

**PROPOSED CHANGES TO CODE OF CONDUCT FOR U.S. JUDGES
AND JUDICIAL CONDUCT AND DISABILITY RULES**

Hearing before the Judicial Conference of the United States
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Testimony of Serena Walker
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To the Committee on Codes of Conduct (The Honorable Ralph R. Erickson, Chair) and the Committee on Judicial Conduct and Disability (The Honorable Anthony J. Scirica, Chair):

Hello, my name is Serena Walker and I'm a first-year student at Yale Law School and I am also testifying as a member of the Working Group. As law students and likely future judicial employees, we are deeply invested in Judicial Conference's efforts to reform its procedures for addressing discrimination and other forms of judicial misconduct. I am here to talk about additional ways the Committees can address the lack of reporting – the creation of a climate survey and the importance of keeping complaints confidential.

To reiterate, the proposed revisions to the Code of Conduct and Rules help to allay student concerns. Thus, we support efforts to further specify harassing behavior and the proposals that incorporate important protections for individuals report misconduct.

These reforms represent a promising effort to protect judicial employees from sex-based harassment and other forms of judicial misconduct. However, we also believe that these revisions do not go far enough to confront major gaps in information and reduce barriers to reporting. As my colleagues discussed, in the absence of comprehensive reforms to reporting procedures, complainants would still be required to file a formal complaint with the clerk of the court of appeals for the circuit or circuit executives, who would then forward the complaint to the respective Chief Judge. Law clerks may not report for fear of retaliation and damaging future career prospects.

Given this background, we recommend that the Committees and the Judicial Conference institute a climate survey to gauge the prevalence of misconduct. We believe contracting with an independent survey design expert and conducting a climate survey of judicial employees can assess the nature and prevalence of judicial misconduct. As my colleagues have mentioned, the judiciary received zero reports of harassment from law clerks in many years, including 2016. However, the reality reflects that the current reporting metrics do not tell the full story; there appears to be information gaps created by the current lack of reporting. We are concerned that the lack of accurate baseline data will undermine efforts to evaluate the effectiveness of the solutions that the Judicial Conference implements. We hope that the Judicial Conference will clarify and offer proposals to actively seek information regarding the prevalence of misconduct within judicial chambers.

A confidential climate survey could also serve as a de facto additional method in which the Judicial Conference could understand reporting, given its confidential nature. The survey could track complaints and recover information that is currently not being put forward. The lack of accurate data deprives the Judicial Conference and the public of information on how pervasive (or not) judicial misconduct is. We believe instituting a climate survey would help collect this necessary information and track how successful various reforms from the Conference are. As potential future clerks, we believe this information is critical and would also contribute to efforts to improve the reporting process.

Finally, related to the current system of reporting, we want to recommend the Committees specifically clarify that complaints shall be kept confidential unless the complainant

consents otherwise. Given the strong concerns law clerks may have about retaliation and potential damage to future career prospects, this confidentiality could be key in ensuring comfort with reporting.

Thank you for your time and attention to this matter.