

CHUCK GRASSLEY, IOWA  
CHAIRMAN

## United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

February 9, 2018

### VIA ELECTRONIC TRANSMISSION

James C. Duff  
Director, Administrative Office of the U.S. Courts  
1 Columbus Circle Northeast  
Washington, DC 2002

Dear Director Duff:

Over the last few weeks, there have been public allegations of sexual harassment and inappropriate workplace behavior within the Judiciary. In December, Ninth Circuit Judge Alex Kozinski retired from his judgeship after more than a dozen women came forward to accuse him of sexual misconduct. Investigative news reports have indicated that this problem may be widespread within the Judiciary.

We are deeply troubled by these news reports and allegations. In the wake of these allegations, nearly 700 former and current federal law clerks signed a letter requesting that Chief Justice John Roberts investigate the Judiciary's handling of sexual harassment claims.

In Chief Justice John Roberts' 2017 State of the Judiciary Report submitted to Congress, the Chief Justice noted that "events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made it clear that the judicial branch is not immune." The Chief Justice charged you with establishing a working group to evaluate and strengthen the current standards of conduct and procedures for addressing inappropriate conduct in the workplace.

We have instructed our staff to investigate this very serious issue. The Chairman's staff met with you and your staff on this twice in the last two weeks. As our staff has indicated to you, we would appreciate an update on the status of the working group. Additionally, the Administrative Office of the U.S. Courts ("AO") should continue to provide the Committee with information regarding the status of the working group.

Accordingly, please provide answers to the following questions:

1. On December 31, 2017, Chief Justice Roberts announced that he was creating a working group to examine protections against sexual harassment in the Judiciary. The working group was directed to explore whether the Judiciary has proper procedures in place that protect law clerks and other courtroom employees from sexual harassment.
  - a. How were the seven members of the working group chosen?
  - b. How often will the working group meet?
  - c. When will the working group begin to make recommendations?
  - d. Will the working group make their recommendations publicly available?
2. Will the working group seek input from current and former law clerks and other court employees?
3. Will the working group consider changes in sexual harassment training and staff development?
4. What action, if any, has the AO taken following the allegations to strengthen the employee resolution process?
5. What current policies for sexual harassment training are currently in place in the Judiciary? Do law clerks and court employees participate in this training?
6. Do anti-retaliation statutes protect law clerks or courtroom employees if they report sexual harassment against federal judges?
7. Some federal court districts allow law clerks to participate in the Judiciary's employee dispute resolution program. How many districts allow this type of dispute resolution? Why might a district not allow their law clerks to participate in this program?
8. How many complaints alleging sexual harassment or misconduct are filed by courtroom staff and federal law clerks each year? How many of these complaints are investigated? How many result in findings for and against judges?
9. Describe the process the Judiciary uses to investigate a claim of misconduct.

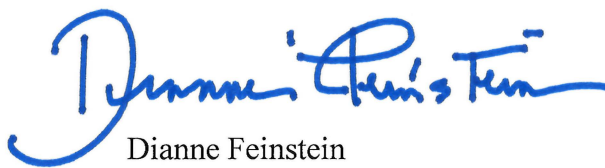
10. Please supply all rules or procedures that may govern a claim of misconduct against a judge.
11. News reports have pointed to several specific investigations of judges accused of sexual misconduct. For each of the following individuals, please describe what action, if any, the Judiciary took to investigate and resolve these claims.
  - a. U.S. District Court Judge Walter Smith on the U.S. District Court for the Western District of Texas, who in 1998 was accused of sexual harassment by a deputy court clerk.
  - b. U.S. District Court Judge Edward Nottingham on the U.S. District Court of Colorado, faced a judicial misconduct complaint involving allegations that he spent thousands of dollars at strip clubs and was involved in a prostitution ring.
  - c. U.S. District Court Judge Richard Cebull on the U.S. District Court for the District of Montana, accused of making racist jokes and disparaging statements about women and certain religions.
  - d. U.S. District Court Judge Samuel Kent on the U.S. District Court for the Southern District of Texas, indicted on three counts of abusive sexual contact and attempted aggravated sexual abuse. Judge Kent later pled guilty to a lesser offense.
  - e. U.S. District Court Judge Richard Roberts on the U.S. District Court for the District of Columbia, accused of raping a 16 year-old witness while he was a prosecutor.
  - f. U.S. Circuit Court Judge Alex Kozinski on the Ninth Circuit, accused of sexual harassment and misconduct by several women.
12. A CNN report reviewed 1,303 misconduct complaints filed in 2016. They concluded: “of those, only four were referred to special committee for the most serious level of investigation.” The report found a similar pattern in 2015.
  - a. Why were so few complaints fully investigated by the Judiciary?
  - b. Do these news reports accurately reflect the pervasiveness of sexual harassment and misconduct within the Judiciary?

13. What, if any, statutory recommendations does the Judiciary have for improving the current statutes involving the Judiciary's complaint process, codified in 28 U.S.C. § 351- 353?

Thank you in advance for your cooperation with this request. We would appreciate a response by February 16, 2018. If you have questions, please contact our Committee staff at (202) 224-5225.

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with the first name "Chuck" being more prominent than the last name "Grassley".

Charles E. Grassley  
Chairman  
United States Senate Judiciary Committee

A handwritten signature in blue ink that reads "Dianne Feinstein". The signature is fluid and cursive, with the first name "Dianne" being more prominent than the last name "Feinstein".

Dianne Feinstein  
Ranking Member  
United States Senate Judiciary Committee