

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-20-90053

Before **HOLMES**, Chief Judge

MEMORANDUM & 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”), 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:
<https://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, the spouse of an incarcerated litigant, alleges the subject judge engaged in misconduct while presiding over her husband's criminal trial. Specifically, complainant contends that the subject judge had improper discussions with counsel for the prosecutor, treated her husband's attorney in a hostile manner, and used his office to obtain special treatment for a friend. A limited inquiry was conducted to determine the veracity of the allegations. *See* JCD Rule 11(b) (permitting the chief judge to obtain and review transcripts and other relevant documents to determine what action to take on a complaint).

Complainant alleges the subject judge argued for the prosecution rather than listening to both sides. Complainant also contends that the subject judge engaged in discussions without her husband present. A review of the transcripts in the matter does not support these contentions. Complainant is correct that her husband's attorney expressed concern that his client was not present during a discussion in the judge's chambers between the subject judge, the opposing party, and her husband's attorney. The subject judge explained that he did not want to discuss the sensitive matter in open court where many people were present. The judge also indicated that after complainant's husband's attorney spoke to his client, they could discuss whether anything needed to be on the record. As to complainant's general contention, the transcripts do not support an allegation that the subject judge argued for the prosecution. Accordingly, these allegations can be dismissed as lacking sufficient evidence to raise an inference that misconduct has occurred. *See* JCD Rule 11(c)(1)(D).

Complainant also alleges the subject judge demonstrated hostility toward the defense attorney by silencing an argument that the attorney wanted to raise. The allegation, as it relates to the judge's ruling not to permit the argument, can be dismissed as merits-related. *See* JCD Rule 11(c)(1)(B) (permitting dismissal of an allegation that is directly related to the merits of a decision or procedural ruling). Further, there is no evidence on the record that the judge demonstrated hostility toward the defense attorney or anyone else. JCD Rule 11(c)(1)(D) (permitting dismissal of an allegation that lacks sufficient evidence to raise an inference that misconduct has occurred).

Finally, complainant asserts the subject judge has a personal relationship with the federal prosecutor in the case and obtained special treatment for the prosecutor. Complainant bases her contention on the friendly banter between the subject judge and the prosecutor, a reference to the prosecutor's upcoming "tee time," and the judge allowing the prosecutor to be sentimental about his upcoming retirement during trial. While allegations of bias and conspiracy can state a valid claim for misconduct, *see* Commentary to JCD Rule 4, these claims fail because they are unsupported. Complainant's examples of the judge having a close personal relationship with the prosecutor are not compelling. More significantly, the record does not support the contention that the judge was biased toward the prosecutor. 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).

In a supplement, complainant takes issue with the subject judge's denial of complainant's husband's post-conviction motions. 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”). Although complainant asserts that the subject judge’s rulings were motivated by his bias against complainant’s husband, complainant does not provide any evidence of bias other than the rulings themselves. *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 13th day of December, 2022.

A handwritten signature in black ink, appearing to read "Jerome A. Holmes". The signature is written in a cursive, flowing style.

Honorable Jerome A. Holmes
Chief Circuit Judge