

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-19-90012 & 10-19-90013

Before **TYMKOVICH**, Chief Judge

ORDER

Complainant has filed a complaint of judicial misconduct against two district judges 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant alleges the district judge presiding over his civil matter engaged in misconduct. Complainant appears to take issue with the denial of appointment of counsel

and the lack of a hearing before his petition was dismissed. He alleges the subject judge deliberately violated his constitutional rights, should have recused, and deliberately delayed sending complainant court mail. Complainant also contends the chief district court judge should have reassigned the case to another judge.

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) (indicating “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse”); *see also* Commentary to JCD Rule 4 (stating that “[a]ny allegation that calls into question the correctness of an official action of a judge—without more—is merits-related”); *see also id.* (providing “complaint of delay in a single case is excluded as merits-related . . . [;] [s]uch an allegation may be said to challenge the correctness of an official action of the judge”).

Complainant contends that many of the district judge’s actions were deliberate or performed with an improper motive. While allegations of an improper motive can state a valid claim 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, 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 judges 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 17th day of October, 2019.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive style with a large, prominent initial "T".

Honorable Timothy M. Tymkovich
Chief Circuit Judge