



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

February 7, 2020

The 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

Dear Chairman Johnson:

Thank you for the invitation, conveyed through your staff, to testify at the Subcommittee's hearing entitled, "Protecting Federal Judiciary Employees from Sexual Harassment, Discrimination, and Other Workplace Misconduct," scheduled for February 13, 2020 at 8:30 a.m.

All federal Judiciary employees should be protected from all forms of workplace misconduct. This commitment is shared throughout the federal Judiciary. I welcome opportunities to highlight for you and Members of the Committee some of the steps the Judiciary has taken to improve workplace conduct within the Judiciary. Over the past 24 months we have:

1. Established the national level Federal Judiciary Workplace Conduct Working Group (Working Group).
2. Published a Working Group report to the Judicial Conference with more than thirty detailed recommendations to improve the Judiciary's policies and procedures.
3. Approved a significantly revised and simplified Model Employee Dispute Resolution 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.
4. Revised the Code of Conduct for United States Judges and the Code of Conduct for Judicial Employees, as well as the Judicial Conduct and Disability Rules 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.

5. Clarified the language in the Code of Conduct for Judicial Employees to make more explicit that confidentiality obligations do not prevent any employee – including law clerks – from revealing abuse or reporting misconduct by any person, including a judge.
6. Created the Office of Judicial Integrity and appointed the first judicial integrity officer. That office began actively providing confidential advice and guidance since her appointment.
7. Established circuit workplace conduct committees and created circuit directors of workplace relations (or similar positions) to provide circuit-wide guidance and oversight of workplace conduct matters.
8. Provided nation-wide training by the Federal Judicial Center on preventing harassment, workplace civility, and diversity and inclusion.

These actions, and other initiatives, are discussed more completely in the *Status Report from the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States*, dated September 17, 2019, which has previously been furnished to the Committee. We have more to do, and I appreciate that you also share our commitment to protecting employees of the Judiciary. I look forward to our continuing discussion with you on how the Judiciary is making progress in this area.

Based on my initial understanding of the focus of the hearing next week, I had planned to apprise the Subcommittee Members of the substantial progress the federal Judicial branch has made through the foregoing measures, discuss other ways to address workplace misconduct nationwide, and reiterate our demonstrated commitment to meaningful reforms.

Yesterday, however, I received the letter of February 6, 2020, signed by Chairman Nadler and other Members of the House Judiciary Committee regarding the order issued by the Tenth Circuit Judicial Council on September 30, 2019, reprimanding District Judge Carlos Murguía for having engaged in serious judicial misconduct. We expect to reply to that letter by the requested date of February 20, 2020. Although the letter purports to "avoid commenting on matters within the [Judicial Conduct and Disability] Committee's jurisdiction that may affect Judge Murguía's office," the letter nonetheless poses nine questions, eight of which relate to Judge Murguía's conduct and the ongoing misconduct proceeding. The letter has been posted on the Committee website and has already received widespread media coverage – including several articles that also mention Thursday's hearing, which was publicly announced on the same day. The likely

Honorable Henry C. "Hank" Johnson, Jr.

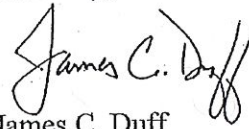
Page 3

result, unfortunately, is that the Judge Murguia matter will now displace or overshadow any discussion of more general reforms we had planned to review with the Committee.

Even if Members refrain from reiterating the letter's questions, any comments the Judiciary might make about workplace conduct efforts generally will inevitably be interpreted, correctly or incorrectly, as bearing on the Judge Murguia matter. That complaint remains under review within the Judiciary. I note that under existing rules and law, I could not discuss any issues involving the Judge Murguia matter in the hearing. Furthermore, discussion of the Murguia matter at the hearing, express or implied, could raise due process concerns, might violate ethical and legal requirements for confidentiality, and could seriously compromise our procedures. In light of these concerns, it would be inappropriate for me or any other Judiciary witness to participate at the upcoming Subcommittee hearing next week while the complaint remains under review. I request that you first allow our process of reviewing the Murguia matter to run its course, after which time I would be pleased to attend a hearing.

I look forward to testifying at a future hearing on the steps we have taken to protect federal Judiciary employees in the workplace.

Sincerely,

A handwritten signature in dark ink, appearing to read "James C. Duff". The signature is fluid and cursive, with a large, stylized "J" and "D".

James C. Duff
Director

cc: Honorable Jerrold Nadler
Honorable Doug Collins
Honorable Martha Roby