

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-22-90002

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/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, represented in the case below but filing this misconduct complaint pro se, alleges the judge was unprofessional in his approach and demeanor during the Complainant's sentencing following a guilty plea. Complainant alleges the judge was biased against him, interrupted defense counsel numerous times during the hearing, sided with the prosecution, and generally reflected hostility toward Complainant and his counsel during the hearing.

A limited inquiry was conducted in which the full transcript of the hearing was obtained and reviewed. That review reflects no evidence of bias by the judge or hostility by the judge against Complainant or his counsel.

The judge repeatedly expressed his concern regarding what he viewed as Complainant's repugnant and serious criminal conduct. In evaluating the proper sentence for the Complainant—in particular in light of the sentencing factors of general and specific deterrence and the seriousness of the offense—the judge did engage in a vigorous colloquy with Complainant's counsel and, during the course of it, periodically interrupted counsel. But the judge did not reflect hostility toward counsel during that colloquy. Instead, he simply expressed in a vigorous manner his concerns regarding what he perceived as weaknesses or omissions in counsel's merits-based arguments for leniency. And, subsequently, the judge gave counsel a full and fair opportunity to make her arguments for leniency without interruption. Moreover, there is no indication that the judge accorded more favorable treatment to the prosecution.

Furthermore, as for the alleged hostility toward the Complainant, the transcript reveals no more than the judge's abhorrence of the Complainant's criminal conduct. In

this regard, the judge noted that the Complainant’s continual internet-based harassment of his victim was akin to “cyberbullying”—a characterization that the Complainant subsequently in the hearing agreed was apt. Though the judge did allude to the Complainant’s race, the transcript reveals that those comments were directly related to the nature of the Complainant’s conduct and the racial identity of his victim. And despite his perception that the Complainant’s offense conduct was repugnant and quite serious, the judge repeatedly noted that the Complainant was a first-time offender and gave him a more lenient sentence than the advisory sentencing range prescribed by the Sentencing Guidelines.

At bottom, the district judge’s comments were centered on the merits of the Complainant’s case and do not reveal any bias, partiality, or personal hostility toward the Complainant or his counsel. Accordingly, the Complainant’s claims do not evince cognizable 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”; and, “[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”).

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 13th day of January, 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