JUDICIAL COUNCIL OF THE SECOND CIRCUIT

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In re:

CHARGE OF JUDICIAL MISCONDUCT Docket No. 25-90130-jm

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DEBRA ANN LIVINGSTON, *Chief Judge*:

On December 19, 2025, a complaint was filed with the Clerk's Office of the United States Court of Appeals for the Second Circuit pursuant to the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 (the "Act"), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Rules"), charging a judge (the "Judge") of this Circuit with misconduct.

BACKGROUND

The Complainant is the founder and president of an organization launched in 2022 ("the Project"), with the stated mission, according to the complaint's cover letter, "to ensure that law clerks have positive clerkship experiences while extending support and resources to those who do not." The Project solicits law

clerks to fill out surveys after completing their clerkships and offers prospective law clerks access to a database of such surveys, for a fee. The Project issued a press release when the complaint was filed. The Complainant identifies herself as such within the complaint, but her cover letter asserts that she files the complaint "[o]n behalf of" the Project.

The complaint, which makes allegations about the workplace environment in the Judge's chambers, is not based on firsthand knowledge but, according to the Complainant, on conversations with several of the Judge's former law clerks who reportedly reached out to her Project. The complaint neither identifies any law clerk specifically nor alleges that any person who has firsthand knowledge was aware of the complaint, supported it, or requested that it be filed.

The Judge named in the complaint was the subject of a previous complaint filed by a law clerk in October 2022 alleging abusive and harassing conduct in the Judge's treatment of chambers staff. That complaint was concluded pursuant to a December 2023 order, affirmed by the Judicial Council of the Second Circuit in March 2024, after the Judge agreed to undertake voluntary corrective action to improve the workplace environment for chambers staff. The gist of the current complaint is that this corrective action was ineffective, and that law clerks who

have worked for the Judge since December 2023, "particularly but not exclusively during the 2024-2025 term," have been subjected to an abusive work environment.

Under Rule 11(a), after reviewing a 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.

In determining what action to take under Rule 11(a), the chief judge may conduct a "limited inquiry." *See* Rule 11(b). In this case, I asked the Staff Attorney of the Court of Appeals to reach out to the individuals who clerked for the Judge in the 2024-2025 term. *See id.* (providing that the chief judge "or a designee" may participate in a limited inquiry). The Staff Attorney and I interviewed three former term law clerks who worked for the Judge during the 2024-2025 term. A fourth declined to be interviewed. I then asked the Staff Attorney to seek interviews with all others who have worked as term clerks for the Judge since entry of my order in December 2023. We interviewed additional

law clerks as a result of this outreach. We also interviewed other chambers and courthouse staff. In addition, I have spoken with the Judge on several occasions.

Based on this limited inquiry, the complaint is concluded. As set forth herein, and based on conversations with law clerks from the 2024-2025 term, appropriate voluntary corrective action began as to the matters alleged in the complaint even before the complaint was filed. The current complaint raises no issue that was not already the subject of voluntary corrective action in response to the earlier complaint. The December 2023 order shall remain in effect and is reinforced pursuant to the terms outlined below, concluding this complaint.

DISCUSSION

The instant complaint focuses primarily on the 2024-2025 term. It alleges that judicial law clerks from this term, in particular, faced a workplace climate "characterized by fear, oppressive control, intimidation, humiliation, and bullying." The complaint further alleges, "on information and belief," that two judiciary employees who are specifically named and whose job duties include serving as points of contact for law clerks with workplace-conduct concerns were "aware of this ongoing misconduct" but failed to take action "to protect clerks from further abuse."

My limited inquiry established the following as to these allegations.

First, law clerks who worked for the Judge in 2024 and 2025 did, indeed, have concerns about the workplace environment in the Judge's chambers. The law clerks with whom I spoke described the atmosphere as both tense and challenging. As a result, several law clerks reached out on a confidential basis to the Second Circuit's Director of Workplace Relations who is charged, *inter alia*, with administering the Circuit's Employee Dispute Resolution Plan ("EDR Plan"). The EDR Plan provides options, both formal and informal, for reporting and resolving allegations of "wrongful conduct" in the workplace, including "abusive conduct," as defined. Notably, the EDR Plan extends confidentiality in most matters to individuals seeking to resolve problems pursuant to its provisions.[1]

The law clerks, who requested confidentiality, as the EDR Plan permits, had repeated contact with the Director of Workplace Relations and with that employee's supervisor, the Circuit Executive. The clerks with whom I spoke expressed overall satisfaction with and appreciation for the help they received.

[1] The exceptions are for circumstances where "there is reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity of the Judiciary."

As one put it, the two judiciary employees were "ready and willing to go with whatever route" the law clerks chose, including by serving as intermediaries to raise workplace concerns with the Judge or by seeking my intervention to do so. Both before and after speaking with these judiciary employees, the clerks were aware that they had options for raising their concerns about the workplace environment, including by filing a complaint under the EDR Plan; by contacting me, another judge, a court unit executive, or other court employees; or by filing a complaint under these Rules. Ultimately, they determined (and advised the judiciary employees) that, better than pursuing any of these avenues, they would raise their concerns directly with the Judge.

The law clerks spoke with the Judge in June 2025, directly voicing their workplace environment concerns to improve the chambers climate and to convey the message that the clerks wanted to function as a team, together with the Judge, to do the best work possible. The clerks recounted that the Judge took their concerns seriously and, moreover, made sure they understood that they had the option to file a judicial misconduct complaint – something they did not wish to pursue. The Judge apologized, indicated a desire to do better, and encouraged the clerks to continue reporting their concerns. The atmosphere in

chambers thereafter improved substantially – not that everything was perfect, but the Judge was generally "nicer," in the words of one clerk, and communicated more effectively and with an improved demeanor to the point that, as another clerk put it, the clerk would recommend the post-June 2025 clerkship "to anyone." The clerks did not fear retaliation and experienced none; to the contrary, the workplace environment was substantially improved.

The clerks with whom I spoke from the 2024-2025 term indicated that they have had no contact with the Complainant or her Project – that is, they did not reach out to the Complainant or her Project, nor did the Complainant reach out to them. To the contrary, each was surprised and upset by the complaint and by the resulting publicity about their clerkship experience. As one put it, the complaint created the impression that the clerks were incapable of advocating for themselves, "which was not the case." Another was "proud" of how the clerks had addressed the workplace situation by speaking with the Judge directly—as opposed to filing a complaint or going through a proxy—and this clerk emphatically did not want to be associated with the complaint, nor with the Complainant's Project. All expressed the view that the Complainant was not acting on their behalf or in their best interests; they did not support the

complaint, and would have preferred if the complaint had not been filed. They also recounted that the December 2025 timing of the complaint—six months after the June 2025 conversation with the Judge—was unfortunate, as the workplace environment had substantially improved after the June 2025 conversation.

In sum, the limited inquiry revealed, first, no evidence to support the Complainant's allegation, "on information and belief," of inaction by the two judiciary employees identified in the complaint. Instead, the law clerks with whom I spoke "felt supported" by these individuals as the law clerks themselves determined how to proceed. Second, none of the law clerks with whom I spoke expressed support for the filing of this complaint; those from the 2024-2025 term, in particular, voiced annoyance that the complaint has precipitated inquiries from former employers, law professors, classmates, friends, and relatives about a workplace matter that they had determined to treat confidentially.

Complaints such as this one, directed at workplace conduct but brought by individuals or organizations outside the workplace, and without first-hand knowledge, may threaten operation of the EDR Plan, which relies on confidentiality to ensure that workplace issues are reported and addressed. That

said, I need not determine in this matter what impact, if any, this consideration should have on the disposition of complaints of this kind.

Based on my limited inquiry, I have spoken with the Judge about a range of matters identified by the 2024-2025 clerks with whom I met, including the corrective actions the Judge undertook beginning in June 2025 when the law clerks approached the Judge with their concerns. Based on extended conversations with clerks from this term, and from outside this period, I have also raised with the Judge ongoing concerns about the management of chambers since entry of the December 2023 order. When that order was entered, the Judge expressed a commitment "to creating a better workplace environment for chambers staff." The Judge has made clear to me that in the Judge's own estimation, while improvements have been made, "more remains to be done to fulfill that commitment." We have agreed that the December 2023 order should be reinforced and extended for this purpose.

More specifically, the Judge affirmatively suggested and has already begun to undertake the following voluntary actions, beyond those in the December 2023 order:

(1) meeting periodically with several advisor judges who have agreed to discuss best practices for chambers management. The Chief Judge,

based on discussions with the Judge, the advisor judges, and the Circuit Director of Workplace Relations, will determine when such meetings may no longer be useful;

(2) participating in management training approved by the Chief Judge, and which focuses on leadership and staff relations;

(3) attending the annual workplace training for new chambers staff with the Judge's newly appointed clerks, a session open to all judges.

In addition, the December 2023 order provided for the Circuit Director of Workplace Relations to check in with term clerks halfway through their clerkships. The Judge suggests that this provision should be strengthened to provide that the Chief Judge will meet with the Judge's law clerks every three months, for a period of 24 months; after this period, the meetings may be discontinued, in the discretion of the Chief Judge, if no additional concerns arise. The other voluntary action provisions in the December 2023 order will continue in effect during this period.

The Commentary to the Rules makes clear that the emphasis of the Judicial Conduct and Disability Act "is on correction of the judicial conduct that was the subject of the complaint." The clerks with whom I spoke, both from the 2024-2025 term and otherwise, unanimously expressed the view that, as one clerk put it, the Judge "cares immensely about doing the job and doing it well." Another clerk opined that the Judge may not fully appreciate how the Judge's demeanor

affects chambers staff and that the Judge "wants it to be the best clerkship." No clerk with whom I spoke questioned the Judge's commitment to the law or the Judge's efforts to do an excellent job.

This is a situation, in my estimation, in which the further voluntary actions proposed by the Judge are merited and, given the Judge's commitment to improvement, are likely to be effective. Accordingly, the instant complaint is concluded based on the limited inquiry contemplated by the Rules and the Judge's agreement to reinforce and extend the undertakings made pursuant to the December 2023 order. *See* 28 U.S.C. § 352(b)(2) (providing that chief judge may conclude the complaint proceeding upon finding that "appropriate corrective action has been taken or that action on the complaint is no longer necessary because of intervening events").

The Clerk is directed to transmit copies of this order to the Complainant and to the Judge.