

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-18-90020 & 10-18-90021

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a district judge and 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges the subject district and magistrate judges assigned to her civil matter engaged in misconduct. Most of complainant’s allegations relate to the magistrate

judge. She asserts the magistrate judge was biased against her as a pro se party. As an example of this, she contends the magistrate judge set an unprecedented settlement conference prior to discovery and did not grant her an extension of time. She also asserts the magistrate judge demonstrated prejudicial conduct in the courtroom by making snide remarks toward her that the judge would not have made toward an attorney. Complainant contends the magistrate judge did not address issues in accordance with the law.

Complainant alleges the district judge improperly denied her IFP motion.

Complainant's allegations that the magistrate judge did not address issues in accordance with the law and that the district judge improperly denied her motion 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").

As to complainant's allegation that the magistrate judge demonstrated prejudicial conduct in the courtroom, that allegation can be dismissed as directly related to the merits of the judge's rulings. The Commentary to Rule 4 provides, "a somewhat different standard applies to determine the merits-relatedness of a non-frivolous allegation that a judge's language in a ruling reflected an improper motive. If the judge's language was relevant to the case at hand . . . the judge's choice of language is presumptively merits-related and excluded." Transcripts were not prepared for the hearing at issue, but assuming complainant's contentions about what the magistrate judge said were true, they were relevant to the proceedings taking place at the time he said them.

A limited inquiry was conducted to determine whether there was anything in the record to support complainant's claim of bias. No support for bias was found. While allegations of bias can state a valid claim for misconduct even when the alleged bias relates to a judge's ruling, *see* Commentary to JCD Rule 3, this claim fails because it is 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 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 15th day of April, 2019.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive, flowing style.

Honorable Timothy M. Tymkovich
Chief Circuit Judge