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November 13, 2018

Committees on Codes of Conduct and  
Judicial Conduct and Disability  
Administrative Office of the United States Courts  
One Columbus Circle, NE  
Washington, D.C. 20544  
*Submitted Via Email*

To the Committees on Codes of Conduct and Judicial Conduct and Disability (the “Committees”):

We appreciate the opportunity to comment on the proposed revisions to the Code of Conduct for U.S. Judges (the “Code”) and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the “JC&D Rules”).

We applaud the diligent work the Committees and the Federal Judiciary Workplace Conduct Working Group (“Working Group”) have undertaken to broaden the definition of and improve the remedies for judicial misconduct. When such misconduct occurs, it has a profound impact on the legal profession and the availability of equal opportunities for professional advancement. The Code’s existing definition of judicial misconduct—one that omits harassment, discrimination, and other forms of workplace abuse—and the corresponding absence of effective process for addressing workplace misconduct have raised deep concerns in the Harvard Law School community, as it has elsewhere.

We are grateful for the thoughtful contributions of law students and current and former law clerks advocating for reform, and we urge the Committees to listen carefully to and take seriously their experiences and advice. We also call for reform and write to urge the Committees to adopt measures that will (i) improve avenues for reporting misconduct and instill confidence that a fair and impartial process is in place to respond to such reports and take appropriate action, (ii) establish a centralized office to receive complaints, provide confidential advice, and engage in nationwide oversight, and (iii) undertake systemic reviews of the federal judicial workplace that will make it possible to identify the scope and nature of the problem.

The proposed changes to the Code correctly acknowledge that “public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior.”<sup>1</sup> We support the proposed revisions to the Code and the JC&D Rules, including expanding the definitions of “cognizable misconduct”<sup>2</sup> and “employee,”<sup>3</sup> clarifying that confidentiality expectations do not prevent an employee from reporting misconduct,<sup>4</sup> and explaining that traditional standing rules do not apply.<sup>5</sup> Adopting the proposed changes would mark an important step towards addressing harassment, discrimination, and retaliation in the federal judicial workplace.

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<sup>1</sup> Draft Code of Conduct for U.S. Judges, Canon 2A, cmt. (Sept. 13, 2018).

<sup>2</sup> Draft Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4 (Sept. 13, 2018).

<sup>3</sup> *Id.*, Rule 3(f).

<sup>4</sup> *Id.*, Rule 23(c).

<sup>5</sup> *Id.*, Rule 3, cmt.

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However, there is more work to be done to establish effective mechanisms for addressing misconduct in the federal judicial workplace. To be able to understand, address, and remedy misconduct, the judiciary will need to receive disclosures, and the willingness of parties to report misconduct will be closely tied to the availability of multiple avenues for reporting. For this reason and others stated below, we strongly support the creation of the Office of Judicial Integrity. This Office should be structured to provide a national avenue for law clerks, interns, externs, and other judicial employees to report misconduct. This Office should also act as a source of confidential advice and guidance for judicial employees and judges and as a centralized institution that is working continuously to further the judiciary's commitment to combat workplace misconduct. A centralized national office, kept informed of concerns raised across the judicial circuits, could provide systemic oversight of and guidance to local jurisdictions, and we believe it could serve that important function without contradicting the governing statute's assignment of authority to chief judges. Accordingly, the JC&D Rules should provide that the Office of Judicial Integrity will be notified when a complaint is filed or when concerns of misconduct are otherwise raised, regardless of whether the misconduct is deemed to be "serious or egregious."<sup>6</sup>

We commend 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, and retaliation."<sup>7</sup> To that end, we urge the judiciary to undertake the additional recommendations of the Working Group to conduct systemic reviews (for example, through surveys of current and former judicial employees), reduce barriers to reporting misconduct, and develop relevant trainings for all employees of the federal judiciary. We offer our full cooperation and our commitment to share information and resources developed by the judiciary with our students, staff, faculty, and alumni.

Workplace misconduct has no place in the legal profession. It is the responsibility of all of us to address it collaboratively. We stand ready to work with the judiciary and we look forward to the proposed changes. Thank you for your efforts and for the opportunity to comment.

Best regards,

John F. Manning

*Morgan and Helen Chu Dean and Professor Harvard Law School*

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*Assistant Professor of Law*

Michael Klarman

*Kirkland & Ellis Professor of Law*

Richard Lazarus

*Howard and Katherine Aibel Professor of Law*

Daphna Renan

*Assistant Professor of Law*

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<sup>6</sup> *Id.*, Rule 4(a)(6).

<sup>7</sup> *Id.*, Rule 4, cmt.

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