

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-20-90008

Before **TYMKOVICH**, Chief Judge

ORDER

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

Complainants, pro se litigants, allege the subject judge engaged in misconduct while assigned to their civil cases in district court. The complainants assert that the

subject judge has improperly delayed in ruling on their case and refused to allow plaintiffs to proceed with an amended complaint, which denied them due process. 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”). Further, “[c]ognizable misconduct does not include an allegation about delay in rendering a decision or ruling, unless the allegation concerns an improper motive in delaying a particular decision” JCD Rule 4(b)(2).

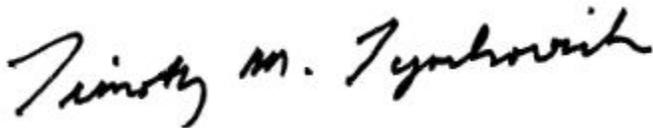
Complainants appear to suggest that the judge was biased against them because of their pro se status. To support this allegation, they assert the judge stated in an order that complainants, “unlike a paying litigant, lack[] an economic incentive to refrain from filing frivolous malicious or repetitive lawsuits.” A review of the order referenced by complainants reveals that the judge was quoting language from another case to set forth a legal standard. This allegation can be dismissed as merits-related, *see* JCD Rule 4 cmt (providing that “[i]f the judge’s language was relevant to the case at hand – for example, a statement that a claim is legally or factually ‘frivolous’ – then the judge’s choice of language is presumptively merits-related and excluded”), and as unsupported, *see* JCD Rule 11(c)(1)(D) (requiring complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred”).

Finally, complainants ask that the judge be investigated. Investigations requiring the appointment of a special committee are appropriate when “some or all of a complaint

is not dismissed or concluded.” JCD 11(f). Here, the complaint is being dismissed for the reasons stated above, thus an investigation is not necessary.

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 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