

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-17-90043 & 10-17-90046

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed two complaints of judicial misconduct against a district and magistrate judge in this circuit. My consideration of these complaints 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges that the subject judges engaged in misconduct while assigned to his civil matter. Complainant contends the subject judges did not understand or

appreciate his cognitive disability, which caused him undue stress. Even if the judges did not understand complainant's disability, this allegation does not constitute cognizable misconduct. *See* JCD Rule 11(c)(1)(A) (permitting dismissal if the complaint "alleges conduct that, even if true, is not prejudicial to the effective and expeditious administration of the business of the courts").

Complainant also asserts that the magistrate judge did not take the right "approach" in addressing him and did not give him enough time for some of her requests. He also contends that the district judge failed to consider a legal definition when ruling on his motion. 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").

Accordingly, these complaints are dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judges 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 7th day of March, 2019.

Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge