

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-23-90017

Before **HOLMES**, Chief Judge

**MEMORANDUM & ORDER**

Complainant has filed a complaint of judicial misconduct against a bankruptcy 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).

A brief procedural history of the underlying matter provides context for the present complaint. Debtor, a business entrepreneur, filed a chapter 7 bankruptcy petition.

Thirteen years after Debtor received his discharge, investors, represented by Complainant, filed an action in state court to enforce their claims against property they allege Debtor either failed to disclose or fraudulently transferred. Debtor's attorney moved for sanctions against investors, alleging that the investors lacked standing to contest the transfers and violated the discharge injunction. The subject judge, who was assigned to the case, denied the request for sanctions, and left the issue of standing for the state court to decide. Debtor appealed the order to the Bankruptcy Appellate Panel ("BAP"). The BAP reversed the ruling and remanded the order for the determination of claim ownership and standing, and thereafter, reconsideration of whether the investors violated the discharge injunction.

After the remand, an attorney from the subject judge's former law firm entered an appearance in the case on behalf of the opposing parties, who are the alleged transferees of the property at issue. After several hearings and additional litigation, the subject judge found that the investors had standing to bring their claims, but that they violated Debtor's discharge injunction, and he granted Debtor's motion for sanctions. Thereafter, Complainant filed a motion to recuse, which the subject judge denied. Complainant appealed the subject judge's order denying the motion to recuse and filed the present misconduct complaint.

In his misconduct complaint, Complainant alleges the subject judge demonstrated bias toward Complainant's clients. To support his assertion, Complainant essentially contends that the subject judge ruled in favor of Complainant's clients until the subject

judge's former firm entered an appearance in the case for the alleged transferees of the property at issue, at which point the subject judge ruled against his clients.

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). The Commentary to the JCD Rules advises, “[a]ny allegation that calls into question the correctness of an official decision . . . – without more – is merits-related.” JCD Rule 4 cmt. Further, complainants must support their allegations with “sufficient evidence to raise an inference that misconduct has occurred.” JCD Rule 11(c)(1)(D).

A limited inquiry was conducted to determine the veracity of Complainant’s allegations and the sufficiency of the evidence. *See* JCD Rule 11(b) (“[t]he chief judge, or a designee, . . . may obtain and review transcripts and other relevant documents” to determine what action to take). The complainant did not present any concrete allegations of conduct that would give rise to an inference of misconduct and a review of the docket, relevant transcripts, and orders did not reveal any either.

Further, the subject judge was not required to recuse from the case merely because he was formerly a partner at a firm appearing before him. The Code of Conduct for United States Judges provides: “[a] judge shall disqualify himself . . . in a proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to instances in which: (a) the judge has a personal bias . . . concerning a party.” Canon 3C(1). The Judicial Conference Committee on Codes of Conduct has further advised that “[a]part from recusal during the period when the judge is receiving payments from a

former law firm, there is a broader question of the appearance of impropriety in the judge's hearing cases involving that firm. . . . The Committee recommends that judges consider a recusal period of at least two years . . . ." Adv. Op. No. 24. In one case, the Committee on Codes of Conduct held that "[a]fter 15 years on the bench, a judge need not recuse from cases handled by the judge's former law firm." Compendium § 3.3-1(e) (Apr. 2023). Here, the subject judge has not worked at the firm or had a financial connection with the firm for over 20 years, and the subject judge never worked with the attorney on the case.

Second, despite Complainant's suggestion to the contrary, bias is not the only reasonable explanation for the subject judge's rulings against Complainant's clients. The subject judge's reasons for changing his ruling appear to be well-grounded in the BAP decision. Significantly, the district court affirmed the subject judge's denial of the motion to recuse.

As Complainant did not support his merits-related claims with evidence of bias, the complaint is dismissed. *See* JCD Rule 11(c)(1)(B), (D) (allowing a chief judge to dismiss a complaint that "is directly related to the merits of a decision or procedural ruling" or that "is based on allegations lacking sufficient evidence to raise an inference that misconduct has occurred or that a disability exists").

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 30th day of December, 2024.

A handwritten signature in black ink, appearing to read "Jerome A. Holmes". The signature is written in a cursive style with a large initial "J".

Honorable Jerome A. Holmes  
Chief Circuit Judge