

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-20-90007

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).

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”).

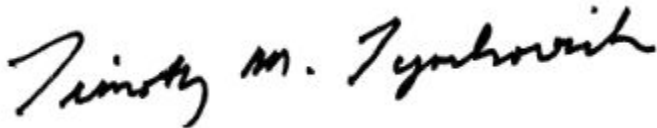
Complainant alleges the subject judge engaged in misconduct while assigned to complainant’s criminal matter. He contends the judge improperly denied complainant a due process hearing based upon a fact that the judge knew to be false and which tainted the entire judicial process.

Complainant’s assertion that the judge improperly denied complainant a due process 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 contention that the judge based his decision on a fact that the judge knew to be false is unsupported. Complainant vaguely suggests I review a different misconduct complaint for evidence of an improper motive in his case. No such evidence was provided in the complainant’s complaint or in the complaint he points to. While allegations of an improper motive can state a valid claim for misconduct even when the allegation relates to a judge’s ruling, *see* Commentary to JCD Rule 4, this claim fails because it is 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 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 4th day of August, 2020.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive style with a large, prominent initial "T".

Honorable Timothy M. Tymkovich
Chief Circuit Judge