

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-19-90052 & 10-19-90053

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.*, 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 alleges the subject judges engaged in misconduct while appointed to his civil matter. Complainant appears to take issue with several of the magistrate judge’s

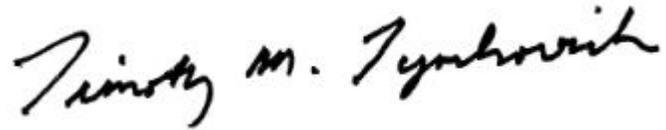
findings; however, complainant has indicated that he is not asking for a review of the court's decision. Instead, he believes that the court engaged in fraud. Specifically, he contends the magistrate judge intentionally delayed the report and recommendation and the district judge "controlled" the illogical process.

Complainant correctly asserts that the misconduct process is not intended as a platform to question the merits of the judges' rulings. A complaint of delay in a single case, however, is also generally excluded as merits-related because "[s]uch an allegation may be said to challenge the correctness of an official action of the judge, i.e., assigning a low priority to deciding the particular case." *See* JCD Rule 4 cmt. Since complainant alleges that the delay was deliberate, however, his allegation of delay may be considered. Nonetheless, even an allegation of intentional delay must be supported by sufficient evidence to support an inference that misconduct has occurred. *See* JCD Rule 11(c)(1)(D). Because there is no evidence to support an allegation that either judge had an improper motive in this case, the complaint must be dismissed.

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 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