

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-19-90007 & 10-19-90008

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.* (the “Act”), 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, a pro se incarcerated litigant, alleges the district and magistrate judges assigned to his habeas matter engaged in misconduct. Complainant contends the

subject district judge prejudiced complainant in a previous matter, but has not recused from complainant's current case. Complainant also takes issue with the magistrate judge's report and recommendation. Complainant contends the magistrate judge improperly failed to liberally construe complainant's filings and did not consider material evidence. 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).

"Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse." JCD Rule 4(b)(1).

Complainant also contends the subject magistrate judge showed favoritism toward prison officials. 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 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).

Insofar as complainant makes allegations against non-federal judges, those allegations are not cognizable under the Act. *See* JCD Rule 1(b) (providing a definition for a judge who is covered by the Act). Further, complainant's request for a case transfer is not an appropriate remedy under the Act. *See generally* JCD Rules.

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 style with a large initial 'T'.

Honorable Timothy M. Tymkovich
Chief Circuit Judge