

**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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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 Andrew DeGuglielmo and I am a first-year student at Yale Law School. Several of my colleagues and I are testifying today on behalf of a working group of over 30 Yale Law students drafting comments on the proposed changes to the Codes of Conduct and the Judicial Conduct and Disability Rules (Rules). I express my gratitude towards Judge Erickson, Judge Scirica, and the Committees for providing us with this opportunity.

As law students and potential future judicial employees, we believe that we have a particular responsibility and unique perspective to contribute in shaping reforms that promote safety and professionalism in the judicial workplace.

My colleagues and I will recommend changes to several aspects of the Rules, ranging from reporting to disciplinary action. My testimony concerns the need for increased flexibility in the channels through which complainants report judicial misconduct. The rigidity of the current reporting channels stems from the fact that the chief judge represents the only avenue through which a complaint can proceed. Our concern is that this rigidity disincentivizes those wishing to avoid the involvement of the chief judge of that circuit from reporting. This assertion is evidenced by the fact that, in the fiscal year 2016, not a single misconduct complaint was filed by law clerks or judiciary employees under the procedures established by the Judicial Conduct and Disability Act.<sup>1</sup>

To address this rigidity, we recommend practicable alterations to four of the current rules, which will create additional reporting channels that add an element of flexibility to the proceedings. The creation of these channels, or avenues, accords with the recommendations of the Judiciary Workplace Conduct Working Group.<sup>2</sup>

Rules 5, 11, 25, and 26 simultaneously ensure that a chief judge plays an unavoidably central role in the proceedings of a complaint while holding a tremendous degree of discretion in shaping their outcome. There exist numerous legitimate reasons for a complainant to desire to avoid the chief judge in his or her proceedings. For instance, if a complainant has reason to believe that the chief judge harbors sympathy towards the accused judge due to mutual friendship or collegiality, the complainant may perceive the act of filing a complaint as a futile endeavor.

We suggest that the rules be amended to allow complainants the option to submit their complaints to a three-judge panel instead of the chief judge for initial review. The panel option establishes an alternative reporting channel that precludes the involvement of the chief judge, while the presence of three judges provides an effective check on any potential discretionary abuses. Similarly, we recommend that the rules be amended to also allow for a complainant to submit their complaint directly to the most senior judge instead of the chief judge. These two alternative reporting channels enable complainants to select the channel that provides them the

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<sup>1</sup> Federal Judiciary Workplace Conduct Working Group, *Report to the Judicial Conference of the United States* 10 (2018), [http://www.uscourts.gov/sites/default/files/workplace\\_conduct\\_working\\_group\\_final\\_report\\_0.pdf](http://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf).

<sup>2</sup> *Ibid.* at 45.

comfort and assurances that his or her complaint will be properly addressed. The flexibility provided by these additional avenues accommodates the complainants of misconduct while preserving the integrity of the proceedings themselves and mitigating the potential for discretionary abuse.

Along the same lines, we recommend that Rule 26 be amended to allow the transfer of a complaint to another circuit at the request of the entity handling the proceedings whether it be the chief judge, most senior judge, or three-judge panel. We suggest that complainants be able to request a transfer of their proceedings provided they have reason to believe that their complaint will not be properly addressed in its original circuit. We further suggest that Rule 5 be amended to enable any circuit judge to identify a complaint based on information, not only the chief judge.

The flexibility achieved through the creation of additional reporting channels provides complainants a degree of choice in shaping the proceedings of their complaints. This notion of agency affords complainants the reassurances that remedy is attainable and consequently encourages, rather than discourages, them to come forward. If complaints are not filed, the Judiciary cannot hope to put an end to the misconduct of its judges. By removing a significant disincentive for filing complaints, the preceding recommendations stand to bolster the efficacy of the Rules system as a whole.

Thank you for your time and attention.