

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

Nos. 10-13-90047  
through 10-13-90049

Before **BRISCOE**, Chief Judge.

**ORDER**

Complainant filed a complaint of judicial misconduct against three circuit judges in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled *Rules for Judicial-Conduct and Judicial-Disability Proceedings* (the “JCD Rules”); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 *et seq.*; and 3) the “Breyer Report,” a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled *Implementation of the Judicial Conduct and Disability Act of 1980*. The Breyer Report may be found at: <http://www.supremecourt.gov/publicinfo/breyercommitteereport.pdf>. To the extent that there are any relevant prior decisions of the full Judicial Council of this circuit which are consistent with those authorities, they may also govern my consideration of this complaint.

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 accord with those rules, the names of the complainant and subject judges shall not be disclosed in this order. *See* JCD Rule 11(g)(2).

After an initial dismissal of the complaint, complainant filed a Petition for Review with the Judicial Council. Upon consideration of that petition, the Judicial Council returned the complaint to me for further inquiry and consideration. *See* JCD Rule 19(b)(2). The Judicial Council limited the investigation to specific allegations made by complainant which contended that the subject judges – an appellate panel that heard oral argument in an appeal of complainant's underlying case – engaged in the “acting out of various scenarios and/or skits” and “unfortunate jovial banter [which] continued on for some time with the intent of mocking filings in both complainant's case and a previous misconduct matter filed by complainant against a district court judge.

The JCD Rules require that, in conducting a limited inquiry as to events at a court proceeding, I make inquiry of every person who may be reasonably identified and contacted. *See* Commentary to JCD Rule 11(b). I have done so, sending inquiry letters to the subject judges, all counsel of record, other attorneys identified by counsel as being present at the oral argument, all court staff in attendance, and individuals identified by complainant as being present. Every person responding to my inquiries has stated clearly and unequivocally that the conduct alleged by the complainant and described above did not occur.

The JCD Rules state that I may not determine reasonably disputed issues, *see* JCD Rule 11(b). However, the JCD Rules do allow me to conclude that issues are not reasonably disputed where, as here, all witnesses were contacted and the response unanimously contradicts and denies the allegations made by a complainant. *See* Commentary to JCD Rule 11(b). I conclude that there is no reasonable issue as to whether the alleged conduct described above occurred.

Accordingly, this complaint is once again dismissed pursuant to JCD Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the subject judges 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 35 days of the date of the letter transmitting this order. *Id.*

So ordered this 11th day of July, 2014.

/s/ Mary Beck Briscoe

Honorable Mary Beck Briscoe  
Chief Circuit Judge