

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-19-90062

Before **TYMKOVICH**, Chief Judge

ORDER

Complainants have 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 complainants and subject judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainants, two pro se attorneys, allege the subject judge has engaged in a pattern of discrimination against pro se litigants. They also contend that the subject judge

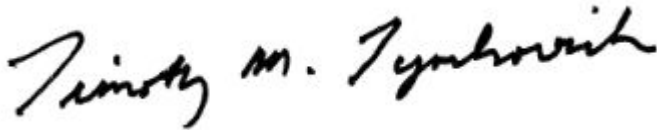
has been biased against them in their civil matter because they are pro se, male, and employees who have filed an EEOC claim. Finally, they assert that the subject judge defamed one of them in the judge's Report and Recommendation. In support of their claim, they cite to the judges' language in orders from their civil matter, and a transcript from an unrelated case.

The orders and transcript have been reviewed and do not support a finding of misconduct. 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 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"). Although complainants allege the rulings reflect bias, "[b]ecause of the special need to protect judges' independence in deciding what to say in an opinion," a different standard applies to determine whether a judge's language reflects an improper motive. JCD Rule 4 cmt. "If the judge's language was relevant to the case at hand . . . then the judge's choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive." *Id.* In each of the examples provided by the complainants, the judge's language is relevant to the case and is not otherwise inappropriate.

Accordingly, this complaint is dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainants 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, complainants 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