

COMMITTEE ON JUDICIAL CONDUCT AND DISABILITY  
OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

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C.C.D. No. 22-02

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IN RE: COMPLAINTS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

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PROCEEDING IN REVIEW OF THE ORDER AND MEMORANDUM  
OF THE JUDICIAL COUNCIL OF TENTH CIRCUIT  
J.C. No. 10-21-90022

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MEMORANDUM OF DECISION

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(Filed May 19, 2023)

Present: Judges William B. Traxler, Jr., Chair, Patricia A. Gaughan, Phyllis J. Hamilton,  
M. Margaret McKeown, D. Brooks Smith, Carl E. Stewart, Sarah S. Vance.

**MEMORANDUM OF DECISION**

This matter is before the Judicial Conduct and Disability Committee on a petition of former Judge Carmen E. Garza for review of the Judicial Council of the U.S. Court of Appeals for the Tenth Circuit’s Order of September 14, 2022. The Judicial Conduct and Disability Committee considers this petition for review under 28 U.S.C. § 357 and Rules 21(a) and 21(b)(1)(A) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Rules”). For the reasons explained below, we deny the petition for review.

In September 2021, four complainants—two former law clerks and two anonymous former employees of Judge Garza—filed a complaint alleging that Judge Garza’s behavior created an abusive and hostile work environment that rose to the level of “conduct prejudicial to the effective and expeditious administration of the business of the courts” under 28 U.S.C. § 351(a). The Chief Judge of the U.S. Court of Appeals for the Tenth Circuit appointed a Special

Committee to investigate the allegations. *See* 28 U.S.C. § 353; JC&D Rule 11(f). Judge Garza’s second, eight-year term as a magistrate judge expired on August 22, 2022, before the Special Committee completed its investigation. In an Order dated September 14, 2022, the Judicial Council concluded the matter because “intervening events ha[d] made the proceeding unnecessary.” JC&D Rule 20(b)(1)(B). Departure from “covered” judicial office is precisely the kind of “intervening event” contemplated by the Judicial Conduct and Disability Act of 1980 (“Act”), *see* 28 U.S.C. §§ 351–64, 28 U.S.C. § 352(b)(2), and the JC&D Rules, *see* JC&D Rules 1(b), 11(e), 21(b)(1)(B); and it requires the judicial council and this Committee to “conclude the [misconduct] proceedings,” *In re Complaints Under the Judicial Conduct and Disability Act*, C.C.D. No. 19-02, pp. 9-10 (March 3, 2020).

In this matter, however, the Judicial Council did not simply conclude the proceeding based upon the intervening event. It also summarized portions of the truncated investigation by the Special Committee and identified “potential institutional issues related to the complaint” in the same order. *See* Commentary to Rule 20(b)(1)(B) (explaining that even though action on a complaint is no longer necessary due to intervening events, the “judicial council of the subject judge may nonetheless be able to take action on potential institutional issues related to the complaint (such as an analysis of what conditions may have enabled misconduct or prevented its discovery, and what precautionary or curative steps could be undertaken to prevent its recurrence”). The Judicial Council also recited a general need to define abusive conduct and a hostile work environment, as well as a need to provide additional training to its judicial employees on what constitutes abusive conduct and a hostile work environment, and retaliation, as forms of reportable misconduct.

Following the issuance of the Order of the Judicial Council of the Tenth Circuit, Judge Garza filed a petition for review with this Committee, primarily objecting to the Tenth Circuit's handling of the institutional review. Judge Garza asserts that the Tenth Circuit erred in making findings and conclusions relating to the complaint even though the Special Committee never completed the investigation into her alleged misconduct. The Judicial Council, however, states that it made no such findings of misconduct and never reached the merits of the complaint made against Judge Garza. Although the Judicial Council's order briefly described the kind of misconduct that the Special Committee preliminarily "determined" had occurred, Order at 3, it very clearly stated that the Judicial Council was "unable to issue a final order on the merits of the misconduct complaint before the expiration of Judge Garza's term," Order at 4.

Because the Judicial Council has made it clear in these proceedings that its Order did not intend to and does not make findings of misconduct against Judge Garza and did not reach the merits of the complaint filed against her, we deny the petition for review. Nonetheless, because the Judicial Council of the Tenth Circuit undertook an institutional review and the scope of such reviews has not previously been delineated in the JC&D Rules or by this Committee, the Committee plans to undertake an examination into the permissible scope of such reviews when they are conducted within the JC&D complaint process and to provide guidance for future cases.

For the foregoing reasons, the petition for review is denied.<sup>1</sup>

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<sup>1</sup> We also deny Judge Garza's motion to produce the Tenth Circuit's response to the petition for review and to allow her to reply to the response, and her motion to supplement the record.