

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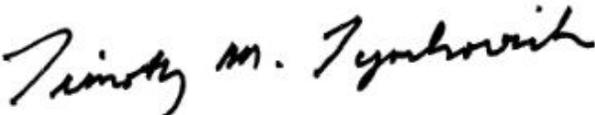
<sup>3</sup> Considering the statutory requirement for certifying a misconduct matter for impeachment, 28 U.S.C. § 354(b)(2), and the applicable constitutional standard of “high Crimes and Misdemeanors,” the evidence and facts in this matter are insufficient to recommend the Judicial Conference refer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