

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE
JUDICIAL CONDUCT AND
DISABILITY ACT

No. 10-24-90031 (DC-24-90022)

Before **HOLMES**, Chief Judge

MEMORANDUM & ORDER

Chief Justice Roberts transferred the above-captioned judicial misconduct matter to the Tenth Circuit from the District of Columbia Circuit pursuant to Rule 26 of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“JCD Rules”). My consideration of this complaint is governed by the JCD Rules, the federal statutes addressing judicial conduct and disability, 28 U.S.C. §§ 351–364, and relevant prior decisions of the full Judicial Council of this circuit that are consistent with those authorities.¹

For the reasons set forth below, I find that the complaint is based on allegations “lacking sufficient evidence to raise an inference that misconduct has occurred” 28 U.S.C. § 352(b)(1)(A)(iii); JCD Rule 11(c)(1)(D). Therefore, the complaint is dismissed.

¹ In accordance with the JCD Rules, the names of the complainant and subject judge are not disclosed in this order. *See* JCD Rule 11(g)(2).

I. Background

Complainant alleges the subject judge engaged in misconduct during an awards ceremony in late 2023. Specifically, Complainant alleges that during the event, the subject judge's interactions with other ceremonial participants conveyed improper friendships that undermine public trust in judicial independence; the judge's remarks constituted improper extrajudicial statements about pending criminal cases; and the judge's speech consisted of partisan political statements and constituted election interference.

Following the awards ceremony, Complainant filed an incomplete complaint with the D.C. Circuit. After several months, Complainant cured the complaint's deficiencies, and the Chief Judge of the District of Columbia Circuit requested that Chief Justice Roberts transfer the proceeding to another circuit. In November 2024, Chief Justice Roberts transferred the matter to the Tenth Circuit.

Upon receipt of the complaint, a limited inquiry was conducted, which included viewing the video recording of the awards presentation at issue, reviewing a transcript of the relevant remarks from the presentation, and requesting and reviewing the subject judge's response to the allegations. *See* JCD Rule 11(b).

The facts in this matter are undisputed. In late 2023, the subject judge appeared at a ceremony hosted by a legal organization to receive an award and made remarks in connection with receiving the award. Two presenters and another award recipient – all of whom had worked for political administrations and some of whom remained in political roles – also made remarks at the ceremony. The subject judge referenced friendships with

those individuals while receiving the award. During the same remarks, the subject judge referenced Abraham Lincoln, discussed the importance of truth in public discourse, and decried the notion that “alternative facts” could justify criminal behavior. In doing so, the subject judge referred to a “bestselling book” by a historian.

II. Discussion

The JCD Rules define cognizable misconduct as “conduct prejudicial to the effective and expeditious administration of the business of the courts,” which can include violations of the Code of Conduct for United States Judges (“Code of Conduct”). JCD Rule 4(a). It is through this lens that each of Complainant’s three allegations must be viewed.

First, Complainant alleges the subject judge publicly portrayed close personal relationships with individuals who currently or previously worked for presidential administrations in highly visible political roles. Complainant asserts that since the subject judge presided over high-profile proceedings involving current or former government officials, as well as newsworthy criminal prosecutions, both before and after the ceremony at issue, the subject judge’s interactions with the presenters and a fellow award recipient undermine public trust in judicial independence. Complainant further contends that by merely participating in the event, the subject judge violated Canon 2 of the Code of Conduct, which provides that a judge should avoid impropriety and the appearance of impropriety in all activities and, more specifically, that “[a] judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor

convey or permit others to convey the impression that they are in a special position to influence the judge.” Canon 2B.

Several cases have found that not all social contacts or friendships are improper or require disqualification, nor can assumptions be made about associates sharing the same political ideologies. *See In re Charges of Jud. Misconduct*, 404 F.3d 688, 693 (2d Cir. Jud. Council 2005) (explaining it does not follow that judges are adherents of the same “political or legal mission” as those with whom they associate); *In re Complaint of Jud. Misconduct*, 816 F.3d 1266, 1268 (9th Cir. C.J. 2016) (observing that “mere general allegations” of a judge’s “intimacy with [a party’s] opponents” does not “create an appearance of impropriety”) (alteration omitted) (quoting *In re Beard*, 811 F.2 818, 828 (4th Cir. 1987)); *see Cheney v. U.S. Dist. Ct. for D.C.*, 541 U.S. 913, 926 (2004) (mem.) (Scalia, J.). The complimentary remarks between the subject judge and other award ceremony participants do not reasonably convey the impression that these associations could influence the judge’s decision making. Because Complainant presents no evidence to support the allegation that these relationships undermine public trust in judicial independence, no impropriety or appearance of impropriety has been demonstrated. Nor has it been demonstrated that, by participating in the non-partisan event to accept an award, the subject judge has lent the prestige of the judicial office to the hosting organization or any of the other participants.

Second, Complainant alleges that the subject judge made remarks during the ceremony that constitute improper extrajudicial statements made while the judge presided over certain criminal matters. Canon 4 provides “[a] judge may engage in extrajudicial

activities, including law-related pursuits . . . and may speak . . . on . . . law-related . . . subjects.” Canon 4 also provides limits on extrajudicial speaking; it advises, “a judge should not participate in extrajudicial activities that detract from the dignity of the judge’s office, interfere with the performance of the judge’s official duties, reflect adversely on the judge’s impartiality, lead to frequent disqualification, or violate” other Code of Conduct provisions. Canon 3A(6) further advises, “[a] judge should not make public comment on the merits of a matter pending or impending in any court.”

In this instance, in remarking generally on cases over which the subject judge had previously presided, and cases over which the judge’s colleagues had presided, the judge was referring to the perspective developed by that experience, after proceedings were concluded and sentences were announced, which is a permissible judicial activity. *See In re Adelman*, 965 F.3d 603, 608 (7th Cir. Jud. Council 2020) (stating that “judges . . . are able to offer the public valuable perspectives on the controversial cases of the day after they have been decided”).

The judge’s comments in this circumstance do not reasonably appear to reflect adversely on impartiality, nor could they lead to disqualification. The perspective offered is consistent with comments the judge, and the judge’s fellow jurists, made on the record in numerous cases they presided over prior to the event at issue. “[C]ourts have generally not found impropriety in a judge’s reiteration of statements that the judge previously made in court.” *In re Charges of Jud. Misconduct*, 769 F.3d 762, 793 (D.C. Cir. Jud. Council 2014). Rather, “opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior

proceedings, do not constitute a basis for a bias or partiality motion” *Liteky v. United States*, 510 U.S. 540, 555 (1994). Because the judge did not, in making the remarks at issue here, refer to any identifiable case, or offer comments other than those generally made by the judge and the judge’s judicial colleagues, there is not sufficient evidence to support an allegation that the remarks constituted improper extrajudicial statements.

Finally, Complainant alleges that the subject judge’s remarks during the event consisted of partisan statements and promoted a partisan campaign theme amounting to election interference. Complainant supports the assertion by noting that the subject judge quoted from a best-selling book containing partisan ideas.

Canon 5A(2) of the Code of Conduct warns that a “judge should not . . . make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office.” “[E]ngaging in partisan political activity or making inappropriately partisan statements” is also included in the definition of cognizable misconduct. JCD Rule 4(a)(1)(D). Additionally, Canon 2B admonishes a judge to “act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” The commentary to Canon 2A further advises, “[a]n appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.”

In this instance, the subject judge did not mention the impending election, or any politician by name other than Abraham Lincoln. Nor did the subject judge promote or

denigrate any specific candidate. The remarks at issue were made at a law-related event, not a political function, and the organization hosting the event was non-partisan. The subject judge offered the public the judge's perspective on the controversial cases of the day after they had been decided, which is permissible conduct, as previously discussed. Further, while Complainant argues the judge promoted a book containing partisan ideas, the judge did not encourage others to buy or read the book, nor did the judge discuss ideas from the book other than one that coincided with the judge's public statements on the record in a non-partisan, judicial context. In making the remarks at issue, the judge did not call out a political party or make personal attacks against any politician. Given the substance of the judge's remarks and the context in which they were made, it is highly unlikely that "reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired." Cmt. to Canon 2A.

III. Conclusion

As no evidence has been presented demonstrating that the subject judge engaged in cognizable misconduct, 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. 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.*; *see also* cmt. to

JCD Rule 7(explaining that “the term ‘circuit clerk,’ as defined in [JCD] Rule 3(b) and used throughout these Rules, applies to circuit executives.”).

So ordered this 22nd day of May, 2025.

A handwritten signature in blue ink, reading "Jerome A. Holmes". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Honorable Jerome A. Holmes
Chief Circuit Judge