Complainant has filed a complaint of judicial misconduct against a circuit 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 considering complainant's misconduct complaints against two magistrate judges in the circuit and while presiding over complainant's appeal from the dismissal of his civil case in district court and writs of mandamus related to the same matter. Complainant contends that the subject judge failed to consider facts and "inferences of complainant[']s complaint." 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 "[a]ny allegation that calls into question the correctness of an official action of a judge—without more—is merits-related" and that "a complaint challenging the correctness of a . . . 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 . . .").

Complainant contends the subject judge had a retaliatory motive to dismiss complainant's appeals. Complainant also seems to assert, without providing examples, that the subject judge treated complainant in a demonstrably egregious and hostile manner, engaged in partisan political activity, made inappropriate partisan statements and failed to cooperate in an investigation. While these allegations can state valid claims for misconduct even when the allegations relate to a judge's ruling, *see* Commentary to JCD Rule 3, these assertions 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 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/ Paul J. Kelly, Jr.

Honorable Paul J. Kelly, Jr.  
Circuit Judge