

**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 Rita Gilles  
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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):

My name is Rita Gilles and I am a second-year student at Yale Law School. I offer my testimony as an individual who may be governed in the future by the judiciary's procedures for addressing judicial misconduct, and on behalf of the working group you've heard my peers describe.

My testimony will focus specifically on the new JC&D Rule 23(b)(8), which allows for more reporting of judicial misconduct to outside entities. This rule is a step forward in the right direction towards addressing the challenge noted by the Breyer Committee in 2006: informal efforts remain the primary means of resolving "difficult problems of judicial misconduct and disability."<sup>1</sup> This new rule has the potential to significantly redress the informality that currently characterizes the judiciary's response to complaints of judicial misconduct.

I want to focus first on when the requirement to report to outside entities is triggered. Right now, the examples enumerated in the Rules are limited to perjury and criminal conduct. These examples fail to illustrate when and how judicial misbehavior such as sexual harassment or discrimination might rise to a level that warrants reporting to outside entities. The absence of nuanced, contextual examples likely makes it difficult for a Chief Judge to infer any general principles about when complaints regarding unprofessional behavior rise to a level at which they should be disclosed to state bar associations. We propose that a series of such examples be included in the Rules, in order to guide the members of the judiciary who are tasked with weighing complaints of this nature.

That being said, our research suggests that, to date, state bar associations have never once issued sanctions against a federal judge. In the absence of formal sanctions against judges who have misbehaved, law students and future clerks may never receive information about complaints against their potential future bosses, even when those claims are numerous and/or credible. This demonstrates the importance of the next aspect I want to focus on: the need for reporting information to another set of outside entities, namely law schools.

In the context of clerkships, law schools and the judiciary have close working relationships. This is especially true regarding placement in clerkships, where faculty act as a conduit between students and judges. Law schools are conscientiously involved in the process of job placement for students. Students trust faculty to place them in a working environment that will be safe and free of harassment. And faculty need information about judicial misconduct in order to uphold that trust. That alone is a reason to think about how information should be shared across those institutions.

In that vein, we propose the following: that the Committee consider also including law schools in the reporting requirements of Rule 23(b)(8), or in a different set of reporting requirements. When it comes to clerkships in particular, law schools and judges act in very close partnership, and we believe there is an obligation for information to be shared across those

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<sup>1</sup> Judicial Conduct and Disability Act Study Committee, *Implementation of the Judicial Conduct and Disability Act of 1980*, at 99 (2006), [http://www.uscourts.gov/sites/default/files/breyercommreport\\_0.pdf](http://www.uscourts.gov/sites/default/files/breyercommreport_0.pdf).

institutions in the interest of all. I can personally attest that developing channels of information-sharing between my own school and the judiciary would go a long way toward repairing broken trust among students.

The triggering obligations for reporting to law schools might be the same as for state bar association, or might even require information sharing to law schools in lesser circumstances where appropriate. Although developing these requirements is difficult to do consistent with issues of confidentiality, to us, this proposal merits serious consideration and investigation, and we believe that law schools would be strongly in favor of such a system.

In conclusion, Rule 23(b)(8) is a critical step towards making the judiciary a fair, equitable, and safe place for all, and we recommend two ways to strengthen it further: by 1) providing examples of when harassment and misbehavior require disclosure of a report under Rule 23(b)(8), and 2) adding law schools to the list of outside entities that receive that information. We believe these revisions will better enable outside institutions to take appropriate action in response to serious judicial misconduct.

Thank you for your time and consideration.