

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-18-90009

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 the subject judge engaged in misconduct while assigned to his case. Complainant indicates that he filed a motion for jury trial and asserts that the

judge's delay in ruling on his motion has deprived him of his due process rights. He also contends the subject judge abused his discretion in dismissing complainant's case.

A review of the docket indicates the subject judge closed the action because the complainant did not comply with filing restrictions. Accordingly, complainant's allegations of delay are unsupported by "sufficient evidence to raise an inference that misconduct has occurred." *See* JCD Rule 11(c)(1)(D). Complainant's claim that the subject judge abused his discretion is not cognizable as misconduct because it is "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, 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 7th day of March, 2019.



Honorable Timothy M. Tymkovich  
Chief Circuit Judge