

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-21-90027

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 father of an incarcerated criminal defendant, alleges that the subject district judge engaged in misconduct while presiding over his son's criminal matter. Complainant contends that the subject judge referred to his son as a "snitch" in court. Complainant also asserts that the subject judge provided information about his son's substantial assistance, which complainant contends exposes his son and others "to an increased danger of retribution." Finally, complainant asserts that the judge behaved inappropriately in referencing the complainant's early sexual trauma. Complainant suggests that the judge lacked impartiality.

The subject judge responded to the complaint. The subject judge explained that both sides properly raised the issue of substantial assistance and that "it would have been essentially impossible to have conducted the hearing without acknowledging the substantial assistance issue and addressing the arguments that were made about it by both sides." The subject judge said he felt compelled to explain to both the parties and their families why he was granting such a significant downward departure from the mandatory minimum. The subject judge explained that he used the word "snitch" only in the context of explaining that the defendant could be seen that way in prison. The judge further explained that he presented the sexual trauma as one of the other mitigating factors.

A limited inquiry was conducted to determine the veracity of the allegations. *See* JCD Rule 11(b) (permitting the chief circuit judge to obtain and review relevant documents in determining what action to take in a misconduct matter). A review of the transcripts reveals that while explaining the factors that he considered in determining the sentence, the judge indicated that the defendant provided substantial assistance, noted the

type and significance of such assistance, and stated that defendants who provide substantial assistance are “labeled a snitch” in prison and often have to be in protective custody. The subject judge indicated that because the defendant provided this information to the government, the government recommended a very significant reduction in sentence from the statutory minimum. The judge also explained what he is required to consider during sentencing, including the federal sentencing guidelines, the nature and circumstance of the offense, the history and characteristics of the defendant, and personal history. As part of the personal history, the judge considered that the defendant was sexually abused when he was a child, an issue which troubled him in his adult years. Indeed, in his allocution in open court before sentencing, the defendant himself referred to his “childhood sexual trauma.”

The judge’s discussion of the defendant’s substantial assistance and the resulting consequence that the defendant could be labeled a “snitch” in prison, as well as the defendant’s early sexual trauma, were all factors that the judge considered in giving the defendant a very significant reduction in sentence. The relevant court documents have been sealed and there is no prohibition on discussing a defendant’s cooperation in court, particularly when substantial assistance is a significant factor in the sentence reduction. Regardless, complainant’s allegations essentially challenge the judge’s decision to make a record of the factors that he considered. As such, the allegations are not cognizable misconduct. “Any allegation that calls into question the correctness of an official decision or procedural ruling of a judge – without more – is merits-related.”

Commentary to JCD Rule 4. Although complainant does suggest that the judge’s

decision may have been based on a lack of impartiality, there is no evidence on the record to support that allegation. *See* JCD Rule 11(c)(1)(D) (requiring the complainants to support their allegations with “sufficient evidence to raise an inference that misconduct has occurred”). Rather, the transcripts demonstrate that the judge empathized with both the defendant and the victim’s family and that he thoughtfully explained to both sides why he departed downward from the mandatory minimum sentence so significantly and why he could not reduce the sentence further.

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 31st day of January, 2023.

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