

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-19-90039 & 10-19-90040

Before **TYMKOVICH**, Chief Judge

**ORDER**

Complainant has filed a complaint of judicial misconduct against one district judge and one magistrate judge in this circuit. My consideration of this complaint is governed by the rules issued by the Judicial Conference of the United States, entitled Rules for Judicial-Conduct and Judicial-Disability Proceedings (the JCD Rules); the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364 (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 on the Tenth Circuit's webpage: <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).

As an initial matter, complainant's allegations against defense counsel and defendant are not cognizable because those individuals are not covered by the Act.

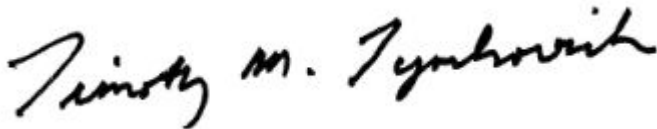
*See* JCD Rule 1 (limiting Act’s applicability to those persons holding judicial office as defined in JCD Rule 1(b)).

Complainant, a pro se litigant, alleges the subject judges engaged in misconduct while presiding over his employment discrimination case. He asserts the judges improperly denied discovery requests and a motion to amend and failed to “adhere to the pretext-plus rule.” 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* Commentary to JCD Rule 4 (“Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge—without more—is merits-related.”). Likewise, complainant’s allegations that the subject judges “artificially extended the lifespan of the case” by favoring defendant’s proposed deadlines and granting defendant deadline extensions do not constitute cognizable misconduct. *See* Commentary to JCD Rule 4 (stating that “a complaint of delay in a single case is excluded as merits-related” because it “may be said to challenge the correctness of an official action of the judge[.]”).

Complainant also contends the subject magistrate judge engaged in ex parte communications and that both judges conspired with defendant. Finally, complainant speculates that the judges’ rulings resulted from bribery. While such allegations can state valid claims for misconduct, even when they relate to a judge’s ruling, *see* Commentary to JCD Rule 4, complainant’s allegations fail because they are wholly unsupported. The JCD Rules require complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” 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 id.* 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). *See also* Commentary to JCD Rule 7 (noting that “‘circuit clerk,’ as . . . used throughout these Rules, applies to circuit executives”). The petition must be filed with the Office of the Circuit Executive within 42 days after the date of this order. JCD Rule 18(b).

So ordered this 26th day of May, 2020.

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

Honorable Timothy M. Tymkovich  
Chief Circuit Judge