

JUDICIAL COUNCIL OF THE EIGHTH CIRCUIT

JCP No. 08-24-90035

In re Complaint of Wisconsin Institute for Law and Liberty*

This is a complaint of judicial misconduct filed by a legal organization against a magistrate judge. The complaint alleges that the subject judge committed cognizable misconduct by participating in the American Bar Association’s Judicial Clerkship Program and serving as a co-chair of the program. The complaint suggests that the program asked judges who participated in the program to discriminate on the basis of race in law clerk hiring, that participating judges agreed to do so, and that the subject judge helped to foster an environment in which race discrimination thrived.

The complaint alleges that the subject judge, at an unspecified time, participated in the ABA Judicial Clerkship Program and served as a co-chair of the program. According to the complaint, a statement on the ABA’s website in 2024 “demonstrates that participating judges contract with the ABA to hire a specific number of clerks on the basis of race.” The complaint includes a “screenshot” from the ABA’s website as follows:

Judges from around the nation have agreed to participate in the Program.
Article III judges and state supreme court justices will receive

*Under Rule 24(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings, the names of the complainant and the subject judge typically are not disclosed. In this matter, however, the complainant issued a press release and published its complaint, so the name of complainant is disclosed under Rule 24(a)(5). Other citations or references herein to a “Rule” refer to these Rules.

preference in selection of judges. Each judge will be asked to make a commitment to strive to hire at least two minority judicial law clerks over the next five years. The minority judicial law clerks they hire need not have participated in this Program.

The complaint states that it is “unclear from the public record” whether the subject judge participated in the ABA’s judicial clerkship program in 2024, but quotes an article from 2020 stating that even after the judge completed his term as co-chair of the program, he “makes time to come back to the program and spend one-on-one time with Native American law students to encourage them on a path to the judiciary.” On that basis, the complaint asserts that the judge’s alleged “‘commitment’ to hire a specific number of ‘minority judicial law clerks’ is likely still in effect.”

The complaint asserts that the use of racial quotas or preferences in law clerk hiring would constitute judicial misconduct. The complaint also alleges that the judge, by co-chairing the ABA’s program, “helped foster an environment in which racial discrimination thrived—and he used his official title in doing so.” The complaint notes that cognizable judicial misconduct includes both “intentional discrimination on the basis of race” in the performance of official duties such as law clerk hiring, Rule 4(a)(3), and “conduct occurring outside the performance of official duties if the conduct is reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people.” Rule 4(a)(7).

The subject judge was invited to respond to the complaint and submitted a written response. As part of a limited inquiry under Rule 11(b), the subject judge also produced documents from his files regarding the ABA Judicial Clerkship Program and documents that he obtained from the ABA about the program at the request of the undersigned.

The judge responded that he participated in the ABA Judicial Clerkship Program from 2013 through 2016, and served as co-chair in 2015 and 2016. In 2017 and 2018, he was a representative of the ABA's Executive Committee of the National Conference of Federal Trial Judges to the planning committee of the Judicial Clerkship Program. The judge stated that he has not been involved in the ABA Judicial Clerkship Program in more than seven years.

The judge advised that during the time of his involvement, the ABA Judicial Clerkship Program was an educational program that functioned as a "mock elbow clerkship" experience for law students who interacted with volunteer mentor judges. The judge explained that law students participated in a research and writing project to mimic the process of working with a judge to draft an order, received feedback on résumé development, and heard from panels of judges discussing the duties and skill sets of judicial law clerks.

As to the specific allegations in the complaint, the judge replied that during his involvement with the program, he was never asked to make, and never did make, a commitment to strive to hire at least two minority judicial law clerks over the next five years. The judge recounted that all of his law clerk hires have been made exclusively through a competitive application and interview process using the judiciary's online application system. The judge wrote that he has never made a law clerk hiring decision that was in any way part of or the result of his participation in the ABA Judicial Clerkship Program.

The judge responded that during his time as co-chair of the program in 2015 and 2016, he was not aware that the program required any "commitment to strive to hire at least two minority judicial law clerks." The judge stated that he never represented or communicated to any volunteer mentor judge that such a "commitment" was a condition of a judge's participation in the program. The judge responded that he does not recall that the ABA's website included a statement about

a hiring commitment during his time as a participant or co-chair. The judge stated that he had no input or control over the content of the program's website in 2024 as quoted in the complaint.

Due to the allegation in the complaint that judges in the ABA program "contract with the ABA to hire a specific number of clerks on the basis of race," the undersigned asked the subject judge to provide any documents showing what the ABA's judicial clerkship program asked of him as a participating judge during 2013 to 2016 and what he agreed to do as a participating judge. The undersigned also asked the judge to provide documents showing what the ABA program asked of participating judges during 2015 and 2016 while the judge was co-chair of the program, including any standard written agreement, correspondence, or documentation showing that a judge joined the program as a participating judge. The undersigned asked the subject judge to obtain such documents from the ABA if the judge did not have the documents in his files.

Regarding the ABA program's website, the undersigned through basic internet research located what appear to be archived website pages for the program from 2001, 2006, 2020, 2021, 2022, 2023, and 2024 showing the same public statement about a hiring commitment that appears in the screenshot produced in the complaint. In addition, a 2005 report from the "Standing Committee on Fairness and Diversity" of the Florida court system states that participating judges in the ABA's judicial clerkship program "are asked to make a commitment to hire at least two minority judicial clerks over the next five years." No website pages from 2013 through 2016 could be located.

The subject judge was asked to provide information that appeared on the ABA's website about the judicial clerkship program from 2013 to 2016 and to request such information from the ABA if the judge did not have it. The judge did not have documents about content of the website during those years. The ABA replied to the

subject judge that the organization “continuously updates its website online and does not maintain records of what appeared on the website at any particular point in time,” so the ABA had no records of information that appeared on the website from 2013 to 2016. The judge also produced a letter written by counsel for the ABA to the complainant in May 2024; the letter stated that judges who participate in the ABA’s judicial clerkship program “are not asked to make any hiring commitments.” The judge observed that the statement regarding a “commitment to strive to hire at least two minority judicial law clerks over the next five years” had been removed from the ABA’s website as of mid-2024.

Among the documents produced by the subject judge was a “Judges Registration Form” for the ABA Judicial Clerkship Program for particular years during the time of the judge’s involvement. This form asked for the judge’s name, court, address, e-mail address, phone number, and fax number, and then set forth an agenda for the three-day program. The registration form did not refer to law clerk hiring or ask the judge to make a hiring commitment. The judge also produced documents entitled “Judicial Clerkship Program | General Information” and “Questions Frequently Asked by Judges Participating in the Judicial Clerkship Program (JCP).” Neither of these documents referred to a hiring commitment by participating judges.

Having conducted a limited inquiry under Rule 11(b) as described, I conclude that there is insufficient evidence to raise an inference that the subject judge engaged in intentional discrimination based on race by making a “commitment” to hire a particular number of “minority judicial law clerks.” *See* Rule 11(c)(1)(D). The judge denies that he made such a commitment. The form establishing a judge’s participation in the ABA program did not call for the judge to make such a commitment. The documents setting forth general information and frequently asked questions about the program did not refer to such a commitment. Even if the ABA’s website during the relevant period stated that participating judges would be asked to

make such a commitment, there is nothing to contradict the judge's response that he did not make one. The ABA's website is insufficient to raise an inference that the judge committed judicial misconduct in his hiring practices.

There is a separate question concerning the subject judge's service as co-chair of the ABA Judicial Clerkship Program during 2015 and 2016. It is not possible to rule out based on a limited inquiry that the ABA's website during this period stated that participating judges would be asked to "make a commitment to strive to hire at least two minority judicial law clerks over the next five years." There is circumstantial evidence that the website included that statement. Even accepting the judge's response that he did not ask any participating judge to make such a commitment, the judge's service as co-chair of the program associated the judge and the federal judiciary with the program and its website. Although the judge responded that he does not recall that the website included the quoted statement during 2013 to 2016, a judge likely has a responsibility to make himself aware of a program's public website declarations before associating himself and the federal judiciary with the program. If the ABA program's website stated during 2015 and 2016 that participating judges would be asked to make a commitment that involved race discrimination, then there would be a reasonably disputed issue about whether the judge's conduct in co-chairing the program was reasonably likely to have a prejudicial effect on the administration of the business of the courts, including a substantial and widespread lowering of public confidence in the courts among reasonable people. A chief judge must not determine a reasonably disputed issue in conducting a limited inquiry. Rule 11(b).

Even so, this complaint proceeding may be concluded on the ground that appropriate corrective action has been taken, and intervening events have made action on the complaint no longer necessary. 28 U.S.C. § 352(b)(2); Rule 11(d)(2), (3). The Judicial Conduct and Disability Act is generally forward-looking. *See* Commentary on Rule 11. The complainant did not file this complaint until nearly eight years after

the subject judge completed his service as co-chair of the ABA program. The judge discontinued his participation in the program more than seven years ago. The ABA has removed the statement regarding a hiring commitment from its website. Assuming for the sake of analysis that the judge should have reviewed the website in 2015 and 2016 and either declined to serve as co-chair or requested changes before serving as co-chair, there is no need for further remedial action now.

For these reasons, the judicial complaint proceeding is concluded.

/s/ Steven M. Colloton
Chief Judge

Filed: April 22, 2025
