

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-20-90045 & 10-20-90046

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed complaints of judicial misconduct against two magistrate judges in this circuit. The complaints have been consolidated for decision. My consideration of these complaints 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 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”).

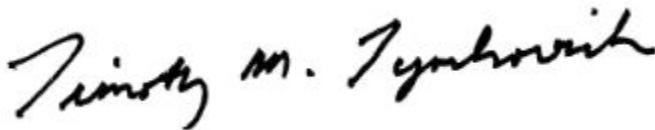
Complainant alleges the magistrate judges engaged in misconduct while assigned to his civil matters. Complainant contends that the first magistrate judge has mismanaged complainant’s civil matter, which has resulted in delays, and that the judge has “refused to issue a [temporary restraining order]” in error. 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”); *see also* JCD Rule 4(b)(2) (providing that “[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 or habitual delay in a significant number of unrelated cases”).

Complainant’s allegations against the second magistrate judge stem from the judge’s dismissal of complainant’s motion for appointment of counsel. Complainant contends the second magistrate judge “effectively sabotaged” his case and is having ex parte communications with opposing counsel. Complainant surmises that the second magistrate judge is prejudiced against him because of his race and incarcerated status. While allegations of conspiracy and bias can state valid claims for misconduct even when the allegations relate to a judge’s ruling, *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, these complaints are 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 19th day of October, 2021.

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