

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
Tuesday October 30, 2018

Testimony of Chandini Jha
Yale Law School, Class of 2021

Hello, my name is Chandini Jha. I'm a first-year law student at Yale Law School and am also speaking on behalf of our working group. I want to begin by thanking the Honorable Ralph R. Erickson and the Honorable Anthony J. Scirica, as well as all the members of the Committee on Codes of Conduct and Committee on Judicial Conduct and Disability, for the opportunity to testify. I will be testifying on reporting.

First, I'd like to provide a student perspective on potential barriers to reporting. For many students, a clerkship is an exciting first step into the legal community. Students are excited about the opportunity to participate in the judicial process from this perspective, as well as the resulting mentorship and learning opportunities. Reporting harassment or judicial misconduct, then, carries with it the fear of retaliation and negative career consequences. Of the 1300 misconduct claims filed under the JC&D Rules in 2016, none were filed by law clerks.¹

The burdens of this difficult choice fall unequally on the shoulders of people from certain gender, racial, or class identities. As students, and potentially as future clerks, we are also aware of this reality. I urge the Committees to create robust, effective, reporting mechanisms and other measures to combat harassment—not only to help clerks enforce their right to a workplace free of harassment, but to expand the pipeline of future clerks from diverse backgrounds.

Next, I would like to respectfully offer some suggestions to the Committees' work. First, I recommend that the JC&D Rules more explicitly state that complaints can be filed at any time, subject to Rule 9's limit on impracticable investigation. I am heartened by the proposed reform to permit complaints of harassment to be filed or identified at any time. This provides essential flexibility to clerks and other judicial employees who are victims of sexual harassment and fear retaliation, and who would like to report after the duration of their short-term employment.

Though the Rules prohibit retaliation once a complaint is submitted, the risk of retaliation occurring can have a chilling effect on an employee's decision to even begin the process. Liberal reporting timelines help correct this problem. To keep consistent values with broad reporting timelines, I hope the conditions for practability of investigations would also be interpreted broadly.

Second, it would be helpful for the JC&D rules to clarify how they work with the Model Employment Dispute Resolution plan (Model EDR). The JC&D Rules redline briefly refers to the Model EDR, but does not clarify the extent to which Model EDR requirements, such as the 180-day timeline for reporting, interact with the JC&D Rules. Prospective and current clerks need a clear set of reporting requirements to follow, so it would be useful to know which process takes precedent in claims against judges.

I also urge the Committees to consider expanding the Model EDR's 180-day limit for reporting. The JC&D Rules and Model EDR seem to have consistent values in encouraging reporting inappropriate behavior: this calls for more consistent timelines. As the Model EDR covers all judicial employees, allowing broader reporting timelines could have a great deal of impact in combatting misconduct.

¹ Federal Judiciary Workplace Conduct Working Group, *Report to The Judicial Conference of the United States* 19 (2018), http://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf.

Finally, I echo my colleagues' statements about using the D.C Administrative office as another avenue of reporting.² After removing identifying information, different circuits could send in data to the D.C office. These changes would allow the Judiciary to track data, identify patterns of behavior, and improve oversight and standardization of the complaint process. This would both benefit complainants and help ensure the process is fair to those accused of misconduct. Additionally, centralizing data could provide important judicial accountability. The D.C Office could publish the number of unresolved or pending complaints per federal judge collected over a reasonable period of time. This may incentivize judges to both address and process complaints in a responsive manner and further ensure transparency for the public.

I thank the Committees for their critical work, and for this opportunity to speak.

² Additionally, this goal can be achieved through proposed procedural changes. Rule 7 could be revised so all complaints could be filed and archived by the D.C. Administrative Office, which would allow patterns of harassment to be identified. Rule 8 could be altered so complaints against non-covered persons would also be filed by the D.C. Office. Rule 13 could be amended to require, rather than merely allow, special committees to use the D.C. Administrative Office staff.