

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-21-90025

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 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 judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant, a pro se litigant, filed a complaint against the district judge assigned to his civil matter. Complainant asserts that the subject judge discriminated against him

based on his age, race, and pro se status. Complainant asserts that the subject judge demonstrated his lack of impartiality by giving educational presentations to a politically affiliated club, which the club posted to its public YouTube channel. Complainant contends that the subject judge's presentations violated the Code of Conduct for United States Judges ("Code of Conduct") and that the presentations' content lowered complainant's faith and confidence in the government.

The JCD Rules include in the definition of cognizable misconduct "[v]iolations of [s]pecific [s]tandards of [j]udicial [c]onduct," including violations of the prohibition against "engaging in partisan political activity." JCD Rule 4(a)(1)(D). The Code of Conduct prohibits a judge from "mak[ing] speeches for a political organization." Canon 5A(2). It defines such an organization, in pertinent part, as "a group affiliated with a political party." Canon 5, cmt. The Code also prohibits federal judges from "attend[ing] . . . a dinner or other event sponsored by a political organization." Canon 5A(3).

A limited inquiry was conducted to determine the veracity of the allegations. *See* JCD Rule 11(b) (allowing the chief circuit judge to review relevant materials and to "communicate . . . with the . . . subject judge . . ." to determine what action to take). A review of the club's website revealed that the club is officially affiliated with a political party. A review of the club's YouTube channel confirmed that the judge made presentations to the club on civics-related matters but that the subject judge's comments during the presentations, when considered in context, were not political in nature.

As part of the limited inquiry, the subject judge was asked to respond to the allegations in the complaint. The subject judge stated that "[political activity] has not

been the sole, or really even the predominate, focus of [the club’s] activities.” Rather, the judge noted that the invitation to speak was an “opportunity to acquaint [the members] with these topics— judicial and legal, not remotely political—[which] was important to . . . representing the federal judiciary and the role law plays in our society.” The subject judge noted that he “had always viewed the term ‘political organization’ in a more conventional sense – i.e., a meeting of a political party – and not reaching an organization such as the one in question.” However, he accepted that his actions in making presentations (even on civics-related, non-political topics) to, and indeed merely attending the meetings of, a politically affiliated club violated the Code of Conduct. And the subject judge ensured that his presentations were removed from the club’s YouTube channel, and he informed the club’s leadership that he could not present at any future meetings.

The Act authorizes the chief circuit judge to conclude the complaint proceedings if “appropriate corrective action has been taken.” 28 U.S.C. § 352(b)(2); *see also* JCD Rule 11(d)(2). Corrective action is “appropriate” when it is voluntary and acknowledges and remedies the problem raised by the complaint. Breyer Committee Report, 239 F.R.D. 116, 244 (Sept. 2006). Here, the subject judge voluntarily acknowledged his mistake, ensured the removal of his presentations from the club’s YouTube channel, and notified the club that he would not present at future club meetings. Accordingly, the subject judge took appropriate corrective action, and the allegations related to the subject judge’s presence at a politically affiliated club can be concluded pursuant to 28 U.S.C. § 352(b)(2). *See also* JCD Rule 11(d)(2).

Complainant’s remaining allegations – that the subject judge made inappropriate comments during the presentations and that the subject judge discriminated against complainant or otherwise lacked impartiality while presiding over complainant’s civil matter – are dismissed because they are 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).

Accordingly, this complaint is dismissed pursuant to JCD Rule 11. 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 June, 2024.

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