

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-25-90048

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, a lawyer, alleges the subject judge engaged in misconduct while assigned to his civil matter. The civil matter is sealed, and it does not appear that many of the named defendants have been served; thus, the factual recitation here will be abbreviated.

Complainant alleges the subject judge has personal friendships with numerous parties named as defendants in the civil case and, consequently, should have recused. Complainant also alleges the subject judge “inserted himself” into the case to protect the parties with whom he has personal friendships. As evidence of the subject judge’s alleged improper motive, Complainant points to a disclosure the judge previously made on the record in another, unrelated case, regarding his relationships with parties who are also parties to Complainant’s case. The fact that the judge did not make a similar disclosure in his case, Complainant asserts, helps to prove the judge wanted to protect his friends by presiding over his case.

A limited inquiry was conducted to determine whether the misconduct allegations have any factual foundation or give rise to any reasonably disputed issues. *See* JCD Rule 11(b). In that inquiry, the case record and the underlying complaint were reviewed, along with the transcript in the unrelated case Complainant cites. Additionally, the subject judge was asked to respond to Complainant’s allegations. In his response, the judge notes that the “personal friendships” Complainant alleges exist are, instead, professional friendships, such that if he saw one of the parties at a professional event or on the street, he would certainly greet that person, but he does not socialize on a personal level with the individuals. More specifically, the judge states that he has not worked with or had social

interactions with any of the individuals since becoming a judge years ago. The judge states that while he has made disclosures regarding these relationships previously, because no party to whom he has made such disclosures has objected or asked that he recuse as a result, he has stopped making such disclosures generally—not exclusively in Complainant’s case. And, the judge notes, disclosure aside, he does not believe recusal is necessary or required given the nature of the relationships at issue.

Finally, the subject judge notes, he did not “insert himself” into the case; rather, it was randomly assigned to him. Moreover, although he initially referred a dispositive motion to the assigned magistrate judge, he later decided to resolve it himself rather than wait for the magistrate judge to issue a recommendation because he anticipated that the recommendation would have been objected to and, since the recommendation would have been subject to de novo review, he would have been resolving the questions it raised in any event.

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).

A judge's recusal is not necessarily required merely because a judge previously knew or worked with parties to a case. And, even if a recusal was required here, this Complainant did not support the allegation that the subject judge failed to recuse for illicit purposes with any evidence. A review of the record in Complainant's case does not support an inference of an improper motive, and the subject judge's response explaining the nature of his relationships and the reason he did not make a disclosure or recuse in this case appears reasonable.

Thus, Complainant's claim that the subject judge should have recused is not cognizable as misconduct; accordingly, it should be deemed "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"). Further, Complainant's allegation that the judge acted with an improper motive fails because it is completely unsupported. 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). The Complainant has failed to provide such evidentiary support.

Finally, Complainant requested my recusal from a review of this complaint, given his belief that I may be biased in favor of one of the parties to the underlying matter. Complainant makes this assertion of bias without any evidence, and he is mistaken in his suggestion that I may have been previously aware of his allegations of misconduct

regarding this party and disregarded them. Therefore, for similar reasons to those discussed above, recusal is not required, and this request is denied.

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 22nd day of September, 2025.

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