

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

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C.C.D. No. 24-02

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IN RE: COMPLAINT OF JUDICIAL MISCONDUCT

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PROCEEDING IN REVIEW OF THE ORDER  
OF THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT  
J.C. No. 09-22-90121

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MEMORANDUM OF DECISION

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(Filed August 22, 2024)

Present: Judges William B. Traxler, Jr., Chair, Patricia A. Gaughan, D. Brooks Smith, Carl E. Stewart, Sarah S. Vance.<sup>1</sup>

**MEMORANDUM OF DECISION**

The Judicial Council of the Ninth Circuit issued an Order on May 23, 2024, finding that Judge Joshua M. Kindred (D. Alaska) engaged in judicial misconduct, ordering remedial action, and certifying the matter to the Judicial Conference for consideration of impeachment under 28 U.S.C. § 354(b)(2)(A). The Committee on Judicial Conduct and Disability (JC&D Committee) now considers this matter pursuant to Rule 20(f) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules), which provides that “[i]f 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

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<sup>1</sup> This panel was comprised of five members of the seven-member Judicial Conduct and Disability Committee, as required by Rule 21(c) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Two members were recused from any consideration of this matter.

accordance with Rule 21.” Although Judge Kindred waived his appellate rights in connection with this proceeding and did not file a petition for review of the Judicial Council’s order, the Committee will review each of the Ninth Circuit Judicial Council’s findings and conclusions, and remedial action imposed, as required by Rule 20(f). *See also* 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.”). For the reasons explained below, we affirm the Judicial Council’s order. This decision does not address the Ninth Circuit Judicial Council’s certification of this matter to the Judicial Conference for consideration of impeachment, which is currently before the Judicial Conference.

## **I. Procedural History**

In November 2022, the Chief Circuit Judge of the Ninth Circuit received information about possible misconduct by Judge Kindred. The information concerned possible sexual misconduct by Judge Kindred involving one of his former law clerks, who was working as an Assistant United States Attorney (AUSA) for the District of Alaska during the time of the alleged sexual misconduct. The Chief Circuit Judge conducted a limited inquiry under JC&D Rule 5(a) to determine whether there was probable cause to identify a complaint.

On December 27, 2022, the Chief Circuit Judge identified a complaint pursuant to 28 U.S.C. § 351(b) against Judge Kindred based on information received during the Rule 5 inquiry. The complaint alleged that Judge Kindred: (1) created a hostile work environment for judicial employees by subjecting them to frequent discussions about his personal life, including conversations of a sexual nature; (2) engaged in unwanted sexual conduct, both physical and

verbal, towards a former judicial employee; and (3) told individuals with knowledge of the potential misconduct to remain silent about any allegations.

On February 3, 2023, the Chief Circuit Judge appointed a Special Committee to investigate the complaint. After concluding its investigation, the Special Committee submitted a 1,144-page (including exhibits) Report and Recommendations to the Ninth Circuit Judicial Council on March 1, 2024. On April 5, 2024, Judge Kindred presented oral argument to the Judicial Council and, after being questioned under oath, admitted that he had lied to the Special Committee throughout the investigation.

The Judicial Council issued its order on May 23, 2024. The Judicial Council found that Judge Kindred committed misconduct by: (1) creating a hostile work environment for his law clerks and engaging in unwanted, offensive, and abusive sexual conduct, and treating the law clerks in a demonstrably egregious and hostile manner; (2) having an inappropriately sexualized relationship with one of his law clerks during her clerkship and shortly after the clerkship ended while she was an AUSA practicing before him; and (3) lying to the Chief Circuit Judge, Special Committee and Judicial Council. The Judicial Council found that Judge Kindred did not engage in retaliation. Based on its findings, the Judicial Council unanimously ordered: (1) that Judge Kindred be publicly reprimanded for his conduct; (2) that Judge Kindred is requested to voluntarily resign; and (3) that the matter be referred to the Judicial Conference for consideration of impeachment.

The Judicial Council of the Ninth Circuit certified this matter to the Judicial Conference on May 23, 2024, upon the Circuit Judicial Council's unanimous determination that Judge Kindred's conduct might constitute one or more grounds for impeachment under Article II of the Constitution. *See* 28 U.S.C. § 354(b)(2)(A). On July 3, 2024, Judge Kindred announced his

resignation, effective July 8, 2024, and waived all appellate rights in connection with the complaint and these proceedings.

## **II. Discussion**

We review circuit judicial council orders for errors of law, clear errors of fact, or abuse of discretion. Rule 21(a); see also *In re Complaint of Judicial Misconduct*, 747 F.3d 869, 872 (U.S. Jud. Conf. 2014) (finding that the circuit judicial council did not abuse its discretion); *In re Complaint of Judicial Misconduct*, 664 F.3d 332, 334–35 (U.S. Jud. Conf. 2011) (deferring to findings of circuit judicial council and overturning them only if clearly erroneous). Our review necessarily depends on the record before us and gives deference to the circuit judicial council’s consideration of the special committee’s review of the evidence. See *In re Decision of Judicial Conference Comm. on Judicial Conduct & Disability*, 517 F.3d 563, 569 (U.S. Jud. Conf. 2008) (“[W]e will defer to the findings of the Judicial Council and the special committee, and will overturn those findings only if, upon examination of the record, they are clearly erroneous.”).

In light of our review for errors of law, clear errors of fact, or abuse of discretion, and in deference to the Circuit Judicial Council’s consideration of the Special Committee’s review of the evidence, we affirm the Circuit Judicial Council’s unanimous decision: (1) concluding that Judge Kindred engaged in serious misconduct by creating an abusive and hostile work environment for judicial employees, having an inappropriately sexualized relationship with one of his law clerks during and shortly after her clerkship ended, and lying to the Chief Circuit Judge, Special Committee, and Judicial Council; and (2) certifying the matter to the Judicial Conference pursuant to 28 U.S.C. § 354(b)(2)(A) based on the Judicial Council’s determination that Judge Kindred’s conduct might constitute one or more grounds for impeachment. The Special Committee conducted a thorough investigation and afforded Judge Kindred all the

process he was due under the JC&D Act and the Rules. Accordingly, we find no error of law or abuse of discretion in the Special Committee's investigatory process. And we conclude that the remedial measures ordered by the Judicial Council under 28 U.S.C. § 354(a)(2)(A), as well as its certification of the matter to the Judicial Conference for consideration of impeachment under 28 U.S.C. § 354(b)(2)(A), were appropriate in light of the Judicial Council's findings in relation to the seriousness of the misconduct.

### **III. Conclusion**

For the reasons above, we affirm the Ninth Circuit Judicial Council's order. As noted above, this decision does not address the Ninth Circuit Judicial Council's certification of this matter to the Judicial Conference for consideration of impeachment, which is currently before the Judicial Conference.