

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-19-90034

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”); federal statutes addressing judicial conduct and disability, 28 U.S.C. §§ 351-364 (the “Act”); 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 on the Tenth Circuit’s webpage 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 presiding over his criminal case. He contends that the case should have been dismissed and that the

subject judge would not let him subpoena pertinent materials. He claims the subject judge allowed the prosecution to level slanderous lies that tricked the jury into finding him guilty. He states the subject judge “cancelled” his rights to due process, to equal protection, to a fair trial, and “to be free from illegal targeting and selected persecution.” And, he asserts that the subject judge’s misconduct is evidenced by complainant having prevailed on appeal. These claims are not cognizable as misconduct because they are “directly related to the merits of a decision or procedural ruling.”

Id. 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 contends the subject judge was dishonest and conspired with the prosecution and defense to frame and convict him. While such allegations can state valid claims for misconduct even when they relate to a judge’s rulings, *see* Commentary to JCD Rule 4, complainant’s allegations 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.” JCD Rule 11(c)(1)(D).

Insofar as complainant takes issue with the conduct of several non-judges, those claims are not cognizable under the Act. *See id.* 1(b) (defining covered judge as “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”).

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 id.* 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 21st day of November, 2019.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive style with a large initial 'T'.

Honorable Timothy M. Tymkovich
Chief Circuit Judge