



chambers operated on a hybrid in-person/remote schedule; when hearings were not scheduled, the law clerks worked in chambers on Mondays and Fridays, and the judge and the judge's judicial assistant worked in chambers on the remaining days. Complainant "rarely interacted with the judge face-to-face."

Complainant alleges that, throughout his clerkship, the judge subjected him to harassment, verbal abuse, bullying, erratic behavior, and other abusive conduct; he alleges that the subject judge treated a co-clerk in a similar manner. Complainant's specific allegations of misconduct are summarized as follows:

- The judge failed to provide complainant with any training and discouraged questions but then "verbally accost[ed him] regarding some minor detail." He recounted a situation in which the judge requested that he send the judge an unfinished draft and then "berated" him because the document "was not in final-draft form."
- "[C]ommunicating productively with [the judge] was almost impossible." The subject judge "constantly interrupted, raised [the judge's] voice, and belittled [him] over the phone," and "any chambers rules for proper behavior and work product were either not communicated . . . or could change suddenly without notice, making it impossible to fulfill the judge's expectations."
- At weekly docket review meetings, the judge expected law clerks to give updates on the more than 200 cases assigned to them and would give them "a verbal browbeating if [they] were unable to provide, at a moment's notice, the exact details [the judge] wanted."<sup>2</sup>

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<sup>2</sup> Former clerks mentioned the weekly docket review meetings held by the judge, describing the experience as "intense," "unpleasant," "stressful," and "harsh." In response to the judicial complaint, the subject judge stated that the judge "was not aware that . . . any . . . law clerks[] ever felt uncomfortable during docket review" and pledged to "take additional steps to ensure that this is never the case going forward."

- The judge verbally attacked complainant as his clerkship progressed, remarking, for example, that the judge “‘wasted’ the past several months training [him].” The judge also referred to complainant’s work product as “crap,” questioned his character, and intimated that he might be fired.
- When complainant’s co-clerk “asked the judge if she could be excused to eat lunch [one] afternoon, the judge told her she would have to bring her lunch into the judge’s office and eat standing up in front of the judge if she wanted to take a lunch break.”<sup>3</sup>
- While his co-clerk was using the chambers bathroom, the judge banged on the door and yelled, “That’s *my* bathroom!” Neither complainant nor his co-clerk were aware of any restrictions on the use of the bathroom.
- The subject judge remarked that the judge “no longer wished to hire any ‘diversity candidates’” after expressing dissatisfaction with an intern’s performance.
- The judge emailed the chambers staff on a day that chambers closed early for a court-sponsored picnic, requesting that someone move boxes of briefing materials from a law clerk’s office to the judge’s office.<sup>4</sup>
- The judge criticized complainant for failing to access the court’s Sensitive Compartmental Information Facility to review certain documents when complainant did not yet have the requisite security clearance.
- The subject judge requested that complainant sign a medical directive as a witness on behalf of the judge’s family member. Because the document

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<sup>3</sup> This incident occurred while staff was still masking in chambers during the COVID-19 pandemic. The co-clerk stated that the subject judge directed her to eat lunch in the judge’s office while the judge edited a document just before a scheduled court hearing. According to the co-clerk, she stood six feet from the judge’s desk, as she was uncomfortable sitting in front of the judge maskless. The judge didn’t offer for her to sit, tell her to take her time eating, or give her any work-related task that would justify the need for her to eat lunch in front of the judge.

<sup>4</sup> Complainant and his co-clerk interpreted the judge’s message as a request that the judicial assistant make a four-hour round-trip to chambers to move the boxes.

required complainant to sign in the presence of the judge's family member, he refused to sign.

Complainant and his co-clerk eventually resigned from the subject judge's chambers and accepted transfers to another chambers in the district. At the time, complainant had served approximately 14½ months and his co-clerk had served approximately 2½ months of their respective 2-year clerkships.

## II. Limited inquiry

On receipt of a judicial complaint, a chief judge must determine whether it should be "(1) dismissed; (2) concluded on the ground that voluntary corrective action has been taken; (3) concluded because intervening events have made action on the complaint no longer necessary; or (4) referred to a special committee." Rule 11(a), Rules for Judicial-Conduct and Judicial-Disability Proceedings. "In determining what action to take under Rule 11(a), the chief judge may conduct a limited inquiry." Judicial-Conduct Rule 11(b). When performing a limited inquiry, "[t]he chief judge, or a designee, may communicate orally or in writing with the complainant, the subject judge, and any others who may have knowledge of the matter and may obtain and review transcripts and other relevant documents." *Id.*

My limited inquiry in this case shows that at least some of the allegations against the subject judge may be explained by poor communication, unstated assumptions, or misunderstandings between the judge and the law clerks. For example, I'm satisfied that the subject judge did not literally order the co-clerk to eat lunch standing up. Nor did the

judge order the judicial assistant to drive two hours each way to move two boxes from one office to another.<sup>5</sup>

But what these examples do illustrate (as the subject judge now acknowledges), is a workplace culture where complainant and his co-clerk were afraid to ask questions and felt compelled to go to great lengths to avoid incurring the judge's displeasure. The clerks described how the judge chastised them for minor errors, provided minimal training and limited guidance, discouraged questions, and gave harsh feedback. Both experienced health issues that they attribute to the stress of their clerkships.

Our interviews of other former law clerks revealed that, while the environment in chambers has improved, they too experienced some of the workplace conduct issues raised in the complaint. Still, most of them would clerk for the subject judge again, even as they agreed that the judge could be tough and intense.

I also spoke with the judge to discuss the allegations and potential voluntary corrective action. *See* Judicial-Conduct Rule 11 cmt. (providing that the chief judge may "facilitate" resolution by voluntary corrective action by "giving the subject judge an objective view of the appearance of the judicial conduct in question and by suggesting

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<sup>5</sup> No one asked the subject judge for clarification regarding the judge's request for the briefing materials, reminded the judge that moving the materials would mean a four-hour commute on the part of the assistant, or asked whether the judge could retrieve the materials without a staff member's assistance.

appropriate corrective measures”). At all times, the judge cooperated fully with the inquiry.

### III. Discussion

Under the Judicial-Conduct Rules, cognizable misconduct includes “abusive or harassing behavior” such as “treating . . . judicial employees . . . in a demonstrably egregious and hostile manner; or . . . creating a hostile work environment for judicial employees.” Judicial-Conduct Rule 4(a)(2)(B), (C). The Code of Conduct for United States Judges similarly provides that “[a] judge . . . should not engage in behavior that is harassing[ or] abusive.” Canon 3. Furthermore, “[a] judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff” and “should not engage in any form of harassment of court personnel.” Canon 3B(4). Thus, the Code requires that “[a] judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment[ or] abusive behavior.” Canon 3B(4) cmt.

“Abusive conduct” isn’t expressly defined in the Judicial-Conduct Rules, but the district court’s Employment Dispute Resolution [EDR] Plan defines it as “a pattern of demonstrably egregious and hostile conduct . . . that unreasonably interferes with an [e]mployee’s work and creates an abusive working environment.” It also provides that abusive conduct is “threatening, oppressive, or intimidating.” The EDR Plan clarifies, however, that “[a]busive conduct does not include communications and actions reasonably related to performance management, including but not limited to: instruction, corrective

criticism, and evaluation; performance improvement plans; duty assignments and changes to duty assignments; office organization; progressive discipline; and adverse action.”

Although the subject judge disputes some of the allegations in the judicial complaint, the judge accepts that the environment and atmosphere in the chambers at that time resulted in an abusive workplace.<sup>6</sup> The subject judge deeply regrets the impact of the judge’s actions on the chambers staff.

Importantly, the subject judge acted to improve the workplace environment in chambers after the resignations of complainant and his co-clerk by (1) meeting with a mentor judge to discuss best practices for chambers management, (2) implementing informal coffee hours with staff, (3) scheduling periodic informal outings for chambers staff with the judge, (4) extending the time for weekly docket review meetings, (5) conducting informal exit interviews, and (6) allowing incoming law clerks to shadow the outgoing clerks.

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<sup>6</sup> As but one example where recollections differ, the subject judge disputes making the comments attributed to the judge about the hiring of “diversity candidates.” In the written response and in our discussion of the complaint, the subject judge emphasized strong support for diversity in the federal judiciary, in both word and deed.

To be clear, I recognize that I can’t make findings on disputed issues of fact as part of my limited inquiry into the complaint. *See* Judicial-Conduct Rule 11(b). But I find such findings unnecessary given the subject judge’s admission that the judge fell short in “ensur[ing] an exemplary workplace for every judge and every court employee.” Chief Justice John G. Roberts, Jr., United States Supreme Court, Year-End Report on the Federal Judiciary, at 11 (2017).

The subject judge has also cooperated fully with the inquiry, acknowledged the significant concerns raised by complainant, and pledged to do more to improve the operation of chambers. To that end, the judge has agreed to the following additional actions:


- participating in discussions about workplace conduct issues and the proper management of chambers staff, including regular meetings with me. These meetings will be held every two months and will be discontinued after 18 months if no additional concerns arise;
- attending workplace training annually with chambers staff;
- pledging to bring to me (or to a future chief judge) any workplace conduct concerns that come to the judge's attention;
- informing new law clerks that they may bring any concerns directly to my attention in addition to relying on regular complaint procedures;
- affirming "the judiciary's commitment to maintaining a work environment in which all judicial employees are treated with dignity, fairness, and respect, and are free from harassment, discrimination, . . . retaliation" and other abusive conduct. Judicial-Conduct Rule 4 cmt; and
- agreeing that the Circuit Director of Workplace Relations will meet with law clerks every other month to gauge the workplace environment, with such meetings to be discontinued after 18 months if no additional concerns arise.

As the Rules commentary makes clear, the Act's emphasis "is on correction of the judicial conduct that was the subject of the complaint. Terminating a complaint based on corrective action is premised on the implicit understanding that voluntary self-correction or redress of misconduct . . . may be preferable to sanctions." Judicial-Conduct Rule 11 cmt. (citation omitted).

Here, I'm satisfied that the judge's acknowledgment of misconduct, coupled with the agreed-upon remedies outlined above, warrant my concluding the complaint under 28 U.S.C. § 352(b)(2) and Judicial-Conduct Rule 11(d).

Accordingly, I conclude this judicial complaint on the ground that appropriate corrective action has been taken.

IT IS SO ORDERED.



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Albert Diaz  
Chief Judge