

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-20-90050

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a magistrate 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 alleges the subject judge engaged in misconduct while assigned to complainant’s employment discrimination case. Complainant appears to take issue with

several of the subject judge's discovery rulings. Complainant asserts that the subject judge made these rulings in error, abused his or her power, and/or violated the Federal Rules for Civil Procedure. 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").

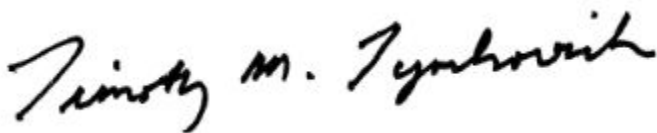
Complainant also asserts that the subject judge engaged in improper discussions with the opposing party in his case. He asserts that the judge improperly ordered the opposing party to submit a document *in camera* along with an explanation via *ex parte* letter as to why the documents should qualify for privilege. A review of the docket was conducted to ascertain the veracity of complainant's assertion. *See* JCD Rule 11(b) (permitting a chief judge to obtain and review relevant documents). There is no evidence to support an allegation of improper discussions. The opposing party in the case chose to produce the documents in question, rather than submit them to the judge for an *in camera* review, and there is no evidence that further communications on the issue, whether proper or improper, even took place.

Complainant also appears to assert that the subject judge demonstrated discrimination and retaliation against complainant by prohibiting complainant from filing further motions and instructing the opposing party not to file responses to complainant's motions. A review of the docket shows that the subject judge restricted complainant from filing documents until after there was a ruling on one of the outstanding motions.

See JCD Rule 11(b). This does not demonstrate discrimination or retaliation and there is no other evidence to support an assertion that the judge ruled with an improper motive. While allegations of improper discussions, discrimination, and retaliation can state valid claims for misconduct even when these allegations relate to a judge’s ruling, *see* Commentary to JCD Rule 4, these claims fail because they lack “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 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