



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

June 5, 2024

The Honorable Robert J. Conrad, Jr.  
Director, Administrative Office of the United States Courts  
Secretary, Judicial Conference of the United States  
One Columbus Circle, NE  
Washington, D.C. 20544

Dear Judge Conrad:

We write with concern regarding several instances in which judges have taken public positions on issues likely to come before them or expressed a categorical bias against lawyers who may come before them, and in which they even appear to have tried to make new hiring policies on behalf of the Judicial Conference. As a result, we request that the Judicial Conference review the hiring practices, public statements and policies of the federal judiciary including those adopted by these judges and take any measures necessary to ensure that the federal judiciary operates under a single unified hiring policy that rejects broad-based boycotts and is committed to merit-based evaluation of individual candidates in adherence to the judiciary's highest ethical standards.

The Code of Conduct for United States Judges ("the Code") makes clear that a judge should "maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved."<sup>1</sup> The intent of the Code is to guide the judges in their personal and professional pursuits, as the Judicial Conference has recognized that public confidence in the judiciary is inextricably linked with the judiciary's legitimacy—without public confidence, the integrity and independence of judges is in jeopardy.

We have witnessed the truth behind this axiom over the last several years, as federal court judges—at both the district court and appellate court levels—across the nation have used the judicial clerk hiring process to issue broad-based policy dictums based on personal opinions regarding issues of public interest that may come before

---

<sup>1</sup> Code of Conduct for U.S. Judges Canon 1 (Jud. Conf. of the U.S. 2019).

them as judges. In September 2022, Judge James C. Ho of the 5th Circuit Court of Appeals announced that he would no longer hire law clerks from Yale Law School, a boycott initiated based on his personal view that the university actively practices “cancel culture” as it pertains to conservative views and speakers.<sup>2</sup> Ultimately 12 other federal judges—from both circuit and district courts—joined him in this boycott against Yale Law School.<sup>3</sup> In April 2023, Judge Ho, joined by U.S. Circuit Judge Elizabeth Branch, announced that they will no longer hire law clerks from Stanford Law School, after a speech on campus by a conservative judge was disrupted by a group of student protestors in March 2023.<sup>4</sup>

Most recently, a group of thirteen judges, led by Judge Ho, signed a letter stating that they refuse to hire any student from Columbia University—whether an undergraduate or a law student—beginning with the class of 2024, based on the judges’ view of the university’s response to protest activity on the university’s campus.

While judges undoubtedly have wide discretion in their hiring decisions, blanket public statements of this nature seem to violate one of the fundamental premises of our judicial system: that a judge should avoid “lending the prestige of judicial office to advance the private interests of the judge or others.”<sup>5</sup> Additionally, a reasonable person could question whether a judge who participates in one of these boycotts can maintain their impartiality in a case involving one of these universities, or in which a lawyer who graduated from one of these universities appears before them.

The list of judicial canons that these actions appear to violate is long. Canon 3B3 provides that a judge should “exercise the power of appointment fairly and only on the basis of merit...”<sup>6</sup> The commentary to the canon makes clear that it applies to the hiring of law clerks. Under Canon 3B3, a judge must exercise their discretion in hiring fairly and “only on the basis of merit.” Similarly, Canon 2B of the code also makes clear that a judge should not allow “...social, political... or other relationships”

---

<sup>2</sup> Debra Cassens Weiss, *Why this conservative federal appeals judge will no longer hire clerks from Yale Law School*, ABA Journal (Oct. 3, 2022, 11:44 AM), <https://www.abajournal.com/news/article/why-this-federal-appeals-judge-will-no-longer-hire-clerks-from-yale-law-school>.

<sup>3</sup> Paul L. Caron, *12 Federal Judges Join Boycott, Refuse To Hire Yale Students As Law Clerks*, TaxProf Blog (Oct. 5, 2022), [https://taxprof.typepad.com/taxprof\\_blog/2022/10/12-federal-judges-join-boycott-refuse-to-hire-yale-students-as-law-clerks.html](https://taxprof.typepad.com/taxprof_blog/2022/10/12-federal-judges-join-boycott-refuse-to-hire-yale-students-as-law-clerks.html).

<sup>4</sup> Andrew Goudswaard, *Conservative judges extend clerk boycott to Stanford after disrupted speech*, Reuters (Apr. 3, 2023, 3:20 PM), <https://www.reuters.com/legal/government/conservative-judges-extend-clerk-boycott-stanford-after-disrupted-speech-2023-04-03/>.

<sup>5</sup> Code of Conduct for U.S. Judges Canon 2(B) cmt. (Jud. Conf. of the U.S. 2019).

<sup>6</sup> *Id.* at Canon 3(B)(3).

to influence their judicial conduct, which applies to both professional and personal conduct.<sup>7</sup> Taken at their word, these boycotts make no pretense of evaluating individual candidates based solely on their individual merit. Rather, by their own statements, these judges are doing just the opposite of what these canons prescribe by overlaying an extraneous litmus test—namely that a candidate must attend a school that the judge sees as ideologically acceptable, regardless of the candidate’s individual merit, conduct or academic performance, in order to be considered for a clerkship. To date, such boycotts have extended to Yale Law School, Stanford Law School, Columbia Law School and Columbia’s undergraduate college. But if this practice is not curtailed, any school or institution could be next, based on a different judge’s personal or political whims.

Perhaps the most troubling outgrowth of these boycotts is the public’s perception of bias, both actual and apparent, which could have serious consequences for the entire justice system. It would be entirely reasonable for a litigant to conclude that any one of these judges’ impartiality in a wide variety of cases has been compromised—including, but not limited to, those cases involving political protest, involving the underlying issues addressed by these protests, involving these specific schools or involving any graduate of these particular schools—which meets the statutory standard for judicial disqualification from a case.<sup>8</sup> Furthermore, the judges’ hiring boycott decisions could have deleterious effects on those who practice law in their judicial districts. For example, fear of invidious political bias could motivate parties to accept less favorable settlements, or avoid seeking to exercise their Seventh Amendment rights altogether in order to avoid appearing before any one of these judges.

This pattern by a small but increasingly influential group of federal judges establishes a damaging and troubling precedent for the entire judiciary. By letting these inappropriate—and unethical—boycotts go unaddressed, the federal judiciary will be perceived as more and more ideologically divided, particularly when it comes to the hiring policies for one of the most coveted legal positions—judicial clerkships. Based upon the most recent statements and actions of this group of thirteen judges, it could appear to the public that clerkship hiring is no longer bound by the Code and policies set by the Judicial Conference, but rather by political fiat. If we allow boycotts to go unaddressed for clerkship hiring, this insidious form of discrimination could, over time, warp into boycotts for hiring for other positions as well, both within the federal judiciary and within the wider federal government.

---

<sup>7</sup> *Id.* at Canon 2(B).

<sup>8</sup> 28 U.S.C. § 455.

As you know, the U.S. Judicial Conference is responsible for considering all administrative and policy issues affecting the federal judiciary. Through its various committees, the Conference studies and sets broad-based policy on everything from allocation of judicial resources to judicial security and financial disclosure. One of its committees, the Committee on Code of Conduct, is empowered to “publish formal advisory opinions on ethical issues that are frequently raised or have broad application.”<sup>9</sup> This clerkship hiring boycott, led by a small but influential number of jurists, merits the committee’s attention and repudiation.

Unfortunately, to date, this inappropriate policy-making appears to have been met with silence by the Judicial Conference. Accordingly, we respectfully request that the Judicial Conference promptly review the hiring practices, public statements and policies of the federal judiciary including those adopted by these judges and take any measures necessary to assure the American people that the federal judiciary operates under a single unified hiring policy that rejects broad-based boycotts and is committed to merit-based evaluation of individual candidates in adherence to the judiciary’s highest ethical standards. The Judicial Conference must take action in order to preserve the integrity and independence of the judiciary as a whole in the eyes of the public. We further request that you make public the findings of any such review.

Sincerely,



Noah Bookbinder

cc: Chief Justice John Roberts

---

<sup>9</sup> *Ethic Policies*, United States Courts, <https://www.uscourts.gov/rules-policies/judiciary-policies/ethics-policies>.