

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-18-90035 through 10-18-90037

Before **TYMKOVICH**, Chief Judge

**ORDER**

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

Complainant, an incarcerated pro se litigant, filed a complaint of judicial misconduct against the district judge presiding over his criminal matter and the two appellate judges who were assigned to both his resulting appeals.

Complainant asserts that the district judge knowingly made a materially false factual finding to support denying complainant's request for due process hearing and other motions. He also suggests the judge received ex parte information from others involved in his case.

Complainant contends the two appellate judges endorsed the materially false factual conclusion from the district judge to deny complainant's certificate of appealability. He asserts the two judges knew the information was false because they were on the appellate panel who heard the direct appeal.

Complainant concludes there was a coordinated effort by the judges to illegitimately ensure that his convictions could not be overturned by an impartial panel.

Insofar as complainant takes issue with the judges' rulings against him, 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 4 (stating that "[a]ny allegation that calls into question the correctness of an official decision or procedural ruling of a judge—without more—is merits-related").

Complainant's allegations that the judges acted knowingly, engaged in ex parte communications, or were involved in a conspiracy are also not cognizable misconduct. While these allegations can state valid claims for misconduct even when they relate to a judge's ruling, *see* Commentary to JCD Rule , these claims 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 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 6th day of June, 2019.

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

Honorable Timothy M. Tymkovich  
Chief Circuit Judge