

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-18-90123

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 filed a complaint against the magistrate judge assigned to his civil matter. He contends the judge did not make rulings based on the law. This claim 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 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 also contends the magistrate judge was not impartial. 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 4, this claim of bias fails because it is completely unsupported. Although complainant offered to supply “hard evidence,” there was nothing in his complaint or filings that has raised an inference that misconduct has occurred. 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).

Insofar as the complaint contains allegations against non-federal judges, those claims are not cognizable misconduct. *See* JCD 1(b) (including as covered by 28 U.S.C. §§ 351 -364 , judges of the United States courts of appeals, district courts, bankruptcy courts, magistrate judges, and judges of the courts specified in 28 U.S.C. § 363).

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 6th day of June, 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