

**JUDICIAL COUNCIL OF THE
TENTH CIRCUIT**

IN RE: CHARGE OF JUDICIAL
MISCONDUCT

Nos. 10-09-90012 & 10-09-90017

ORDER

Pursuant to the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and 28 U.S.C. § 351 *et seq.*, the Judicial Council has reviewed the complainants' Petitions for Review and hereby affirms the August 3, 2009, order of Chief Circuit Judge Robert H. Henry dismissing the captioned complaints of judicial misconduct.

One challenge to the Chief Judge's order compels some explanation. Complainants alleged that the subject judge's spouse is associated with a local law firm and that such association creates a conflict for the judge in an underlying case involving complainants because the law firm represented an opposing party. Upon a limited inquiry, conducted by the Chief Judge pursuant to Misconduct Rule 11(b), the subject judge responded, in pertinent part, that the judge's spouse was "of counsel" to the firm, and had only one client in one case filed in state court. Based on the judge's response, the Chief Judge concluded in accord with applicable authorities that the judge's spouse had no financial interest or other role in the firm or the underlying case such that a conflict existed.

In their Petitions for Review, complainants contend that a review of PACER, the electronic case reporting system for the federal courts, clearly shows that the judge's spouse represented many clients on behalf of the law firm in question in the district court. One complainant attached copies of PACER docket sheets from six separate cases listing the judge's spouse as counsel, complete with the name and contact information for this same law firm. However, what complainants may not know is that PACER gets its information from the federal courts' computerized case management system. The case management system for the federal district court in question allows attorneys to have only one personal record, which contains their current firm or agency association and address. Regardless of how old a case in this district court may be, if you look at a current electronic docket sheet for that case in PACER, it will contain only the most recently updated firm association and address for any attorneys of record. Out of an abundance of caution, we have independently reviewed the electronic docket sheets for each of the 169 cases in the court in question in which the subject judge's spouse is listed as counsel. In every case, the judge's spouse was either listed as counsel for the government, which cases arose during a period of time when the judge's spouse was an Assistant United States Attorney, or the case was closed long before the judge's spouse left the U.S. Attorney's Office. Therefore, we conclude that this challenge to Judge Henry's ruling lacks any factual foundation.

The Petition for Review is denied. The Circuit Executive is hereby directed to sign, enter and distribute this Order to all parties as Secretary to the Judicial Council.

The dismissal of the complaint is hereby AFFIRMED.

So **ORDERED**, November 25, 2009, and
Entered on behalf of the Judicial Council
Of the Tenth Circuit

By:

/s/ Victoria M. Parks
Deputy Circuit Executive

for David Tighe
Circuit Executive and Secretary to the
Judicial Council of the Tenth Circuit