

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-16-90038

Before **KELLY**, Circuit Judge

ORDER

Complainant has filed a complaint of judicial misconduct against a circuit 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 that the subject judge wrongly dismissed a complaint against another judge in the Circuit. This claim 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 3 (stating “a complaint challenging the correctness of a . . . determination to dismiss a prior misconduct complaint would be properly dismissed as merits-related – in other words, as challenging the substance of the judge’s administrative determination to dismiss the complaint . . .”).

Complainant appears to allege that the dismissal was a result of the subject judge’s bias, malice, and favoritism. While these allegations can state valid claims for misconduct even when the allegations relate to a judge’s ruling, *see* Commentary to JCD Rule 3, these assertions 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, 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 this order. *Id.*

So ordered this 16th day of November, 2016.

/s/ Paul J. Kelly, Jr.

Honorable Paul J. Kelly, Jr.
Circuit Judge