

U.S. House of Representatives
Committee on the Judiciary

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February 6, 2020

James C. Duff
Secretary
Judicial Conference of the United States
One Columbus Circle NE
Washington, D.C. 20544

The Hon. Julie A. Robinson
Chief Judge
U.S. District Court for the District of Kansas
500 State Avenue, Suite 511
Kansas City, Kansas 66101

The Hon. Timothy M. Tymkovich
Chief Judge
U.S. Court of Appeals for the Tenth Circuit
1823 Stout Street
Denver, Colorado 80257

Dear Secretary Duff, Chief Judge Tymkovich, and Chief Judge Robinson,

As the leadership of the House Judiciary Committee, we, along with our colleagues, are responsible for assessing how best to ensure accountability within the courts so that judicial branch employees and judges can be free from workplace misconduct, isolation, and retaliation, and have fair and meaningful recourses to address any concerns. The Committee is committed to protecting the more than 30,000 people employed by the federal Judiciary.

On September 30, 2019, the Tenth Circuit Judicial Council issued an order finding that Carlos Murguia, a federal district judge in Kansas City, Kansas, had committed multiple acts of serious judicial misconduct, including sexually harassing an undisclosed number of Judiciary employees for an undisclosed period of time.¹ In light of these serious allegations, we write to inquire about the adequacy of the rules and statutes governing judicial misconduct, and the effectiveness of the Judiciary's recent reforms to address workplace harassment. Because the Council's order may be subject to further action by the Judicial Conference's Committee on

¹ *In re: Complaint Under the Judicial Conduct and Disability Act*, No. 10-18-90022 (10th Cir. Jud. Council Sept. 30, 2019), <https://www.ca10.uscourts.gov/sites/default/files/misconduct/10-18-90022.J.pdf>.

Judicial Conduct and Disability, we will avoid commenting on matters within the Committee’s jurisdiction that may affect Judge Murguia’s office.² Our focus is forward-looking.³

This order from the Tenth Circuit Judicial Council nonetheless calls into question the adequacy of the Judiciary’s recent steps to better protect its employees from wrongful workplace conduct—steps which we would like to welcome as much-needed progress in this area. In December 2017, Chief Justice Roberts instructed Secretary Duff to form a working group composed of judges and senior staff to conduct “a careful evaluation of whether” the judiciary’s “standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate.” The working group looked to the findings of the Equal Employment Opportunity Commission’s Select Task Force on the Study of Harassment in the Workplace, which identified a set of key steps that have generally proven effective in preventing and addressing harassment. Those steps include a “committed and engaged leadership” and “consistent and demonstrated accountability.” In September 2019, the Working Group issued a status report concluding that “the Judicial Branch has demonstrated commitment from courts nationwide to creating and ensuring exemplary workplaces.”

Notwithstanding these efforts, the Tenth Circuit Judicial Council’s findings document very troubling workplace behavior by an active judge that was never reported. The Council found that Judge Murguia subjected employees to “sexually suggestive comments,” “inappropriate text messages,” and “excessive, non-work related contact.” The Council found that Judge Murguia’s harassment continued after work hours “and often late at night.” Every one of the employees Murguia harassed “stated that they were reluctant to tell Judge Murguia to cease his behavior because of the power he held as a federal judge.” One person “eventually told [Judge Murguia] explicitly to stop his harassing conduct, but he continued.” The Council does not say what, if anything, has been done to ensure a safe workplace for these and similarly situated employees.⁴

The wellbeing of the employees affected by such misconduct is a priority for this Committee. Faced with findings of such serious, longstanding, unaddressed harm to its employees, employers are expected to investigate why it failed to stop the harassment over such a long period of time, assess whether harassment is still occurring or is perceived to be tolerated, and very likely implement new policies and procedures to address its evident shortfalls. These responsibilities are

² See 28 U.S.C. § 355. The Committee’s review is normally limited to “errors of law, clear errors of fact, or abuse of discretion.” Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 21.

³ Cf. *In re Complaints of Judicial Misconduct*, 9 F.3d 1562, 1566 (U.S. Jud. Conf. 1993) (describing judicial misconduct proceedings as “essentially forward-looking and not punitive” that accordingly “have an administrative and managerial character not present in traditional adjudication by courts”).

⁴ The Tenth Circuit Judicial Council publicly reprimanded Judge Murguia for his misconduct, noting that a public reprimand was appropriate even though it “may cause embarrassment to the judiciary.” The Council stated that a public reprimand “was the most severe sanction available.” In a footnote, the Council noted that “[i]n a private letter, the Council is requiring Judge Murguia to take certain corrective actions, with which Judge Murguia has agreed.” The Council also stated that a private reprimand “might be sufficient to deter future misconduct.”

particularly important for the Judiciary, which is one of the only employers—private or public—whose civilian employees are not protected by state or federal civil rights laws. We support the Judiciary’s attention to these important matters but find it difficult to square the public record regarding Judge Murguia’s misconduct with the Working Group’s guiding principles and status report.

To that end and as you further develop greater workplace protections, we respectfully request answers to the following questions by February 20, 2020.


1. The Tenth Circuit Judicial Council order does not say what, if any, support has been provided to the court employees who work for or with Judge Murguia, including the individuals he sexually harassed. What steps have district and circuit courts taken to ensure that these individuals or similarly situated individuals receive appropriate support and resources?
2. The Tenth Circuit Judicial Council’s order does not say whether any employees who were or may have been harassed by Judge Murguia are still working for him. Were employees provided an opportunity to seek employment elsewhere in the court if they so chose?
3. The Tenth Circuit Judicial Council’s order does not say when Judge Murguia’s misconduct began or how many people he harassed. Will the extent of an individual’s misconduct be fully disclosed at any point during the review process? Are there policies in place that will allow for such disclosure in order to prevent future extended, undocumented harassment or other forms of misconduct?
4. The Tenth Circuit Judicial Council’s order does not say whether any of the people Judge Murguia sexually harassed suffered negative personnel decisions in addition to the harassment itself. The order also states that Judge Murguia in some cases gave preferential treatment to individuals he harassed. What policies and practices are in place to review personnel decisions that may have been influenced by a judge (or supervisor’s) misconduct towards an employee? Please explain the details of this review process, or if none exists, whether there are plans to create one.
5. No individual filed a judicial misconduct complaint against Judge Murguia. Instead, the complaint against Judge Murguia was initiated by Chief Judge Tymkovich pursuant to 28 U.S.C. § 351(b). 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.

6. Has the District of Kansas or the Tenth Circuit investigated why none of the employees of the Federal District Court for the District of Kansas felt comfortable filing a complaint against Judge Murguia? Will such an investigation occur if it has not happened already?
7. Will the District of Kansas or the Tenth Circuit investigate whether the other judges in the District of Kansas were concerned about Judge Murguia's behavior and why they did not file a complaint against him?
8. The Rules for Judicial-Conduct Proceedings rely on the Breyer Committee Report, which states: "Ordinarily corrective action will not be 'appropriate' to justify conclusion of a complaint unless the complainant or other individual is meaningfully apprised of the nature of the corrective action in the chief judge's order, in a direct communication from the judge complained against, or otherwise." The Tenth Circuit Judicial Council's order states that Judge Murguia has apologized for his actions, but it does not say who received his apology. How and when are employees found to have been sexually harassed or are victims of other related misconduct informed of the nature of the corrective action?
9. The ease of publicly accessing the form for filing a judicial misconduct complaint, the format of the form, and any additional requirements varies markedly by circuit. For example, the Tenth Circuit's form is not directly available on the circuit's website. Instead, like some other circuits, it is appended to the circuit's judicial conduct and disability rules. What training, information, and resources do employees and judges receive about the process for filing a complaint?


Thank you for your attention to this letter. We also thank the Council for making its order public. As the Council acknowledged, secrecy enables workplace harassment and undermines the integrity of the Judiciary. Partial transparency, however, is never enough. We hope there will be a frank examination of the adequacy of the steps taken to address what the Tenth Circuit has documented as Judge Murguia's misconduct and what further actions are needed to ensure that the Judicial Branch provides a safe workplace for all of its employees.

In addition, current and former judiciary employees should know that they have options to report workplace misconduct. They may contact the national Office of Judicial Integrity at (202) 502-1604 or AO_OJI@uscourts.gov. They may also contact their local employment dispute resolution coordinators or their circuit director of workplace relations. They may submit a complaint against a federal judge to the clerk of their circuit court—instructions are available at every circuit's website and at uscourts.gov. They can also contact us. The Committee's number is (202) 225-3951. To the extent possible, we will respect the confidentiality of anyone reaching out to us on these issues.


Sincerely,




Jerrold Nadler
Chairman
House Committee on the Judiciary



F. James Sensenbrenner, Jr.
Member of Congress



Henry C. 'Hank' Johnson, Jr.
Chairman
Subcommittee on Courts, Intellectual
Property, and the Internet



Mary Gay Scanlon
Vice Chair
House Committee on the Judiciary

cc: Doug Collins, Ranking Member, House Committee on the Judiciary
Martha Roby, Ranking Member, Subcommittee on Courts,
Intellectual Property, and the Internet