

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

Nos. 10-17-90034 & 10-17-90037

Before **TYMKOVICH**, Chief Judge

ORDER

Two complainants have filed separate complaints of judicial misconduct against a district judge in this circuit. The complaints have been consolidated for decision because they arise out of the same underlying case and factual circumstances. My consideration of these complaints 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: <http://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 complainants and subject judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

These two complaints stem from the same district court case. The Court has received at least three other complaints since 2011, which have contained nearly identical allegations. Each of those complaints was dismissed and any petitions for review were denied and affirmed. The complaints were filed against a district judge who presided over a 2011 criminal trial for six pro se defendants. In the present complaints, the first complainant (“organization”), filed on behalf of an organization that filed two of the previous complaints, presents new allegations regarding the sentencing of one of the defendants, and the second complainant (“attorney”), an attorney for partial proceedings in the district court matter, reiterates allegations from both the previous complaints and allegations similar to the organization’s new complaint.

The attorney asserts, as the three previous complaints asserted, that the subject judge compelled six pro se defendants to testify when she told them that if they did not have another witness available to testify in their case, that one of them would have to take the stand, or the judge would rest their case. The attorney also asserts that the subject judge had improper discussions with the AUSA in the case. Finally, the attorney contends that the subject judge has treated the defendants in a demonstrably egregious and hostile manner. These allegations have been considered in three previous complaints and dismissed. Given the nearly identical nature of the allegations, it appears that these complaints have been orchestrated. I warn complainants and any future complainants that another complaint with similar or identical allegations may result in a restriction from filing further complaints pursuant to JCD Rule 10 (providing “[w]hen many essentially identical complaints from different complainants are received and appear to be

part of an orchestrated campaign, the chief judge may recommend that the judicial council issue a written order . . . refus[ing] to accept additional complaints”).

Both complainants add allegations related to the sentencing of one of the defendants in the matter. This defendant was represented by the attorney at his original sentencing, but successfully argued in a 2855 petition that the attorney had an actual conflict of interest that adversely affected her representation of him. The attorney contends that the judge exhibited bias and favoritism during the hearing and should have recused. She notes that the judge allowed the attorney to be questioned about her religious beliefs and her bank accounts and that the judge also made improper statements about the other defendants and the pastor of their church. The attorney asserts that the judge treated her, the pastor, the litigants and attorneys in an egregious and hostile manner. The organization makes similar allegations and adds that the judge engaged in discriminatory sentencing practices by releasing one defendant out of six, which he contends was in retaliation for the co-defendants filing a misconduct claim. Finally, he contends the judge has a pattern of arbitrarily and deliberately disregarding legal standards.

I have reviewed the relevant orders, transcripts, and dockets. The allegation that the judge has disregarded legal standards is directly related to the merits of the judge’s rulings. Further, the contention that the judge’s language in questioning the attorney or in speaking to the defendants reflected an improper motive is also not cognizable as misconduct because the judge’s language was relevant to the substance of the issue at hand: whether the attorney had a conflict of interest that adversely affected her

representation. *See* JCD Rule 11(c)(1)(B); *see also* Commentary to JCD Rule 3 (providing “[i]f 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”).

Insofar as complainants contend that the judge has demonstrated bias or mistreated the attorney, defendants or others, that allegation is 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).

Accordingly, these complaints are dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainants 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, complainants 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 petitions 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 November, 2017.

/s/ Timothy M. Tymkovich

Honorable Timothy M. Tymkovich
Chief Circuit Judge