

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

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Good morning Judge Erickson, Judge Scirica, and members of the Committee on Codes of Conduct and Committee on Judicial Conduct and Disability. Thank you for providing us with the opportunity to testify. My name is Megan Yan, and I am a second-year student at Yale Law School also testifying on behalf of the Working Group described by my colleagues. My comments will address relief for complainants who undergo the reporting process. I am speaking from the particular perspective of a law student and my comments are with regard to the short-term employment experience of law clerks.

Currently, the proposed changes to the Code of Conduct and Rules for Judicial Conduct & Disability proceedings offer no specific guidance on relief for complainants undergoing Judicial Conduct & Disability proceedings. The Rules and the Model Employee Dispute Resolution Plan provide remedies for *successful complainants* - in other words, complainants who have undergone the entirety of the reporting and investigatory process. However, because law clerks are employed for such a short period of time (one or two years) and work very closely with judges, a law clerk experiencing judicial misconduct or harassment may require some resources and avenues for relief immediately, rather than waiting until a complaint has gone through the entire process.

To that end, we recommend providing confidential access or referral to mental health care and counseling covered by insurance or through other means of financial support. The Federal Judiciary Workplace Conduct Working Group's report took note of commenters' remarks that "law clerks may feel especially vulnerable if required to remain in close proximity to a judge during a misconduct inquiry, especially in small judicial districts."¹ More generally, research has documented the damaging psychological effects of workplace harassment. According to the EEOC Taskforce on the Study of Sexual Harassment in the Workplace, experiencing harassment can lead to or heighten the risk of depression, posttraumatic stress disorder (PTSD), and anxiety.² Providing access to mental health and other counseling resources, then, can go a long way to providing support for clerks experiencing misconduct - support that can be critical as they contemplate reporting, undergo reporting, or wait for the JC&D process to play out.

We also recommend that the Committees consider proposing voluntary transfer options. This echoes the Working Group Report's suggestion that the Judiciary "incorporate informal employee protection programs[,] includ[ing] contingency plans and funding to provide for a transfer or alternative work arrangements for an employee, including a law clerk, when egregious conduct by a judge or supervisor makes it untenable for the employee to continue to work for that judge or supervisor."³ Given the proximity with which law clerks and their judges work together, providing options for voluntary transfer can alleviate some of the immediate stress of an unprofessional or otherwise demeaning work environment.

¹ Federal Judiciary Workplace Conduct Working Group, *Report to the Judicial Conference of the United States* 16 (2018), http://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf.

² Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace, *Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* 20 (2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf.

³ Federal Judiciary Workplace Conduct Working Group, *Report to the Judicial Conference of the United States* 38-39 (2018), http://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf.

These two recommendations for immediate relief - access to counseling services and access to voluntary transfer - are proposals tailored specifically to obstacles facing early-career, short-term employees experiencing harassment. We believe these recommendations may help law clerks and law students interested in clerkships be more protected in the workplace.

In closing, I want to convey how heartening it is for us as students to see the Judicial Conference and the respective Committees work toward making positive changes in the workplace. Clerkships are often thought of as a special opportunity to look forward to, a chance to develop unique insight into the judiciary while contributing to the resolution of cases and thorny issues of law. But in the wake of last year's news, classmates discussed whether clerkships were still worth pursuing - many felt ambivalent about them after hearing reports of harassment.

As such, the Committees' work on reforming the Judicial Code of Conduct and the JC&D Rules is deeply meaningful and valuable. It will go a long way for law students who felt such ambivalence. My colleagues and I are excited about the Committees' proposed changes thus far and offer our recommendations to further the shared goal of a safe work environment. Thank you for your time.