

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-24-90022 and 10-24-90023

Before **HOLMES**, Chief Judge

MEMORANDUM & ORDER

Complainant has filed a complaint of judicial misconduct against a district judge and 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 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 judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

This matter stems from a civil action filed by complainant. Complainant asserts that the respondent district judge committed misconduct by relying on a draft summary judgment decision that had been prepared by another district judge to whom the case had previously been assigned, by ruling in too short of a time to have fully considered all of the evidence submitted, and by violating a local rule limiting parties to filing only one summary judgment motion. Complainant asserts that the respondent magistrate judge willfully ignored evidence of fraud committed by the defendant in his case. 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”).

Complainant also alleges that the respondent magistrate judge treated the complainant in a demonstrably egregious and hostile manner during a hearing by threatening to send him to jail “for no reason.” Cmpl. at 4. To determine the veracity of these allegations, a limited inquiry was conducted by reviewing the transcript and audio recording from the relevant hearings. *See* JCD Rule 11(b). The purpose of the hearing was to discuss defendant’s motion to show cause why complainant should not be held in contempt for violating the court’s protective order regarding confidential documents produced during discovery. Complainant had filed pro se a quasi-criminal action against defendant’s officers and its attorneys in a state court and had attached confidential documents covered by the protective order to his complaint. The complaint was not filed under seal and the confidential documents were open to public review. Following

discussion of the matter with defendant's attorney and complainant's former attorney, the magistrate judge raised his voice in expressing frustration with the complainant's actions. The magistrate judge stated that he had the authority to order complainant to be handcuffed and imprisoned in a nearby jail cell. He did not order security officers to handcuff or imprison complainant, however, and the hearing continued in a courteous and professional manner. The magistrate judge later acknowledged he had become frustrated, stating he was upset that complainant had violated the court's explicit protective order, and apologized for raising his voice.

“If the judge's language was relevant to the case at hand . . . then the judge's choice of language is presumptively merits-related and excluded, absent evidence apart from the ruling itself suggesting an improper motive.” JCD Rule 4 cmt. Although the magistrate judge used an elevated tone while addressing complainant and his counsel, the judge's statements were relevant to the case and to his authority to address the complainant's actions. Accordingly, the judge's statements 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).

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 judges 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 2nd day of December, 2024.

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

Honorable Jerome A. Holmes
Chief Circuit Judge