

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-20-90014

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).

Complainant, a litigant, alleges the subject judge engaged in misconduct while presiding over her civil matter. Complainant takes issue with the judge’s evidentiary

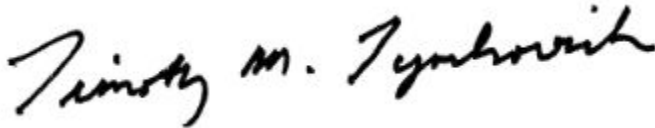
rulings, asserting that the rulings were erroneous and inconsistent. At one point, the judge made a ruling in court, changed his mind after reviewing the briefs, and issued a different written ruling. Complainant surmises the judge's decision was affected by an outside influence. Complainant further contends the judge mischaracterized his relationship with the opposing party and that the judge should have recused.

Complainant's claim that the judge's evidentiary rulings were erroneous 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"). Similarly, complainant's claim that the judge should have recused is not cognizable misconduct. *See* JCD Rule 4(b)(1) ("Cognizable misconduct does not include an allegation that calls into question the correctness of a judge's ruling, including a failure to recuse.").

A limited inquiry was conducted to determine the veracity of complainant's claims of bias and outside influence. *See* JCD Rule 11(b) (allowing a chief judge to conduct a limited inquiry in determining what action to take). A review of the docket, filings, and relevant transcripts does not support a claim of bias or outside influence. While these allegations can state valid claims for misconduct even when they relate to a judge's ruling, *see* Commentary to JCD Rule 4, these claims fail because they are not supported by "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 14th day of October, 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