

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-21-90026

Before **TYMKOVICH**, 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: <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 complainant and subject judge shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

Complainant, a pro se litigant, alleges that the subject judge engaged in misconduct while presiding over his civil case. Complainant contends the subject judge

broke the law “by hearing a case that he had a financial interest in.” Complainant asserts the subject judge has a pattern of violating the Code of Conduct for United States Judges and engaging in judicial misconduct. Complainant alleges the subject judge and his colleagues “are bought and sold by attorneys admitted to the bar, law firms, lobbyists, establishment, business, employers, police, institutions and government entities and are so corrupt, dishonest, lacking in integrity that the public has lost faith in [the judge and the court].” Specifically, complainant asserts that the subject judge presided over complainant’s case involving a subsidiary of a company in which the subject judge held stock and ruled in the company’s favor. Complainant contends this was a violation of the Code of Conduct for United States Judges.

Under the Code of Conduct for United States Judges, all judges have a duty to keep informed about their financial interests. *See* Canon 3C(2). The Code of Conduct defines “financial interest” as “ownership of a legal or equitable interest, however small,” subject to certain exceptions such as “ownership in a mutual or common investment fund.” Canon 3C(3)(c). The Judicial Conference of the United States requires judges to “develop a list identifying financial conflicts for use in conflict screening, [and] review and update the list at regular intervals . . . .” *Guide to Judiciary Policy*, Vol. 2, Pt. C, § 410.20(c). The policy requires each judge to “employ the list . . . to participate in automated conflict screening” in addition to each judge’s “personal review of cases for conflicts.” *Id.* Under the policy, courts are required to use “automated conflict screening [on a regular schedule] to identify financial conflicts of interest for judicial officers, and to notify the judicial officer . . . when a financial conflict is identified . . . .” *Guide*, Vol.

2, Pt. C, § 410.20(b). The Code of Conduct requires a judge to disqualify himself “in a proceeding in which the judge’s impartiality might reasonably be questioned, including . . . [when] the judge knows that the judge . . . has a financial interest . . . in a party to the proceeding . . . .” Canon 3C(1)(c).

The Commentary to the Rules for Judicial-Conduct and Judicial-Disability Proceedings provides context for Code of Conduct violations in the judicial misconduct setting. The Commentary states,

[e]ven where specific, mandatory rules exist — for example, governing the . . . financial disclosure obligations — the distinction between the misconduct statute and these specific, mandatory rules must be borne in mind. For example, an inadvertent, minor violation of any one of these rules, promptly remedied when called to the attention of the judge, might still be a violation but might not rise to the level of misconduct under the Act. By contrast, a pattern of such violations of the Code might well rise to the level of misconduct.

JCD Rule 4 cmt.

A limited inquiry was conducted to determine the veracity of the allegations. *See* JCD Rule 11(b) (allowing the chief judge to “communicate . . . with the . . . subject judge . . .” to determine what action to take). As part of the inquiry, the subject judge was asked to respond to the allegations in the complaint. The subject judge stated, “I concede that I had a financial interest in a case involving the complainant . . . requiring my recusal.” The subject judge went on to explain that the complainant’s case was initially

assigned to a magistrate judge and directed to the court's pro se attorney division. The case was later drawn to the subject judge as the presiding district court judge. After the case was assigned to the subject judge, his first action was to remand the case to state court.

The subject judge maintains that any financial interest he had in complainant's case "had no bearing whatsoever" on his rulings in that matter.<sup>1</sup> The subject judge contends that the delay in bringing the case to his attention "contributed to the inadvertent oversight of the need for recusal." To support this contention, the subject judge pointed out that he recused in two other cases involving the same party when those cases were initially assigned to him, rather than starting with the court's pro se division.

After the complainant filed a Motion to Reopen the Case, the subject judge recused from the matter. Complainant's Motion to Reopen was considered by another district judge, and the motion was denied. To avoid conflicts of interest in the future, the subject judge said he now reviews daily the parties in his cases, whether those cases are assigned to him initially or assigned to him after directed to the pro se division.

The Act authorizes the chief 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). Voluntary 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).

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<sup>1</sup> The subject judge's order remanding the case was affirmed on appeal.

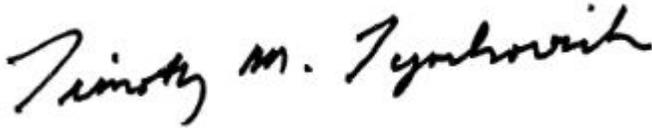
In the present matter, the subject judge failed to recuse from a case in which he had a financial interest in violation of the Code of Conduct. The judge's response in conjunction with a review of the record in the case, and the judge's and court's conflict checking process, reveals that the judge's conduct was unintentional and a mere oversight. Nonetheless, the judge voluntarily acknowledged his mistake, recused from the matter, and amended his current conflict screening practices to ensure the mistake will not be repeated. As provided by the Commentary to the JCD Rules, "an inadvertent, minor violation of [the Code of Conduct], promptly remedied when called to the attention of the judge," as in the present matter, "might still be a violation [of the Code] but might not rise to the level of misconduct under the Act." JCD Rule 4 cmt. Whether the subject judge engaged in judicial misconduct or not, the subject judge took appropriate voluntary corrective action. Accordingly, this portion of the complaint can be concluded pursuant to 28 U.S.C. § 352(b)(2). *See also* JCD Rule 11(d)(2).

Insofar as complainant alleges the subject judge is corrupt, dishonest, and has conspired with others, these claims can be 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).

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 6th day of January, 2022.

A handwritten signature in black ink that reads "Timothy M. Tymkovich". The signature is written in a cursive, flowing style.

Honorable Timothy M. Tymkovich  
Chief Circuit Judge