

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

C.C.D. No. 19-02

IN RE: COMPLAINTS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

PROCEEDING IN REVIEW OF THE ORDER
OF THE JUDICIAL COUNCIL OF THE TENTH CIRCUIT
J.C. No. 10-18-90022

MEMORANDUM OF DECISION

(Filed March 3, 2020)

Present: Judges Anthony J. Scirica, Chair, Sarah Evans Barker, Joel F. Dubina, Joel M. Flaum, Thomas F. Hogan, James E. Gritzner, and Jon O. Newman.¹

MEMORANDUM OF DECISION

The Judicial Council of the Tenth Circuit issued an Order on September 30, 2019, finding that Judge Carlos Murguia (D. Kansas) committed judicial misconduct by “(1) sexually harassing Judiciary employees; (2) engaging in an extramarital sexual relationship with an individual who had been convicted of felonies in state court and was then on probation [which made him susceptible to extortion]; and (3) demonstrating habitual tardiness for court engagements” and publicly reprimanding him for conduct that was prejudicial to the effective and expeditious administration of the business of the courts. Jud. Council Order at 2, 3, 7. The

¹ See R. 21(c) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (“Those members hearing the petition for review should serve in that capacity until final disposition of the petition, whether or not their term of committee membership has ended.”).

matter came before the Committee on Judicial Conduct and Disability (JC&D Committee), which immediately began its review of and deliberations regarding each of the Tenth Circuit Judicial Council’s conclusions, findings, and imposed remedial action, as required under the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules).²

On February 18, 2020, while the JC&D Committee’s review and deliberations were ongoing, Judge Murguia submitted a letter to President Donald J. Trump resigning his commission as a United States District Judge for the District of Kansas, effective April 1, 2020. Because Judge Murguia does not meet the age and length-of-service requirements, his resignation renders him ineligible for any pension or other retirement benefits. All cases previously assigned to Judge Murguia have been reassigned to other judges, and Judge Murguia will transition all administrative and case-related responsibilities by April 1.

Based on our statutory review authority, Judge Murguia’s resignation and removal of judicial functions require the Committee to conclude the proceedings on the merits. Because Judge Murguia, *sua sponte*, set forward the effective date of his resignation to April 1, which extends the Committee’s jurisdiction to that date, we think it is important to outline the procedural history and process that ultimately led to Judge Murguia’s resignation. Judge Murguia’s underlying misconduct, as found by the Tenth Circuit Judicial Council, was serious enough to warrant this Committee’s review to determine whether it should recommend a referral to Congress for its consideration of impeachment.

² See JC&D R. 20(f) (“If the complaint was identified under Rule 5 . . . , the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21.”).

The judicial employees involved in this matter have expressed a desire for confidentiality and anonymity throughout the proceedings, which the Tenth Circuit Judicial Council and JC&D Committee have made every possible effort to honor.

I.

The underlying misconduct proceedings began in May 2016 when the then-Chief Judge of the District of Kansas provided a report to the Chief Judge of the Tenth Circuit regarding allegations by one of Judge Murguia's former judicial employees that Judge Murguia had sexually harassed that employee. The reporting judge had learned of the allegations from two other judges in the District of Kansas, who had received the information beginning in April 2016 from judicial employees.

The Circuit Chief Judge promptly conducted an informal investigation in accordance with JC&D Rule 5³ that included reviewing documentary evidence and confronting Judge Murguia. Judge Murguia expressed remorse for his conduct toward the judicial employee who had alleged sexual harassment and agreed to participate in assessment and treatment by a medical professional, at the recommendation of the Tenth Circuit's Certified Medical Professional.

Sometime after October 2016, the Tenth Circuit's Certified Medical Professional indicated, based on the facts conveyed by Judge Murguia at that time, that Judge Murguia had successfully completed treatment. The Circuit Chief Judge sent Judge Murguia a letter in February 2017 saying that there was credible evidence that he had engaged in misconduct, but

³ "When a [circuit] chief judge has information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct . . . , the chief judge may conduct an inquiry, as he or she deems appropriate, into the accuracy of the information even if no related complaint has been filed." JC&D R. 5(a).

that he would not initiate a formal misconduct complaint because of Judge Murguia's apparent honesty in admitting his improper behavior, willingness to correct his behavior, cooperation with the Tenth Circuit's Certified Medical Professional, and successful evaluation and treatment.

In November 2017, the Circuit learned of additional allegations that Judge Murguia had engaged in a sexual relationship with a woman who had been convicted of felonies in state court and who was, at the time of their relationship, on probation. These allegations called into question Judge Murguia's candor and truthfulness during the Circuit Chief Judge's previous informal investigation. In response to this report, the Circuit hired a retired FBI investigator in December 2017 to assist with additional investigation into Judge Murguia's conduct for the purposes of determining whether to identify a complaint of judicial misconduct under JC&D Rule 5.

As part of their investigation, the retired FBI agent and Circuit Executive Office staff interviewed Judge Murguia, Judge Murguia's then-wife, and several current and former judicial employees they believed might have knowledge regarding Judge Murguia's previously alleged sexual harassment and the recent allegations that Judge Murguia had a sexual relationship with a woman who had been convicted of state-court felonies. Circuit Executive Office staff and the retired FBI investigator also reviewed relevant documentation, including telephone records, text messages, and email communications related to the sexual harassment allegations, and pertinent telephone records and materials related to the criminal proceedings of the woman who allegedly had a sexual relationship with Judge Murguia. Additional information regarding possible judicial misconduct by Judge Murguia, including his sexual harassment of two additional judicial employees, came to light during this investigation and showed Judge Murguia's lack of candor

and truthfulness during the informal investigation, including his lack of candor and truthfulness during his evaluation and treatment following the initial allegations.

In August 2018, after Circuit Executive Office staff and the retired FBI investigator presented the information they had gathered to the Circuit Chief Judge, he determined there was sufficient information to proceed and identified a complaint of judicial misconduct under JC&D Rule 5.⁴ In September 2018, he appointed a Special Committee to investigate.⁵ As part of its investigation, the Special Committee directed interviews of fourteen former and current staff members, mostly in person, including the three judicial employees whom Judge Murguia had allegedly sexually harassed, and other relevant witnesses, as well as reviewed documentary evidence, including text messages, email communications, and recorded telephone conversations and voicemails. On April 23, 2019, the Special Committee held a day-long hearing, at which Judge Murguia testified under oath.

The Special Committee issued a thorough, lengthy report to the Tenth Circuit Judicial Council in July 2019. The Judicial Council, in turn, issued its Order on September 30, 2019, unanimously adopting the Special Committee's conclusions that Judge Murguia committed judicial misconduct by "(1) sexually harassing Judiciary employees; (2) engaging in an extramarital sexual relationship with an individual who had been convicted of felonies in state court and was then on probation; and (3) demonstrating habitual tardiness for court

⁴ "If the evidence of misconduct is clear and convincing and no informal resolution is achieved or is feasible, the [circuit] chief judge must identify a complaint." JC&D R. 5(a).

⁵ "If some or all of a complaint is not dismissed or concluded, the [circuit] chief judge must promptly appoint a special committee to investigate the complaint or any relevant portion of it and to make recommendations to the judicial council." JC&D R. 11(f).

engagements.” Jud. Council Order at 2. The Judicial Council also noted “Judge Murguia was less than candid with the Special Committee”:

When initially confronted with the allegations, he did not fully disclose the extent of his misconduct. He tended to admit to allegations only when confronted with supporting documentary evidence. His apologies appeared more tied to his regret that his actions were brought to light than an awareness of, and regret for, the harm he caused to the individuals involved and to the integrity of his office.

Id. at 5. Recognizing that “misconduct that rises to this level calls for transparency and a powerful disincentive,” the Judicial Council publicly reprimanded Judge Murguia for conduct that was prejudicial to the effective and expeditious administration of the business of the courts and publicly admonished him for his violations of the Code of Conduct for United States Judges.

Id. at 6–7.

Following issuance of its Order, the Tenth Circuit Judicial Council sent a private letter to Judge Murguia on September 30, 2019, containing additional remedial actions not included in the public Order. These remedial actions included (1) additional evaluation and treatment under the supervision of the Tenth Circuit’s Certified Medical Professional; (2) waiver of confidentiality allowing the Circuit Chief Judge, the Tenth Circuit’s Certified Medical Professional, and Circuit Executive Office staff to access this evaluation and related records and to discuss this evaluation and treatment with the provider; (3) written apologies to the three judicial employees he sexually harassed; (4) participation, as practical and appropriate, in all court meetings, retreats, and other court activities, as well as court governance and administrative activities; (5) semi-annual meetings with the Chief District Judge to review Judge Murguia’s work habits, engagement, and performance as a federal judge; (6) prohibition on participation in any internship programs or hiring of interns; and (7) advising the Chief District Judge and Chief Circuit Judge of any threats of extortion. The Judicial Council also encouraged Judge Murguia to

maintain his mentor relationship with another judge for as long as that judge was willing to serve in that role.

II.

The JC&D Committee received the September 30, 2019, Tenth Circuit Judicial Council's order and immediately began its review of and deliberations regarding this matter. *See* JC&D R. 20(f) ("If the complaint was identified under Rule 5 ... , the judicial council must transmit the order and memoranda incorporated by reference in the order to the Committee on Judicial Conduct and Disability for review in accordance with Rule 21."); Commentary on JC&D Rule 20 ("Because an identified complaint has no 'complainant' to petition for review, a judicial council's dispositive order on an identified complaint on which a special committee has been appointed must be transmitted to the Committee on Judicial conduct and Disability for review.").

The JC&D Committee sent Judge Murguia a letter in December 2019 noting that the Committee "[would] review each of the Tenth Circuit Judicial Council's conclusions, findings, and imposed remedial action" and noting Judge Murguia could file a written statement with the Committee addressing these issues. Judge Murguia submitted a written statement accepting responsibility for his "inappropriate conduct" and stating that he had agreed to the various requirements noted in the Tenth Circuit's September 30, 2019, private letter to him.

The JC&D Committee's focus was whether Judge Murguia "may have engaged in conduct which might constitute one or more grounds for impeachment." *See* 28 U.S.C. § 354(b)(2)(A). Among the issues considered by the JC&D Committee were whether the Tenth Circuit Judicial Council's misconduct findings constituted a pattern and practice by Judge

Murguia of judicial misconduct (including by his sexual harassment of three judicial employees;⁶ his sexual relationship with a woman who had been convicted of state-court felonies and was facing parole revocation; and his habitual tardiness due in part to time spent with these judicial employees and engaging in the sexual relationship with the woman convicted of state-court felonies);⁷ whether Judge Murguia’s failure to cooperate in and lack of truthfulness during the misconduct proceedings, which unnecessarily delayed the proceedings and prevented fulsome corrective action, constituted additional judicial misconduct; and the Judicial Council’s conclusion that “[t]he most severe sanction available to the Council in this matter is a public reprimand” and “the evidence and facts in this matter [were] insufficient to recommend the Judicial Conference refer this matter to Congress for impeachment.” Jud. Council Order at 6 & n.3.

While we make no additional findings or conclusions here because Judge Murguia’s resignation and removal of judicial functions require the Committee to conclude the proceedings on the merits, we note the instructive value of providing guidance regarding the statutory standard for Congressional referral for consideration of impeachment. In determining whether referral for Congressional consideration of impeachment is warranted, a circuit judicial council

⁶ As noted, this Committee has made every effort to honor the requested confidentiality and anonymity of victims and witnesses. We have provided additional details in this Decision that do not jeopardize this confidentiality and anonymity, and only to the extent necessary to demonstrate fidelity to our review procedures.

⁷ The Federal Judiciary Workplace Conduct Working Group, formed in response to Chief Justice John G. Roberts, Jr.’s call to examine the sufficiency of the safeguards currently in place within the Judiciary to protect all court employees from inappropriate conduct in the workplace, highlighted that “there are significant ‘power disparities’ between judges and the law clerks and other employees who work with them, which may deter a law clerk or employee from challenging or reporting objectionable conduct.” *Report of the Federal Judiciary Workplace Conduct Working Group* at 3 (June 1, 2018).

shall certify a matter to the Judicial Conference of the United States when it determines “that a judge appointed to hold office during good behavior may have engaged in conduct which might constitute one or more grounds for impeachment.” 28 U.S.C. § 354(b)(2)(A). The statute does not require a circuit judicial council to reach a definitive conclusion as to whether the subject judge’s conduct meets the standard for impeachment; that is a determination reserved for Congress. Although the Judicial Conduct and Disability Act (JC&D Act) and the JC&D Rules do not define what might constitute an impeachable act, the Rules provide helpful guidance. *See, e.g.*, JC&D R. 4(a) (defining cognizable misconduct). Notably, there can be variations in the frequency and severity of judicial misconduct, *see* Commentary to JC&D R. 4, and a “pattern and practice” of judicial misconduct generally indicates a more severe level of judicial misconduct that may warrant consideration of referral for impeachment.⁸

III.

While the JC&D Committee was preparing its recommendation to the Judicial Conference, Judge Murguia submitted a letter to President Donald J. Trump on February 18, 2020, resigning his commission as a United States District Judge for the District of Kansas, effective April 1, 2020. Upon Judge Murguia’s submission of his letter on February 18, all cases previously assigned to him were reassigned to other judges. We note that the underlying misconduct, as found by the Tenth Circuit Judicial Council, is serious enough to have warranted our deliberations over a referral to Congress for its consideration of impeachment. But Judge Murguia’s resignation and removal of his judicial functions will terminate this Committee’s

⁸ *See, e.g.*, Judicial Conference of the United States, Certificate of Consideration of Impeachment of Former U.S. District Judge Mark E. Fuller (Sept. 9, 2015); Judicial Conference of the United States, Certificate of Consideration of Impeachment of U.S. District Judge Samuel B. Kent (June 9, 2009).

continued jurisdiction over this matter as of April 1, and we are required to conclude the proceedings.

The JC&D Act expressly provides that “intervening events” may terminate the Judiciary’s power to adjudicate the merits of a complaint. The JC&D Act states: “After expeditiously reviewing a complaint,” the circuit chief judge may “conclude the proceeding if the chief judge finds . . . that action on the complaint is no longer necessary because of intervening events.” 28 U.S.C. § 352(b)(2); *see also* JC&D R. 11(e) (explaining action is no longer necessary when “intervening events render some or all of the allegations moot or make remedial action impossible as to the subject judge”). The JC&D Committee and judicial councils have long recognized a judge’s departure from “covered” judicial office to be precisely the kind of “intervening event” the JC&D Act and Rules contemplate. *See* 28 U.S.C. § 351(d)(1) (defining “judge” as circuit judge, district judge, bankruptcy judge, or magistrate judge); JC&D R. 1(b) (defining “covered judge”). The Third Circuit Judicial Council, for example, has specifically held that by including the “intervening events” language in the JC&D Act, Congress “codified what has been reported to be the general practice of circuit chief judges to dismiss complaints . . . on the ground that a judge had left the bench.” *In re Complaint of Judicial Misconduct*, 10 F.3d 99, 99 (3d Cir. 1993).

Concluding a misconduct proceeding upon a judge’s resignation serves important institutional and public interests, including prompting subject judges who have committed misconduct to resign their office. Here, the judicial misconduct process included a thorough investigation, resulting in findings of judicial misconduct, and layers of institutional review by a special committee, a judicial council, and this Committee (involving seventeen judges) that prompted Judge Murguia’s resignation, as of April 1, and removal of judicial duties as of

February 18. Judge Murguia has resigned his commission and will no longer be a federal judge as of April 1.

IV.

Following a lengthy and through investigation, Judge Murguia has resigned his commission as a federal judge as of April 1 and will not receive any pension or retirement benefits. Because the Act does not apply to a judge who has resigned from a covered judicial office, we conclude this matter.