

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-20-90004 through 10-20-90006

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against three circuit judges 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 name 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 non-judges 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”). Further, one of the subject judges is now deceased. Accordingly, the allegations against that subject judge will not be considered. *See* JCD Rule 11(e) (allowing a chief judge to “conclude a complaint . . . in whole or in part upon determining that intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge”).

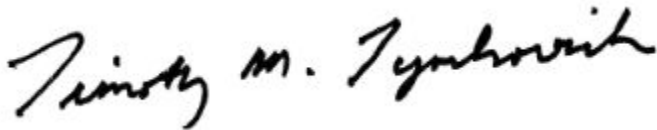
Complainant alleges the subject judges engaged in misconduct while assigned to his appeal. Complainant takes issue with the clerk of court’s orders in his case. He alleges the subject judges erroneously allowed the clerk of court and her staff to make legal determinations despite complainant’s objections. Complainant further contends that the judges incorrectly applied the law in dismissing complainant’s appeal. 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”).

Complainant also contends the judges made false statements in their orders and retaliated against him after he objected to the clerk’s orders and asked for appointment of counsel. He asserts the judges violated their oaths of office because they did not faithfully and impartially perform their duties. While these allegations can state valid claims for misconduct even when they relate to a judge’s rulings, *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).

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 4th day of August, 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