

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-19-90051

Before **TYMKOVICH**, Chief Judge

**ORDER**

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

Complainant, an incarcerated litigant, alleges the subject district judge and a court reporter engaged in misconduct while assigned to complainant’s criminal matter.

Complainant alleges the district judge did not “adequately determine” that petitioner understood the nature of the charges against him during complainant’s plea hearing. To support his assertion, complainant reviewed the transcript and attempted to listen to the audio recording from the hearing. The court reporter provided a copy of the transcript, but indicated that because of the recording’s unique format, it was only available to review in person. Complainant surmises that the subject district judge and the court reporter changed the transcript to hide the judge’s mistakes. Complainant contends he is being targeted because he is a “member of a particular racial, ethnic, and politically unfavorable group, which [the] court may dislike.”

As an initial matter, complainant’s allegations against the court reporter are not cognizable misconduct. *See* JCD Rule 1(b) (providing “[a] covered judge is defined under the Act and is limited to judges of United States courts of appeals, judges of United States district courts, judges of United States bankruptcy courts, United States magistrate judges, and judges of the courts specified in 28 U.S.C. § 363”).

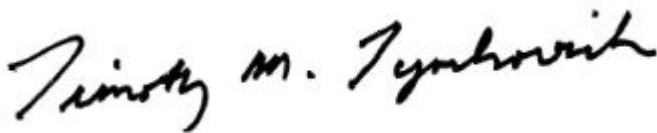
Complainant’s contention that the judge did not properly conduct the plea hearing is not cognizable as misconduct because it is “directly related to the merits of a decision or procedural ruling.” JCD Rule 11(c)(1)(B); *see also* Commentary to JCD Rule 4 (stating that “[a]ny allegation that calls into question the correctness of an official decision or procedural ruling of a judge—without more—is merits-related”).

Complainant’s allegations that the judge conspired with the court reporter to change the transcript or that the judge acted with an improper motive are also not cognizable. While allegations of conspiracy and bias can state valid claims for

misconduct even when they relate to a judge's ruling, *see* Commentary to JCD Rule 4, 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). Although complainant does not recall making the statements recorded in the transcript, that is not enough to support an assertion that the transcripts have been changed.

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 26th day of May, 2020.

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