

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-23-90019

Before **HOLMES**, Chief Judge

MEMORANDUM & ORDER

Complainant has filed a complaint of judicial misconduct against a magistrate 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/cc/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, an incarcerated pro se litigant, filed a § 1983 claim against employees at a correctional facility. Shortly thereafter, the subject judge was assigned to the matter, and attorneys from the firm where the subject judge's son worked entered an appearance on behalf of the correctional facility's employees. For the next two years, the subject judge served as the magistrate judge in the matter. After two years, the subject judge entered a sua sponte Order of Recusal, indicating that his son became a partner at the firm that year. After the Order of Recusal, complainant learned from the law firm's website that the subject judge's son was listed as a "Member" of the firm for several years. Complainant filed the present complaint essentially alleging that the subject judge's recusal was untimely or misleading because the subject judge indicated that his son became a partner that year, which Complainant asserts conflicts with the information on the firm's website. Complainant contends that the subject judge's failure to recuse sooner was motivated by a desire to benefit his son and his son's law firm, which was reflected in the subject judge's rulings against him.

The Commentary to the Code of Conduct advises "[t]he fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if . . . the relative is known by the judge to have an interest in the law firm that could be 'substantially affected by the outcome of the proceeding' under Canon 3C(1)(d)(iii), the judge's disqualification is required." Cmt. to Canon 3C(1)(d)(ii). The Committee on Codes of Conduct has further clarified that: "[i]f the [judge's] relative is . . . [a] non-equity partner and has not participated in the preparation or presentation of the case before the judge, and the relative's compensation

is in no manner dependent upon the result of the case, recusal is not mandated” but a judge’s recusal is required in all cases where the relative’s law firm represents a party before the court if the relative is an equity partner at the firm. Adv. Op. No. 58.

A limited inquiry was conducted to determine the veracity of the allegations. *See* JCD Rule 11(b). The inquiry revealed that the subject judge’s son had not been a profit-sharing partner until the year the subject judge recused from the case, as the subject judge indicated in the docket entry. Since the subject judge’s son was not a profit-sharing partner earlier in the case, the subject judge was not required to recuse. Rather the subject judge properly recused when the subject judge’s son became a profit-sharing partner. Consequently, there is no evidence to support Complainant’s claim that the subject judge untimely recused or intentionally misled him.

The JCD Rules provide that “[c]ognizable misconduct does not include an allegation that calls into question the correctness of a judge’s ruling, including a failure to recuse.” JCD Rule 4(b)(1). But “[t]he very different allegation that the judge failed to recuse for illicit reasons – i.e., not that the judge erred in not recusing, but that the judge knew he should recuse but deliberately failed to do so for illicit purposes – is not merits-related.” *Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice*, 239 F.R.D. 116, 222 (2006). Such an allegation, however, must be supported with sufficient evidence to raise an inference that misconduct has occurred. JCD Rule 11(c)(1)(D).

Complainant’s assertion that the subject judge’s failure to recuse earlier was motivated by a desire to benefit his son and his son’s firm is unsupported. During the two

years the subject judge was assigned to the case, he granted motions in favor of both parties, and in the instances where the subject judge issued a report and recommendation, the district judge accepted the recommended rulings. Without evidence that the judge acted with an improper motive, his claims fail as they are directly related to the merits of the subject judge's decision to recuse and are unsupported by sufficient evidence.

Accordingly, the 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, 2024.

A handwritten signature in black ink, appearing to read "Jerome A. Holmes". The signature is fluid and cursive, with the first name "Jerome" being more prominent.

Honorable Jerome A. Holmes
Chief Circuit Judge