

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-18-90012

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, a pro se litigant, alleges the subject judge engaged in misconduct in connection with the complainant’s civil case. Complainant contends the subject judge

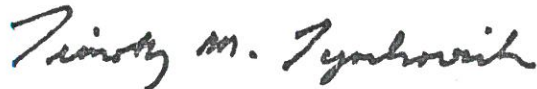
demonstrated partiality by granting opposing counsel's motions for extensions of time while denying his similar requests. Complainant asserts the subject judge denied his due process rights by not giving him an opportunity to address the reasons why his attorneys withdrew from the case. Finally, complainant contends the subject judge intentionally delayed sending him mail and misled him by not giving him detailed deadlines in a letter he received.

Complainant's claims regarding his inability to address the reasons why his attorneys withdrew from the case and his general challenges to the judge's denial of complainant's requests for extension of time 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").

Complainant's claims regarding intentional delay and partiality are also not cognizable. While these allegations can state valid claims for misconduct even when they relate to a judge's ruling, *see* Commentary to JCD Rule 3, these claims fail because they are completely unsupported. A review of the record indicates that both parties were granted extensions of time for various filings and does not otherwise support a claim that the judge intentionally delayed his mail or demonstrated improper motive. 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 7th day of March, 2019.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive style with a large initial 'T'.

Honorable Timothy M. Tymkovich
Chief Circuit Judge