



# JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

March 3, 2020

Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Honorable Mary Gay Scanlon  
Vice Chair  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Honorable Henry C. "Hank" Johnson, Jr.  
Chairman  
Subcommittee on Courts, Intellectual Property,  
and the Internet  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515

Honorable F. James Sensenbrenner, Jr.  
United States House of Representatives  
Washington, DC 20515

Dear Chairmen Nadler and Johnson, Vice Chair Scanlon, and  
Representative Sensenbrenner:

We are responding to your letter dated February 6, 2020, which was focused on the misconduct of Carlos Murguia, United States District Judge for the District of Kansas. We appreciate that you share our commitment to protecting the more than 30,000 employees of the Federal Judiciary.

We had been constrained by statute, rules and other ethical restrictions in replying to your questions about the Murguia matter specifically while it had been under review by the Judicial Conference's Committee on Judicial Conduct and Disability ("JC&D"). There have been significant developments since February 6, however, which allow us now to provide more information to you than would have been possible had we replied by February 20, 2020, as requested in your letter.

On February 18, 2020, Judge Murguia submitted his resignation from the bench, effective April 1, 2020. His cases have been reassigned to other judges and his duties limited to the orderly closure of his office. Earlier today, the JC&D Committee issued an

order stemming from its review of the Tenth Circuit Judicial Council's public reprimand of Judge Murguia for his serious misconduct. The JC&D Committee had been deliberating about whether it should recommend a referral of the Judge Murguia matter to the House of Representatives for its consideration of impeachment. In light of Judge Murguia's resignation, the JC&D Committee has now concluded its review. Copies of the JC&D Committee's order, the Tenth Circuit's public reprimand, Judge Murguia's letter of resignation, and a public statement by Chief District Judge Julie Robinson regarding Judge Murguia's resignation are enclosed with this letter.

Judge Murguia was appointed in 1999 to a Constitutionally protected life-tenured position. He will soon leave that office with no pension or any retirement benefits, having been publicly censured by his judicial colleagues.

The proceedings in this matter demonstrate the continuing commitment of the Judicial Branch to address effectively workplace misconduct. As the JC&D Committee Order explains, the investigation proceeded over several years and was expanded as additional information about multiple instances of misconduct was discovered through investigation.

In light of the conclusion of the JC&D investigatory and deliberative process, along with the public release of the JC&D Committee's order, we can clarify certain issues raised in your letter. The judicial employees involved in this matter have expressed a desire for confidentiality and anonymity throughout the proceedings, and their desires in this respect are promised and protected by the District of Kansas, the Tenth Circuit and the Judicial Conference. As your February 6 letter recognizes, it is important that there be adequate protections for victims of workplace harassment to be able to report confidentially and/or anonymously. We have worked to honor the victims' requests for confidentiality under our new workplace conduct procedures. We therefore respond to the questions in your letter in a manner that does not jeopardize confidentiality or the anonymity of the victims.

We assure you the affected employees' well-being and safety is and has been a paramount concern throughout the process. No harassment victims were required to work for Judge Murguia after his misconduct was reported. The District of Kansas also offered assistance to those still employed in the courthouse, including counseling and relocation to other judiciary jobs. The victims were kept informed about the results of the Tenth Circuit's investigation. The Tenth Circuit's investigation did not uncover any negative personnel decisions toward Judge Murguia's harassment victims. As the JC&D Committee order states, Judge Murguia was required to provide, and did provide, written

apologies to each of his harassment victims. He also provided apologies to the court employees and others affected by his misconduct.

We recognize the role of the House Judiciary Committee in understanding the protections in place for Federal Judiciary workers and how they are implemented. We trust the attached materials and the discussion above are responsive to the Committee's interest in the Murguia matter, specifically.

Several of your questions also ask about policies and practices that are more general in nature. In response to those inquiries, we provide additional information below.

### **Efforts by the Judiciary to improve workplace conduct**

In January 2018, Chief Justice John G. Roberts, Jr. directed the establishment of the Federal Judiciary Workplace Conduct Working Group (Working Group). In doing so, the Chief Justice sent a clear message to all judges and Judicial Branch employees that our branch should strive to have an "exemplary" workplace in which harassment and other workplace misconduct is not tolerated and does not occur.

Our work since the establishment of the Working Group has been significant. His charge to the Working Group was to evaluate the Judiciary's standards of conduct and procedures for investigating and correcting inappropriate workplace conduct. The role of the Working Group, comprised of judges and senior court executives, is to identify and address shortcomings in the existing misconduct policies and procedures of the Judiciary; find ways to remove barriers to utilizing those procedures; recommend improvements to our procedures; establish easier and additional access for employees to address their concerns outside of their local workplace environment; and identify areas of expanded training and educational programs for judges and employees concerning workplace conduct.

On June 1, 2018, the Working Group issued its first report, with more than thirty recommendations for the Judicial Conference of United States Courts (Judicial Conference), the Administrative Office of the United States Courts (AO), and the Federal Judicial Center (FJC). The recommendations included publication of clear standards on appropriate workplace behavior, improved procedures for reporting and addressing misconduct, and additional education and training on how to prevent harassment and misconduct. The Judiciary has since implemented nearly all the Working Group's recommendations. In September 2019, the Working Group provided a status report to the Judicial Conference, which highlighted the Judiciary's efforts in implementing the prior

recommendations to date. A copy of the status report is enclosed for your convenience. A brief summary of the progress the Judiciary has made is as follows:

- 1) The Judicial Conference approved revisions to the Code of Conduct for United States Judges, the Code of Conduct for Judicial Employees, and the Judicial Conduct and Disability (JC&D) Rules in March 2019 to state expressly that sexual harassment, other discrimination, and abusive conduct, are cognizable misconduct, as is the failure to report misconduct or retaliation to the chief district or chief circuit judge.
- 2) The Office of Judicial Integrity (OJI) was created and the first judicial integrity officer appointed in December of 2018. The office began providing confidential advice and guidance to current and former Judiciary employees on January 22, 2019, and is a central resource for judiciary workplace conduct information.
- 3) Most circuits have created directors of workplace relations (or similar positions) to provide circuit-wide guidance and oversight of workplace conduct matters and many federal circuits and courts have established workplace conduct committees.
- 4) The Judicial Conference approved a significantly revised and simplified Model Employment Dispute Resolution (EDR) Plan that clearly states harassment, discrimination, abusive conduct, and retaliation are prohibited; provides several informal and formal options for employees to report and seek redress for wrongful conduct under EDR; and ensures that Judiciary employees know the many resources available to them for EDR matters.
- 5) The FJC has provided significant nation-wide training on preventing harassment, workplace civility, and diversity and inclusion. A description of their programs is provided below.

We have carefully and thoughtfully considered each of the questions and concerns raised in your letter and provide here as much information as feasible without violating our ethical constraints. Accordingly, we respond to certain of the questions you posed as follows:

**What steps have district and circuit courts taken to ensure that [individuals who have been sexually harassed] receive appropriate support and resources?**

Where an employee is found to have been sexually harassed under the Model EDR Plan, a remedy is fashioned for the aggrieved employee that, as nearly as possible, places the employee in the situation he or she would have been had their right(s) not been

violated. In accordance with a final EDR order, district and circuit courts may provide a remedy for an employee by placing the employee in a comparable alternative position, restoring leave, and/or providing the employee with monetary back pay, if appropriate.

All judicial employees have free access to the Employee Assistance Program, whose services include licensed or credentialed professional counselors who provide face-to-face, short-term counseling to employees and who can also provide referrals to community counseling resources.

**What policies and practices are in place to review personnel decisions that may have been influenced by a judge's (or supervisor's) misconduct towards an employee?**

There are a number of procedures and practices in place that can be used to review personnel decisions that may have been influenced by misconduct, including the JC&D process, which is governed by statute, as well as the EDR process.

Judiciary employees have the right to file a judicial misconduct complaint against a federal judge regarding a personnel decision they believe was influenced by discrimination, harassment, retaliation, or other judicial misconduct, as described in the Judicial Conduct and Disability Act (JC&D Act) and the Rules for Judicial-Conduct and Judicial Disability Proceedings (JC&D Rules). Judicial misconduct is defined as any "conduct prejudicial to the effective and expeditious administration of the business of the courts." The JC&D Rules define judicial misconduct to include abusive or harassing behavior (including engaging in unwanted, offensive, or abusive sexual conduct, such as sexual harassment or assault; treating judicial employees or others in a demonstrably egregious and hostile manner; and creating a hostile work environment for judicial employees), as well as discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability. The JC&D Rules also define judicial misconduct to include retaliation against complainants and judicial employees, among others, for participating in the complaint process, or for reporting or disclosing judicial misconduct.

The JC&D Rules clarify that any individual or organization can file a judicial misconduct complaint. Traditional standing requirements do not apply. There is no statute of limitations and a judicial misconduct complaint can be filed at any time.

Under the JC&D complaint process, a complainant is entitled to review of their complaint by the relevant circuit chief judge and circuit judicial council. Where a special investigating committee is appointed to determine issues of fact, the complainant is also entitled to review by the Committee on Judicial Conduct and Disability. Similarly, where

a complaint is identified by the circuit chief judge based on information that has come to that judge's attention, the matter is reviewed by the circuit judicial council and the Judicial Conduct and Disability Committee. The complainant receives written notice at various stages and is given the opportunity to provide evidence and present argument. A finding of judicial misconduct may result in remedial action, including but not limited to public or private reprimand, ordering that no new cases be assigned to the subject judge for a limited, fixed period, and referral to the Judicial Conference for consideration of referral to the House of Representatives for impeachment.

Judiciary employees have the right to challenge a personnel decision they believe was influenced by discrimination, harassment, or retaliation (including whistleblower retaliation) through an administrative claims process set forth in the Model EDR Plan. First adopted by the Judicial Conference in 1997, and revised several times thereafter, the Model EDR Plan prohibits employment and personnel decisions by judges and by court managers based on, or motivated by, protected-class discrimination or harassment or retaliation for reporting or opposing such wrongful conduct. The Model EDR Plan addresses the forms of discrimination defined in many federal employment laws, including Title VII of the Civil Rights Act of 1964. The Model EDR Plan was last revised in September 2019 to offer simpler and expanded ways to seek help with a wrongful conduct issue. It now offers employees three options for addressing harassment and other wrongful conduct as defined under the Model EDR Plan:

- Confidential informal advice and guidance about harassment or other wrongful conduct under the Model EDR Plan from a local court official (called an EDR coordinator, which every court unit must have), a circuit director of workplace relations (available in most circuits), or the national OJI about ways to respond to wrongful conduct and their rights and options; or
- Assisted resolution, in which the EDR coordinator or a circuit director of workplace relations works with the employee and employee's office to resolve or correct the harassment or other wrongful conduct; or
- A formal complaint process that includes the right:
  - to have the claim(s) decided by a federal judicial officer in a written decision;
  - to a fair and impartial investigation into the complaint allegations;
  - to a prompt hearing to resolve factual disputes;

- to use an attorney or representative;
- to call witnesses; and
- to seek review of the judicial officer's decision by the circuit judicial council.

Under the Model EDR Plan, EDR complaints must be filed within 180 days. There are no prerequisites (such as mandated mediation) to filing a complaint alleging discrimination, harassment, retaliation, or violation of any of the employment laws.

In addition, independent of the formal review systems mentioned above, all judges and supervisors are expected to take appropriate action if they learn about workplace misconduct.

**Is there a system or process in place so that employees or other judges may report misconduct in a manner that preserves their confidentiality and anonymity? Please explain the details of any such process, or if there is none, whether there are plans to create such a process.**

The Model EDR Plan provides for “informal advice” – a confidential process that allows individuals to get confidential advice and guidance about wrongful conduct. Employees have multiple options for obtaining informal advice. They may contact the national judicial integrity officer, their circuit director of workplace relations (if applicable), and/or their EDR coordinator. Regardless of who they choose to contact, under the Model EDR Plan an individual's request for informal advice, including any meetings and discussions, must be kept entirely confidential unless the allegations indicate a reasonable risk to someone's safety or security, or are so serious or egregious that they threaten the integrity of the Judiciary.

In addition to informal advice, the OJI and some directors of workplace relations permit employees or judges to report misconduct and wrongful conduct anonymously. Specifically, any employee or judge can confidentially or anonymously tell the OJI about harassment and other workplace misconduct. The OJI's internal and external websites allow current and former Judiciary employees to confidentially – even anonymously – report harassment and other misconduct to the OJI. If it is an anonymous report, the OJI will immediately provide any anonymous report of harassment or misconduct to the appropriate local court resource; for example, to a chief circuit judge if the allegation involves conduct by a judge or the chief district judge if the allegation involves a district court supervisor.

Similarly, some circuit directors of workplace relations also have systems to enable employees to submit anonymous reports of misconduct and will share information about a harassment or misconduct allegation to the local court resource without identifying the reporting employee, if the employee so requests.

In formal processes where an employee is seeking personal relief (e.g. grievance, adverse action appeals, EDR), allegations of wrongful conduct are treated with the highest degree of confidentiality, and information will only be shared with those who need the information to address or resolve the matter.

Judges involved in the formal judicial misconduct complaint process take steps to protect a complainant's identity and confidentiality, when desired, to the greatest extent possible while also ensuring accountability for misconduct. Judges have a duty to report or disclose possible judicial misconduct to the relevant chief district or chief circuit judge where they have reliable information of conduct reasonably likely to constitute judicial misconduct. Chief district and circuit court judges must treat information as confidential, when requested, but an assurance of confidentiality must yield when there is reliable information of misconduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the Judiciary. A person reporting information of misconduct must be informed at the outset of a judge's responsibility to disclose such information to the relevant chief district judge or chief circuit judge.

The recent JC&D Rules amendments added language clarifying that nothing in the confidentiality requirements of the judicial complaint process prevents judicial employees from reporting or disclosing misconduct.

**How and when are employees found to have been sexually harassed or are victims of related misconduct informed of the nature of the corrective action?**

Circuit judicial council orders resolving a judicial misconduct complaint must be provided to the complainant. This includes orders concluding a proceeding because appropriate corrective action has been taken. In addition, resolutions of JCD matters where there is a victim often involve corrective action that is intended to correct specific harm to that victim, if such harm can be remedied, and such corrective action often involves direct communication with a victim that acknowledges and redresses the harm, if possible.

In the EDR context, where an employee files an EDR complaint alleging that they are a victim of harassment, the employee-complainant is a party in the process and would

be directly involved in requesting interim relief and/or the remedy they seek for the harassment. Any settlement terms or order finding harassment, as well as proper remedies for the employee-complainant, is shared with all parties in the EDR action. However, any disciplinary actions against an alleged violator are handled outside of EDR by an appropriate official with authority to discipline the alleged violator. Like with all disciplinary actions, the personnel action is conducted confidentially.

**What training, information, and resources do employees and judges receive about the process for filing a complaint?**

The Judiciary has a wide array of tools to provide information to employees and judges about the processes for addressing workplace misconduct.

The FJC provides education and training on workplace conduct issues for judges and court employees at all levels. The FJC training includes in person, audio, video and publications, as well as in-court training programs. These programs include in person training for new judges and continuing education for all judges. Other in person training includes programs for new and experienced court unit executives, other new and experienced managers, as well as court attorney and other non-supervisory staff. Examples of video programs include a video on workplace conduct (including reporting avenues) specifically aimed, and directly sent, to all law clerks. The FJC also provides in-court training programs in which FJC-trained instructors deliver FJC-prepared curricula to court employees in their courts. In addition, many courts, circuits, and the OJI have provided training to judges and staff.

Information about how to file a judicial misconduct complaint, with a detailed list of frequently asked questions about the misconduct process, is posted on the front page of the OJI's internal Judiciary website, easily located from a prominent "Workplace Conduct" link on the Judiciary's internal website home page. This site also includes all rules related to filing a misconduct complaint.

Every circuit has a direct link to the judicial misconduct rules and how to file a judicial misconduct complaint on their internet website, accessible to both their employees and the public. For example, the Tenth Circuit's website at <https://www.ca10.uscourts.gov/ce/misconduct> states, "We suggest you use the complaint form attached to the Rules." The link to the Rules is then provided: <https://www.ca10.uscourts.gov/sites/default/files/ce/2019%20JCD%20and%20Tenth%20Circuit%20Rules.pdf>.

Posters that describe the EDR options, including a flowchart to explain the formal complaint process, and that describe the employment rights in the EDR Plan are attached to EDR Plans and must be posted in every court workplace, along with an Anti-Discrimination and Anti-Harassment Notice that lists the name and contact information for all available EDR coordinators, any circuit director of workplace relations, and the OJI.

The EDR training materials provided by the OJI to each court inform employees that they have the right to file an EDR claim and/or a judicial misconduct complaint alleging misconduct by a judge. Posted on the OJI's internal Judiciary website, which is available to all Judiciary employees, is information about the EDR Plan and its options for resolution; contact information for court EDR coordinators; copies of circuit EDR Plans; and the detailed EDR Interpretive Guide and Handbook. The OJI's site is easily located by all judicial employees via a prominent "Workplace Conduct" link on the Judiciary's internal website home page.

The OJI provided extensive nationwide workplace conduct training throughout 2019 to judges, law clerks, managers, EDR coordinators, and employees. The OJI is available to all judicial employees to answer their questions about their EDR rights and their informal and formal EDR options for resolving a conduct issue or an EDR claim. The OJI website also includes EDR training materials for employees and for judges and managers, which courts can use to provide training on sexual and other discriminatory harassment, retaliation, abusive conduct, employment laws adopted in the EDR Plan, and the EDR options for resolution.

Additionally, the guidance and advice provided by the OJI, circuit directors of workplace relations, and local court EDR coordinators includes advice about the option to file a judicial misconduct complaint if an allegation of harassment or misconduct concerns a judge. Regular overviews are also given to chief judges about the JC&D process specifically touching on the administration of the process.

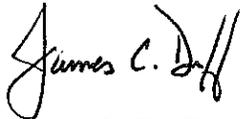
### **Methods to report misconduct**

Your letter concluded with a recitation of methods by which workplace misconduct in the Judiciary may be reported within our branch, for the benefit of third parties who might read your letter, which was widely publicized. We certainly welcome any encouragement to those who can report misconduct to us. Unfortunately, there was an error in your letter. The correct e-mail address for the Judicial Integrity Officer is [AO\\_OJI@ao.uscourts.gov](mailto:AO_OJI@ao.uscourts.gov). Because of the extreme importance of facilitating reporting of workplace conduct, we would respectfully recommend that you provide this correct e-mail to any third parties to whom you distributed your letter.

**Conclusion**

We appreciate the opportunity to describe our aggressive response to workplace misconduct in the Judiciary. Our Working Group continues to seek ways to improve our processes and procedures so that our workplace reflects our values of civility, respect and appropriate workplace behavior. We look forward to providing additional information as the Judiciary continues its focus on this issue. The Administrative Office's Office of Legislative Affairs can be reached at 202-502-1700, and will be happy to assist you in reaching us for any further assistance you may need.

Sincerely,



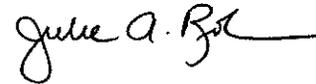
James C. Duff  
Secretary  
Judicial Conference  
of the United States

Sincerely,



Timothy Tymkovich  
Chief Judge  
U.S. Court of Appeals  
for the Tenth Circuit

Sincerely,



Julie Robinson  
Chief Judge  
U.S. District Court  
for the District of Kansas

Enclosures

cc: Honorable Doug Collins  
Honorable Martha Roby

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

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C.C.D. No. 19-02

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IN RE: COMPLAINTS UNDER THE JUDICIAL CONDUCT AND DISABILITY ACT

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

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MEMORANDUM OF DECISION

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(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.<sup>1</sup>

**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

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<sup>1</sup> 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).<sup>2</sup>

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.

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<sup>2</sup> 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 5<sup>3</sup> 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

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<sup>3</sup> "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.<sup>4</sup> In September 2018, he appointed a Special Committee to investigate.<sup>5</sup> 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

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<sup>4</sup> "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).

<sup>5</sup> "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;<sup>6</sup> 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);<sup>7</sup> 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

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<sup>6</sup> 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.

<sup>7</sup> 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.<sup>8</sup>

### 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

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<sup>8</sup> *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.

**JUDICIAL COUNCIL OF THE  
TENTH CIRCUIT**

IN RE: COMPLAINT UNDER THE  
JUDICIAL CONDUCT AND  
DISABILITY ACT

No. 10-18-90022

**Before TYMKOVICH, Chief Circuit Judge, KELLY, LUCERO, HARTZ, Circuit Judges, BRIMMER, WADDOUPS, and DOWDELL, District Judges\***

**ORDER**

In August 2018, Chief Judge Tymkovich identified a complaint of judicial misconduct under the Judicial Conduct and Disability Act, 28 U.S.C. § 351–364, against District Judge Carlos Murguia of the District of Kansas. Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 5 (Jud. Conf. of the U.S. 2019).<sup>1</sup> Chief Judge Tymkovich appointed a Special Committee,<sup>2</sup> pursuant to § 353 of the Act, to investigate the allegations against Judge Murguia, and the Special Committee has submitted a report

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\* The Honorable Mary Beck Briscoe and the Honorable Scott Skavdahl are members of the Judicial Council but did not participate in the consideration of this matter.

<sup>1</sup> “Once a special committee has been appointed, and a proceeding is concluded by the full judicial council on the basis of a remedial order of the council, Rule 24(a)(4) provides for disclosure of the name of the subject judge.” Rules for Judicial-Conduct and Judicial-Disability Proceedings Rule 24(a)(4) cmt. (Jud. Conf. of the U.S. 2019).

<sup>2</sup> The members of the Special Committee are Circuit Judges Timothy M. Tymkovich, Michael R. Murphy (presiding), and Carolyn B. McHugh, and District Judges Claire V. Eagan and Philip A. Brimmer.

of its findings and recommendations to the Judicial Council and to Judge Murguia. Judge Murguia has responded.

After consideration of the Special Committee's report and Judge Murguia's response, the Judicial Council unanimously adopts 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 engagements. The remainder of allegations identified in the 2018 complaint are dismissed because the facts on which those allegations are based have not been established. *See* Rule 20(b)(1)(A)(iii).

The Special Committee hired an investigator to assist with the matter. With her assistance, the Special Committee conducted an extensive investigation including interviews with 23 people and a hearing at which Judge Murguia testified under oath. The Special Committee unanimously submitted its findings and recommendations. The three findings of misconduct are explained below.

First, Judge Murguia gave preferential treatment and unwanted attention to female employees of the Judiciary in the form of sexually suggestive comments, inappropriate text messages, and excessive, non-work-related contact, much of which occurred after work hours and often late at night. All of the harassed employees stated that they were reluctant to tell Judge Murguia to cease his behavior because of the power he held as a

federal judge. One of the employees eventually told him explicitly to stop his harassing conduct, but he continued.

This type of behavior violates several provisions of the Code of Conduct for United States Judges. *See* Code of Conduct for U.S. Judges, Canon 3B(4) (providing that “[a] judge should not engage in any form of harassment of court personnel”); Canon 3 cmt. to 3A(3) (advising that “[t]he duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment”); Canon 3 cmt. to 3B(4) (advising that “harassment encompasses a range of conduct having no legitimate role in the workplace”). Further, the Rules include “[a]busive or [h]arassing behavior” in the definition of misconduct, which, in turn, includes “engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment.” Rule 4(a)(2) & 4(a)(2)(A).

Second, Judge Murguia engaged in a years-long extramarital sexual relationship with a drug-using individual who was then on probation and is now incarcerated (because of probation violations) for state-court felony convictions. A judge’s sexual affair does not constitute misconduct in all cases; whether a judge’s affair, even with a convicted felon, is misconduct depends on the circumstances surrounding the relationship. But the Special Committee found, and the Council agrees, that Judge Murguia placed himself in such a compromised position that he made himself susceptible to extortion.

Given the risk of extortion and potential for embarrassment to the Judiciary, Judge Murguia’s relationship implicates Code of Conduct Canons 1 and 2. The relationship

itself is in violation of Canon 2, which is titled “A Judge Should Avoid Impropriety and Appearance of Impropriety in All Activities.” Judge Murguia’s relationship with a convicted felon on probation could cause “reasonable minds, with knowledge of all the relevant circumstances,” to “conclude that the judge’s honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired.” Canon 2 cmt. to 2A. The Commentary to Canon 2A is explicit that the prohibition on impropriety (or the appearance thereof) “applies to both professional and personal conduct” and that “[a] judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen.” *Id.*

Third, Judge Murguia has been habitually late for court proceedings and meetings for years. The Special Committee found general agreement among witnesses that Judge Murguia was frequently late for court proceedings, often requiring attorneys, parties, and juries to wait, and sometimes making attorneys late for proceedings in other courtrooms. A repeated cause of this tardiness was Judge Murguia’s regularly scheduled lunchtime basketball games on days when he had hearings or trials, leaving the jury and others waiting for him to return. Judge Murguia was counseled about his tardiness fairly early in his federal judicial career, but his conduct persisted nonetheless.

A judge’s habitual disrespect for attorneys, jurors, and witnesses is a violation of the Code of Conduct for United States Judges. Canon 3 advises that “[a] judge should be . . . respectful[] and courteous to litigants, jurors, witnesses, [and] lawyers[,]” Canon 3A(3), “[a] judge should dispose promptly of the business of the court . . . ,” Canon

3A(5), and “[a] judge should diligently discharge administrative responsibilities . . . and facilitate the performance of the administrative responsibilities of other judges and court personnel,” Canon 3B(1). Given the number of years Judge Murguia engaged in this practice, his having been previously counseled against it, and the resulting lack of respect this demonstrated toward jurors, attorneys, and litigants, his behavior amounts to misconduct. *See* Rule 4 cmt. (“[A] pattern of such violations of the Code might well rise to the level of misconduct.”).

Judge Murguia admitted that he engaged in these three forms of misconduct. During the course of the investigation and proceedings, he also apologized for his behavior and assured the Judicial Council that he will not engage in this or any other inappropriate conduct in the future. In addition, the Special Committee found no evidence that his misconduct continued after he was served with the complaint. He has also offered to take voluntary corrective action.

Despite these assurances, we note that 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. Moreover, his misconduct is very serious and occurred over a lengthy period.

As judges, we have an obligation to foster a nondiscriminatory and courteous workplace that is respectful of everyone inside and outside the Judiciary. Judges have a duty to maintain the integrity and propriety of the Judiciary and to ensure that the public has a positive view of, and experience with, the Judiciary. Judge Murguia’s actions fell well short of these obligations.

In accordance with Rule 20(b)(1)(D), the Judicial Council is empowered to take remedial action to ensure the effective and expeditious administration of the business of the courts. One option is to issue a private reprimand. This course of action would serve to identify and denounce the misconduct. Such action might be sufficient to deter future misconduct. However, the conduct of Judge Murguia was too serious and the importance of maintaining the integrity of the Judiciary in the mind of the public too important for a private reprimand. The most severe sanction available to the Council in this matter is a public reprimand.<sup>3</sup> Although we appreciate the public reprimand may cause embarrassment to the Judiciary, misconduct that rises to this level calls for transparency and a powerful disincentive.<sup>4</sup>

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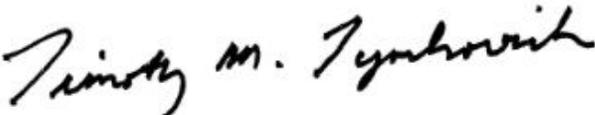
<sup>3</sup> Considering the statutory requirement for certifying a misconduct matter for impeachment, 28 U.S.C. § 354(b)(2), and the applicable constitutional standard of “high Crimes and Misdemeanors,” the evidence and facts in this matter are insufficient to recommend the Judicial Conference refer this matter to Congress for impeachment. Const. art. II, sec. 4.

<sup>4</sup> In a private letter, the Council is also requiring Judge Murguia to take certain corrective actions, with which Judge Murguia has agreed.

Pursuant to 28 U.S.C. § 354(a)(2)(A)(iii), the Judicial Council reprimands Judge Murguia for his conduct described in this Order, conduct that was prejudicial to the effective and expeditious administration of the business of the courts. The Judicial Council further admonishes Judge Murguia for his violations of the Code of Conduct.

The Circuit Executive is directed to transmit this Order to Judge Murguia and the Judicial Conference Committee on Judicial Conduct and Disability. *See* Rule 20(f). The Circuit Executive is also directed to ensure that this reprimand is publicly available. Judge Murguia has agreed to waive his right to seek review of this Order from the Committee on Judicial Conduct and Disability under Rules 21 and 22. Therefore, this matter is concluded, and this Order shall be made publicly available immediately. *See* Rule 24. The Special Committee's report and other materials related to this matter shall remain confidential pursuant to 28 U.S.C. § 360.

So **ORDERED**, September 30, 2019, and  
Entered on behalf of the Judicial Council  
of the Tenth Circuit

By: 

Honorable Timothy M. Tymkovich  
Chief Circuit Judge

**United States District Court**  
**District of Kansas**  
537 Robert J. Dole U.S. Courthouse  
500 State Avenue  
Kansas City, Kansas 66101

**Hon. Carlos Murguia**  
**United States District Judge**

**Telephone: (913) 735-2340**  
**Email: KSD\_Murguia\_Chambers@ksd.uscourts.gov**

February 18, 2020

President Donald J. Trump  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20500

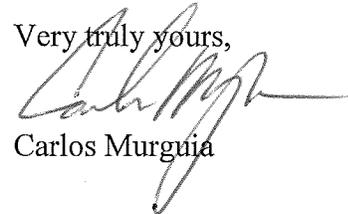
Dear President Trump,

With this letter, I respectfully resign my commission as United States District Judge for the District of Kansas, effective April 1, 2020.

I have been honored to serve in this position since 1999, and my tenure on the Court has been the highlight of my professional life. In recent months, it has become clear that I can no longer effectively serve the Court in this capacity. I therefore tender my resignation with a heavy heart and profound apologies, out of respect for the federal judiciary, my colleagues, my community and — most importantly — my family.

Between now and April 1, I look forward to assisting the District of Kansas with an orderly transition of my administrative and case-related responsibilities.

Very truly yours,



Carlos Murguia

cc:

Chief Justice John G. Roberts, Jr., United States Supreme Court  
Chief Judge Timothy M. Tymkovich, Tenth Circuit Court of Appeals  
Judge Anthony J. Scirica, Third Circuit Court of Appeals and Chair, Judicial Conduct and Disability  
Chief Judge Julie A. Robinson, United States District Court for the District of Kansas  
James C. Duff, Director, Administrative Office of the United States Courts  
John S. Cooke, Director, Federal Judicial Center  
Carol Sefren, Chief, Judges Compensation and Retirement Division

**UNITED STATES DISTRICT COURT**

**District of Kansas**

**United States Courthouse  
500 State Avenue, Suite 511  
Kansas City, Kansas 66101**

**Julie A. Robinson  
Chief Judge**

**Telephone : 913-735-2360  
Fax: 913-635-2361**

February 18, 2020

Today United States District Judge Carlos Murguia tendered his resignation from office to President Trump, effective April 1, 2020. Judge Murguia's letter is attached. Judge Murguia resigned with "a heavy heart and profound apologies, out of respect for the federal judiciary, my colleagues, my community and — most importantly — my family." Between now and April 1, 2020 Judge Murguia will assist the District of Kansas with an orderly transition of his administrative duties and case-related responsibilities. Judge Murguia's cases will immediately be reassigned to the other district judges of this court. Judge Murguia has been a district judge since 1999 and resigns his commission without eligibility for pension or any retirement benefits.

**STATUS REPORT FROM THE FEDERAL JUDICIARY WORKPLACE CONDUCT  
WORKING GROUP TO THE JUDICIAL CONFERENCE OF THE UNITED STATES  
SEPTEMBER 17, 2019**

**INTRODUCTION**

This status report summarizes progress made on recommendations in the [Federal Judiciary Workplace Conduct Working Group Report](#) (Report), submitted to the Judicial Conference of the United States on June 1, 2018. At the direction of Chief Justice John G. Roberts, Jr., the Federal Judiciary Workplace Conduct Working Group (Working Group) was established in January 2018 to evaluate the Judiciary's standards of conduct and procedures for investigating and correcting inappropriate workplace conduct. The Working Group made more than thirty detailed recommendations to improve the Judiciary's policies and procedures and achieve the Chief Justice's goal of creating an exemplary workplace for every federal judicial employee and judge.

The Working Group's recommendations cover three general categories:

- Revisions to the Codes of Conduct for United States Judges (Codes of Conduct or Code) to state clear and consistent standards describing inappropriate workplace behavior.
- Improvements to the Judiciary's procedures for identifying and correcting misconduct and providing more informal and flexible ways to report and resolve workplace conduct issues, including revising the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) and the Model Employment Dispute Resolution (EDR) Plan, and creating a national Office of Judicial Integrity (OJI) and circuit directors of workplace relations as independent

resources for employees to report and receive advice about workplace misconduct; and

- Enhancements to the Judiciary’s educational and training programs to raise awareness of workplace conduct issues, prevent discrimination and harassment, and promote civility throughout the Judicial Branch.

Prior to the submission of the Report, the Judiciary took several actions that did not require Judicial Conference action. Those included:

- Revising the confidentiality provisions in the law clerk handbook to clarify that nothing in those provisions prevents revealing workplace misconduct, including harassment, and removing the Model Confidentiality Statement from JNet, the courts’ intranet website;
- Establishing a comment mailbox on the [uscourts.gov](http://uscourts.gov) public website for current and former law clerks and other employees to send comments and suggestions to the Working Group;
- Meeting with the authors of the 2016 report from the Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace;
- Meeting with a group of law clerks, and a cross-section of Judiciary employees to hear their workplace experiences;
- Adding instructive in-person programs on Judiciary workforce policies and procedures and workplace sexual harassment to the curricula at Federal Judicial Center programs for chief district and chief bankruptcy judges; and

- Providing a session on sexual harassment during ethics training for newly appointed judges.

Since the receipt of the Working Group's Report in June 2018, the Judicial Conference of the United States, the Administrative Office of the U.S. Courts (AO), the Courts, and the Federal Judicial Center have acted on nearly all of the Working Group's recommendations. These actions include the following:

- The Judicial Conference approved revisions to the Codes of Conduct for United States Judges and Codes of Conduct for Judicial Employees, as well as the JC&D Rules in March 2019 to state expressly that sexual and other discriminatory harassment, abusive conduct, and retaliation are cognizable misconduct, as is the failure to report misconduct to the chief district or chief circuit judge.
- AO Director James C. Duff appointed Jill Langley to head the newly-created OJI and that office began actively providing confidential advice and guidance since her January 2019 appointment.
- Many federal circuits and courts established workplace conduct committees and created directors of workplace relations (or similar positions) to provide circuit-wide guidance and oversight of workplace conduct matters.
- The Federal Judicial Center (FJC) has provided nation-wide training on preventing harassment, workplace civility, and diversity and inclusion.
- Most recently, on September 17, 2019, the Judicial Conference approved a significantly revised and simplified Model EDR Plan that clearly states that harassment, discrimination, abusive conduct, and retaliation are prohibited; provides several options for employees to report and seek redress for wrongful

conduct; and ensures that Judiciary employees know the many resources available to them.

This report addresses these improvements in more detail below. The Working Group has been encouraged by the initiatives at the national and local levels to assure professionalism, civility, and accountability in the workplace. The Working Group remains in place to monitor the progress and success of these initiatives and the ongoing work on the remaining recommendations.

## **I. AMENDMENTS TO THE CODES OF CONDUCT**

The Judicial Conference took action in response to several recommendations in the Working Group’s Report. This action includes the overall recommendation that the Judiciary “revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior.” Report at 21. The Judicial Conference Committee on the Codes of Conduct’s (Codes Committee) proposed revisions to the Codes of Conduct were published for written comment in September 2018. In October 2018, the Codes Committee held a public hearing to consider comments on the proposed amendments. After further consideration of all comments, the Codes Committee developed final recommendations, which the Judicial Conference approved in March 2019. The [revisions to the Codes](#) addressed the following Working Group recommendations.

### ***A. Promoting Appropriate Workplace Behavior and Prohibiting Workplace Harassment***

In its Report, the Working Group suggested clarifying in the Codes of Conduct that a judge has an affirmative duty to promote civility not only in the courtroom but throughout the courthouse. This includes the duty to promote appropriate behavior in the workplace, especially in chambers. The Working Group further recommended that the Code explicitly affirm that a

judge must not engage in or tolerate any workplace misconduct, including harassment, abusive behavior, or retaliation for reporting such conduct.

In response to these recommendations, the Judicial Conference amended the Codes of Conduct at Canon 2A (Commentary), the introduction to Canon 3, Canon 3B(4), and Canon 3B(4) (Commentary). These amendments make clear that a judge should promote and practice civility—by being patient, dignified, respectful, and courteous—in dealings with court personnel, including chambers staff. The amendments also prohibit judges from taking part in, or allowing, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct.

***B. Prohibiting Impermissible Harassment, Bias, or Prejudice***

The Working Group recommended Code amendments to clarify that harassment, bias, or prejudice based on race, color, religion, national origin, sex, age, disability, or other bases (including sexual orientation or gender identity) is impermissible. In response, the Judicial Conference added Commentary to Canon 3B(4) that “harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others.”

***C. Requiring Appropriate Action Concerning Misconduct***

The Report recommended clarifying a judge’s existing obligation under the Code to “take appropriate action” against misconduct extends to the inappropriate treatment of court employees, including those in chambers. The Report advised that “appropriate action” should reasonably address the misconduct, prevent harm to those affected by it, and promote public confidence in the integrity and impartiality of the Judiciary.

The Code amendments that are responsive to these recommendations are in Canon 3B(6) and Canon 3B(6) Commentary. As noted in the Commentary, “Public confidence in the integrity and impartiality of the Judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence.”

***D. Clarifying Confidentiality and Reporting***

The Report stressed that confidentiality obligations must be clear so both judges and judicial employees understand these obligations never prevent any employee—including a law clerk—from revealing abuse or misconduct by any person. In response, the Codes Committee recommended, and the Judicial Conference approved, an amendment to the Code of Conduct for Judicial Employees at Canon 3D(3) to clarify that the “general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.”

***E. Coordinating Amendments with Other Codes of Conduct***

The Working Group recommended making similar changes to the codes of conduct that apply to all judicial employees (including the Code of Conduct for Judicial Employees and the Code of Conduct for Federal Public Defender Employees). In response, the Judicial Conference adopted amendments to the Code of Conduct for Judicial Employees at Canon 3C and 3D. These amendments include a duty to promote appropriate workplace conduct, prohibit workplace harassment, take appropriate action to report and disclose misconduct, and prohibit retaliation for

reporting or disclosing misconduct. The Codes Committee expects to recommend similar revisions to the Code of Conduct for Federal Public Defender Employees later this year.

The Working Group also asked the Codes Committee to consider whether there was a continuing need to use the existing model confidentiality statement to inform employees about their confidentiality obligations. The Working Group viewed the statement—and the Codes Committee agreed—as an impediment to reporting workplace misconduct. The confidentiality statement was rescinded in February 2018. The Codes Committee further decided that developing a new confidentiality statement may not be necessary, as working groups at the circuit level have issued a variety of proposals to improve understanding of employee confidentiality issues. The Codes Committee intends to develop ethics education programs on this topic, including assisting judges and court executives to educate judicial employees about their confidentiality obligations.

***F. Improving Educational and Guidance Materials***

The Report included a recommendation to review and revise all written ethics guidance concerning workplace conduct. The recommendation aims to ensure that the Judiciary provides a consistent and accessible message that it will not tolerate harassment or other inappropriate conduct. The Report further recommended developing ethics education programs, in cooperation with the FJC, on these topics. The Codes Committee has begun to review and revise existing written educational materials that inform judges and judicial employees of their ethical obligations related to workplace conduct and is working with the FJC to develop new ethics education programs for judges and court employees on these topics.

## II. **AMENDMENTS TO THE PROCEDURES AND NEW INITIATIVES FOR IDENTIFYING AND CORRECTING WORKPLACE MISCONDUCT**

### *A. Rules for Judicial-Conduct & Judicial-Disability Proceedings (JC&D Rules)*

In response to the Working Group’s recommendations, the Committee on Judicial Conduct and Disability (JC&D Committee) proposed amendments to the JC&D Rules. The JC&D Committee released final draft proposed amendments to the JC&D Rules on September 13, 2018, for a sixty-day public comment period that ended on November 13, 2018. The JC&D Committee, in coordination with the Codes Committee, held a public hearing on October 30, 2018, to hear testimony and comments concerning the proposed amendments to the JC&D Rules, as well as the Codes of Conduct. The JC&D Committee prepared a final set of proposed amendments, which the Judicial Conference approved at its March 2019 session. The [amendments](#) address the following Working Group recommendations.

#### *1. Requiring Judges to Report or Disclose Misconduct*

Most significantly, the Working Group recommended that the JC&D Committee “provide additional guidance . . . on a judge’s obligations to report or disclose misconduct and to safeguard complainants from retaliation” and that the Committee “reinforce the principle that retaliation for reporting or disclosing judicial misconduct constitutes misconduct.” Report at 31. In response, the JC&D Committee recommended, and the Judicial Conference adopted, an expansion of the JC&D Rules’ misconduct definition to include retaliation for reporting or disclosing judicial misconduct or disability. *See* Rule 4(a)(4) (“Retaliation”). The Judicial Conference also added a new provision that includes a judge’s failure to bring “reliable information reasonably likely to constitute judicial misconduct” to the attention of the relevant chief district judge or chief circuit judge within the definition of cognizable misconduct. *See*

Rule 4(a)(6) (“Failure to Report or Disclose”) & Commentary; *see also* Rule 23 (“Confidentiality”) Commentary.

## **2. *Expressly Prohibiting Workplace Harassment***

In its Report, the Working Group suggested that the JC&D “Rules or commentary include express reference to workplace harassment within the definition of misconduct,” and include changes “clear[ly proscribing] harassment based on sexual orientation or gender identity.” Report at 30. The Judicial Conference responded by revising the JC&D Rules and related Commentary to include abusive or harassing behavior (including unwanted, offensive, or abusive sexual conduct; hostile work environment; and discrimination based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, and disability) within the definition of misconduct. *See* Rule 4(a)(2) (“Abusive or Harassing Behavior”); Rule 4(a)(3) (“Discrimination.”)

## **3. *Exempting Reports of Misconduct from Confidentiality Rules***

The Working Group proposed that “the Committee on Judicial Conduct and Disability make clear . . . that confidentiality obligations should never be an obstacle to reporting judicial misconduct or disability” in order to ensure that complainants “understand that the obligations of confidentiality that judicial employees must observe in the course of judicial business do not shield a judge from a complaint under the JC&D Act.” Report at 30-31. In response, the Judicial Conference adopted a new JC&D Rule and related Commentary emphasizing that nothing in the JC&D Rules regarding confidentiality of the complaint process prevents a judicial employee from reporting or disclosing misconduct or disability. *See* Rule 23(c) (“Disclosure of Misconduct and Disability”). *See also* Rule 4 (“Misconduct and Disability Definitions”) Commentary; Rule 6 (“Filing of Complaint”) Commentary.

#### ***4. Clarifying Eligibility to File a JC&D Complaint***

The Working Group recommended that the “Rules or associated commentary state with greater clarity that traditional judicial rules respecting ‘standing’— viz., the requirement that the complainant himself or herself must claim redressable injury from the alleged misconduct—do not apply to the JC&D Act complaint process.” Report at 29–30. In response, the Judicial Conference revised the JC&D Rules and related Commentary to note that traditional standing requirements do not apply, and that individuals and organizations may file a complaint even if they have not been directly injured or aggrieved. *See* Rule 3(c)(1) (“Complaint”) & Commentary.

#### ***5. Improving Transparency***

The Working Group recommended that “the Judiciary as a whole consider possible mechanisms for improving the transparency of the JC&D Act process.” Report at 31. The Judicial Conference approved various changes to the JC&D Rules, including: expanding the provision regarding confidentiality to allow judicial councils and the JC&D Committee (and not just circuit chief judges) to disclose the existence of proceedings in specific circumstances, *see* Rule 23(b)(1)) (“General Rule” on “Confidentiality in the Complaint Process”); expanding the provision regarding disclosure of information about the consideration of a complaint where a complainant or other person has publicly released information regarding the existence of a complaint proceeding, *see* Rule 23(b)(8) (“Disclosure in Special Circumstances”) & Commentary; permitting the disclosure of a subject judge’s name in additional circumstances where a complaint is concluded based on voluntary corrective action, *see* Rule 24 (“Public Availability of Decisions”) Commentary; and including language that the Judiciary will seek ways to make decisions available to the public through searchable electronic indices, *id.*

## **6. Authorizing Systemic Evaluations**

As the Working Group notes, the Judiciary has an “institutional interest in determining, apart from any disciplinary action, what conditions enabled the misconduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its repetition.” Report at 39. The Judicial Conference added language to the JC&D Rules that the Judicial Conference and judicial council of the subject judge have ample authority to assess potential institutional issues related to the complaint as part of their respective responsibilities to promote “the expeditious conduct of court business.” 28 U.S.C. § 331. This includes making “all necessary and appropriate orders for the effective administration of justice within [each] circuit,” *id.* at § 332(d)(1), including consideration of what precautionary or curative steps could be undertaken to prevent the recurrence of misconduct. *See* Rule 11 (“Chief Judge’s Review”) Commentary.

### ***B. Amendments to the Model Employment Dispute Resolution (“EDR”) Plan***

The Working Group recommended revisions to the Model EDR Plan to provide clear, uniform definitions of “wrongful conduct,” such as harassment and discrimination; offer informal avenues for employees to report wrongful conduct; allow employees more time to file a formal claim; cover all paid and unpaid Judiciary employees; increase awareness of EDR rights and options to address workplace misconduct; and ensure the appropriate chief judge is notified of potential misconduct by a judge.

The Judicial Conference approved two of the Working Group’s recommendations in September 2018: increasing the time to file a formal EDR Complaint from 30 to 180 days and extending EDR coverage to all paid and unpaid interns and externs. As it always has, the Model EDR Plan applies to all Article III and other judicial officers of the federal courts; all current and

former Judiciary employees, including all chambers staff; federal public defenders and their staffs; and all applicants for employment who have been interviewed.

The Director of the AO established a Model EDR Plan Working Group (EDR Group), made up of federal judges and Judiciary officials with expertise in employment dispute resolution. The EDR Group drafted a revised Model EDR Plan to incorporate the Working Group's recommendations and ensure consistency with the amendments to the Codes of Conduct and the JC&D Rules. The proposed revision was circulated for Judiciary-wide comment. The Judicial Resources Committee of the Judicial Conference and its Diversity Subcommittee then considered the revised Model EDR Plan and recommended its adoption, which the Judicial Conference adopted at its September 2019 session. Some of the significant changes to the Model EDR Plan are highlighted below.

***1. Providing Clear and Consistent Definitions of Wrongful Conduct***

The Working Group recommended revising all of the Judiciary's guidance documents, including the Model EDR Plan, in parallel fashion with the Codes of Conduct to provide consistent standards of workplace conduct. In response, the revised Model EDR Plan now states the Judiciary's core values, including a commitment to a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment. Consistent with changes to the Codes of Conduct and the JC&D Rules, the Model EDR Plan encourages reports of wrongful conduct and makes clear that confidentiality requirements do not prohibit anyone, including law clerks, from reporting any type of workplace misconduct. Furthermore, consistent with the revised Codes of Conduct and JC&D Rules, the revised Model EDR Plan includes a clear policy statement of prohibited "wrongful conduct" in the workplace, using explanatory examples,

namely: discrimination; sexual, racial or other discriminatory harassment; abusive conduct; retaliation; and violations of specific employment laws.

The Model EDR Plan has always protected against discrimination and harassment based on race, color, national origin, sex, gender, pregnancy, religion, and age (40 years and over), but the Working Group recommended expanding the Model EDR Plan's definition of sex discrimination to match established legal definitions and the language used within the Codes of Conduct and other Judiciary policy statements. The revised Model EDR Plan includes gender identity and sexual orientation as a "protected category" consistent with similar action taken by the Judicial Conference in March 2019 in amending the Codes of Conduct and the JC&D Rules.

## ***2. Prohibiting Abusive Conduct***

The Working Group suggested that the revised Model EDR Plan state that harassment, without regard to motivation, is wrongful conduct. The revised Model EDR Plan adds "abusive conduct" as a form of wrongful conduct, defined as "a pattern of demonstrably egregious and hostile conduct *not* based on a protected category that unreasonably interferes with an employee's work and creates an abusive working environment." This definition is consistent with language defining abusive behavior in the JC&D Rules. The definition excludes communications and actions reasonably related to performance management.

## ***3. Providing Flexible and Informal Options for Resolution***

The Working Group recommended that the Model EDR Plan provide an avenue for employees to report wrongful conduct without filing a formal EDR complaint. The revised Model EDR Plan provides new flexible and more informal ways for reporting and resolving allegations of wrongful conduct, called "Options for Resolution:" (1) informal advice; (2) assisted resolution; or (3) formal complaint. Based on the Working Group's recommendation,

the revised Model EDR Plan allows an employee, including a law clerk or other chambers employee, to request interim relief during the pendency of any Option for Resolution, including transfer or an alternative work arrangement.

Informal advice is just that: an employee can contact an EDR Coordinator, circuit director of workplace relations, or the national OJI for informal, confidential advice and guidance about workplace misconduct. Assisted resolution simply means an employee can ask for help with a workplace conduct issue. Assistance under this option includes facilitated discussions, voluntary mediation, a preliminary investigation, or any other steps that may yield an effective resolution of the issues.

The formal EDR complaint option is substantially the same: it allows an employee to use a structured claims process overseen by a presiding judicial officer assigned by the chief judge. It provides for a fair and impartial investigation, a hearing before the presiding judicial officer to resolve material factual disputes, a written decision, and a right to have that decision reviewed by the circuit judicial council. The new Model EDR Plan sets out mandatory recusal standards for those involved in the EDR process to avoid conflicts of interest.

#### ***4. Increasing Awareness of EDR Rights and Options for Resolution***

The Working Group found that employees lacked awareness of the rights and options available to them under the Model EDR Plan. In response, the new Model EDR Plan is written in “plain English”; includes easy-to-follow infographics describing EDR rights and options; and requires courts to post the EDR Plans and infographics prominently on their websites, along with contact information for the court’s EDR Coordinators and the national OJI. The Model EDR Plan now also requires courts to conduct EDR and workplace conduct training annually for all judges and employees, including chambers staff.

Based on a Working Group recommendation, the revised Model EDR Plan requires that all EDR coordinators be trained and certified on the Model EDR Plan's rights, processes, and Options for Resolution. The EDR Group is currently developing materials to assist in training and to answer frequently asked questions about EDR.

#### ***5. Providing Notice of Wrongful Conduct Allegations Against Judges***

The Model EDR Plan has always permitted employees, including chambers employees, to report judicial misconduct in the workplace. Implementing the Working Group recommendation, the revised Model EDR Plan now requires notice to the appropriate chief district or circuit judge when an EDR-level allegation is made against a judge in their district or circuit. In such a case, the appropriate chief district or chief circuit judge is responsible for coordinating an Assisted Resolution request or overseeing a formal EDR Complaint. As it has in the past, the Model EDR Plan states that if a judge is the subject of both a formal complaint under the Model EDR Plan and a complaint under the Judicial Conduct and Disability Act, the chief circuit judge will determine the appropriate procedure for addressing both.

#### ***C. Creation of Office of Judicial Integrity***

The Working Group recommended that the Judiciary offer employees a broad range of options and methods to report harassment and seek guidance about workplace conduct concerns, with multiple points-of-contact at both the local and national level. As part of that goal, it recommended the AO establish a national OJI to provide confidential assistance regarding workplace conduct to all Judiciary employees.

### *1. Providing Independent, Confidential Advice on Workplace Conduct*

The Director of the AO created the OJI, which began operations in January 2019. The OJI serves as an independent resource where current and former Judiciary employees can seek—by phone or confidential email—counseling, guidance, and intervention regarding sexual and other harassment, abusive conduct, discrimination, and other workplace misconduct. The OJI ensures employees are aware of all the informal and formal options available to them to report and address workplace harassment or other wrongful conduct. The OJI provides a safe and confidential avenue for employees who, for whatever reason, choose not to report misconduct to, or discuss their workplace concerns with, their local court office.

Employees can make confidential, even anonymous, reports of harassment or other wrongful conduct on an email form located on the OJI's JNet website, linked prominently on a Workplace Conduct Quick Link on the front page of the JNet. Former employees and members of the public can submit similar confidential reports on the OJI's public site on [www.uscourts.gov](http://www.uscourts.gov). The OJI's JNet website provides links to other workplace resources, such as court EDR Plans and EDR Coordinators, the Codes of Conduct and JC&D Rules, the Working Group's June 2018 Report, and the FJC's workplace conduct training programs and offerings.

The OJI also provides guidance and advice to judges, unit executives, managers, and EDR Coordinators about workplace conduct matters. It provides advice on best practices for conducting a fair, thorough, and impartial workplace investigation, and, at the request of a court Chief Judge, can assist with a workplace investigation. It ensures managers are aware of other workplace conduct resources at the AO, including the AO's Court Human Resources Division,

the Office of the General Counsel, and the FJC's workplace conduct in-person and web-based training programs.

The OJI is headed by the first appointed Judicial Integrity Officer, Jill Langley, formerly the Tenth Circuit's Director of Workplace Relations. Prior to her appointment, Ms. Langley was an attorney with the Tenth Circuit for twenty-three years and spent thirteen years focusing on EDR, during which time she developed an EDR training program that she presented nation-wide. Before joining the court, Ms. Langley was in private practice with a law firm in Phoenix, Arizona. She graduated cum laude from the Sandra Day O'Connor College of Law at Arizona State University, where she was an editor of the law review, and received her undergraduate degree from the University of Arizona.

## ***2. Outreach to Future, Current, and Former Judicial Employees and Law Clerks***

The OJI provides an avenue for law schools to report any information they learn from students about judicial workplace misconduct. Law schools and law students who worked in chambers can report a judicial workplace misconduct issue directly to the OJI. If the law school or student would prefer to remain anonymous, they can submit a confidential report via the OJI's public website. After receiving any such report, the OJI will notify the appropriate Chief Judge of the reported information.

The Judicial Integrity Officer travels extensively to circuit and court conferences to increase awareness of the OJI and its workplace conduct resources and of workplace conduct issues generally. In 2019, the Judicial Integrity Officer has been invited by courts in the First, Third, Fourth, Fifth, Seventh, Ninth, Tenth, Eleventh and District of Columbia circuits to participate in, or provide, training on the role of the OJI, workplace conduct, and the Model EDR Plan. The conferences have included judge conferences, court manager conferences, new law

clerk orientations, workplace conduct workshops, and training programs for Human Resource Professionals and EDR Coordinators. As courts adopt their EDR Plans based on the new Model EDR Plan, the OJI will be available to provide training next year to educate employees about their rights and options under the Model EDR Plan and make them aware of the many ways—informal and formal—they can get help with a workplace conduct concern.

### ***3. Analyzing Issues and Trends***

The OJI maintains a confidential database of all contacts with the OJI, including the nature of the allegations, to inform the Judiciary and this Working Group about the frequency and the nature of the reported workplace conduct issues and any notable trends. In addition, the OJI works with the Court Human Resources Division, which currently administers a national exit survey of all former Judiciary employees, to identify workplace conduct issues or trends revealed in the exit surveys.

The AO is in the process of clarifying the data that courts will be required to report under the new Model EDR Plan and creating easier and more accurate ways for courts to provide that information. This data collection will include a requirement that courts annually report sexual harassment claims.

### ***D. Circuit and Court Initiatives***

Following the recommendation of the Working Group, many circuits have now hired trusted individuals, often called Directors of Workplace Relations, to provide confidential guidance and resolution of workplace conduct issues to Judiciary employees within the circuit. The Directors of Workplace Relations offer workplace conduct training; give guidance to employees and managers about conduct issues; provide informal workplace conduct advice, train and assist court EDR Coordinators; and assist with workplace conduct investigations, mediation,

and dispute resolution. It is anticipated that the OJI and Circuit Directors of Workplace Relations will meet at least annually to develop best practices, identify effective training programs, improve methods and processes for employees to report misconduct, and identify workplace conduct trends. Many circuits have also created workplace conduct committees, either in addition or as an alternative to, a circuit director of workplace relations.

Many circuits and individual courts have conducted confidential climate surveys, developed their own workplace conduct training programs, and offered workplace conduct workshops and seminars. Courts in every circuit have provided training and education to staff and employees about workplace conduct, particularly the ways that employees can report issues and how managers can address and correct issues. The Seventh Circuit and the Ninth Circuit, which amended their EDR Plans in advance of the new Model EDR Plan, provided circuit-wide training to EDR Coordinators, including training on mediation skills and conducting a workplace investigation.

### **III. TRAINING AND EDUCATION**

The Working Group made three recommendations to the FJC regarding training. First, the FJC should ensure that all new judges and new employees receive basic workplace standards training as part of their initial orientation programs, with refresher training at regular intervals. Second, the FJC should develop an advanced training program aimed at developing a culture of workplace civility. Finally, the FJC, in coordination with the AO and individual courts, should continuously evaluate the effectiveness of workplace conduct educational programs.

The FJC has delivered “workplace standards” training at the initial orientations of new federal judges (phases I and II of the orientations for new district, bankruptcy, and magistrate judges). The FJC also regularly offers periodic refresher training consisting of sessions at

national and circuit judicial workshops. An orientation video covering workplace conduct issues for new law clerks was produced in time for summer 2018 term law clerks entering into their duties. That video is currently being updated to reflect changes recommended and implemented following the Working Group report, and to include the formation of the OJI and the amendments to the Codes of Conduct and JC&D Rules. The FJC anticipates creating EDR training programs after the Judicial Conference approves the revised Model EDR Plan.

With respect to an initial orientation for all new Judiciary employees, an FJC webcast last fall in the series “Court Web” reached roughly 2,400 participants and consisted largely of scenario-based discussions of acceptable workplace conduct. It is likely that an online approach, whether via podcast, webcast, or a similar mechanism, which allows the recipients to absorb the content at a time their choosing, offers the best chance of reaching the entirety of the target audience.

The FJC believes the most effective educational approach is to use scenarios, some of which are adapted from actual reports received, that enable candid discussions among groups of judges, court unit executives, and managers and supervisors. The formal ethics presentations at new judge orientations (typically consisting of a judge representative from the Codes Committee and a representative from the AO’s Office of the General Counsel) have been expanded to include greater focus on the ethical obligations of judges in responding to workplace misconduct allegations. The perceptions formed at orientations for new judges as to what is and is not acceptable within the Judiciary’s culture, guided by mentor judge observations, are critical. Discussions at national workshops of district, bankruptcy, and magistrate judges, circuit judicial workshops, chief district and bankruptcy judge workshops, and the new chief judge (circuit,

district, and bankruptcy) leadership seminar program have all proven useful in capturing important workplace conduct insights.

The FJC's lineup of in-person programs for unit and deputy unit executives, experienced supervisors, and new supervisors all address various issues affecting workplace conduct. The Conference for Court Unit Executives, a national-level gathering, addressed various aspects of workplace conduct both in plenary and elective sessions. At the court staff level, the primary educational method of learning more about these issues is a variety of in-district training seminars (e.g., Preventing Workplace Harassment, Dealing with Difficult Situations; Meet: Breaking New Ground – Respect and Inclusion in the Workplace) delivered by court trainers. In the year ahead, the FJC intends to add another program, Civility in the Workplace, to those seminars.

### **CONCLUSION**

The Judicial Branch has demonstrated commitment from courts nationwide to creating and ensuring exemplary workplaces. Managers are offering workplace training and workshops, judges are actively involved in workplace concerns, and employees are coming forward, both locally and to the OJI, to discuss and resolve any concerns they may have. Our Working Group will continue to monitor and assess workplace conduct matters throughout the Judiciary, to assist with continued implementation of the workplace initiatives already in place, and to recommend additional changes whenever we see needs for improvement.