

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-24-90006

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/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, filing pro se, alleges the subject judge is a close friend and former colleague of opposing counsel in the underlying civil matter. Complainant alleges the judge had improper ex parte communications with opposing counsel and cites as evidence purportedly erroneous information the judge is alleged to have relied on in issuing the order dismissing the underlying civil matter, which, Complainant asserts, could only have come from opposing counsel. However, a review of the underlying record and the dismissal order indicates the information the judge cited came from documents entered into the court record. There is no evidence presented—only the Complainant’s supposition and conjecture—to support allegations that either an improper bias on the part of the judge existed such that the judge should have recused, or that improper ex parte communication occurred.

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). An allegation that a judge acted with an improper motive, however, must be supported by sufficient evidence to raise an inference that misconduct has occurred. JCD Rule 11(c)(1)(D). Further, a judge’s recusal is not necessarily required merely because a judge knows or previously worked with parties to a case.

In this instance, because no evidence has been provided to demonstrate conflict, bias, or an improper failure to recuse, and because the order itself points to permissible sources for the information in question, these claims are not cognizable as misconduct since 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”).

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 4th day of December, 2025.

A handwritten signature in black ink, appearing to read "Jerome A. Holmes".

Honorable Jerome A. Holmes
Chief Circuit Judge