



**Judicial
Watch**

*Because no one
is above the law!*

VIA CERTIFIED USPS MAIL

February 26, 2024

The Hon. Diane S. Sykes
c/o Office of the Clerk, Judicial Conduct Complaint
United States Court of Appeals for the Seventh Circuit
Everett McKinley Dirksen United States Courthouse
219 S. Dearborn Street, Room 2722
Chicago, IL 60604

Re: Complaint of Misconduct Against Chief Judge Nancy J. Rosenstengel, Judge Staci M. Yandle, and Judge David W. Dugan of the U.S. District Court for the Southern District of Illinois

Chief Judge Sykes:

Judicial Watch respectfully submits this judicial misconduct complaint against Chief Judge Nancy J. Rosenstengel, Judge Staci M. Yandle, and Judge David W. Dugan of the U.S. District Court for the Southern District of Illinois. Chief Judge Rosenstengel, Judge Yandle, and Judge Dugan have entered standing orders affording special preferences to lawyers who appear before them based on the lawyer's race, ethnicity, or sex/gender. The orders are discriminatory and unconstitutional and constitute "conduct prejudicial to the effective and expeditious administration of the business of the courts." *See* Rule 4(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings ("Rule ___"); *see also* 28 U.S. Code § 351(a). Judicial Watch respectfully requests that the orders be reviewed expeditiously, and that corrective action be taken to remedy this blatant, intentional, unlawful, and unconstitutional discrimination occurring in the U.S. District Court for the Southern District of Illinois. *See* Rules 5(a) and 11; *see also* 28 U.S. Code § 352(a). At minimum, the orders should be withdrawn and should be followed by a public

acknowledgement that all proceedings in the U.S. District Court for the Southern District of Illinois will be administrated impartially and without regard for the race, ethnicity, or sex/gender of the lawyers who appear before it.

I. Background.

On January 7, 2020, Judge Staci M. Yandle entered a standing order that provides, in pertinent part:

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned encourages the participation of newer, female, and minority attorneys in proceedings in my courtroom, particularly with respect to oral argument . . . To that end, the Court adopts the following procedures regarding oral arguments as to pending motions:

1. After a motion is fully briefed, as part of a Motion Requesting Oral Argument, a party may alert the Court that, if oral argument is granted, it intends to have a newer, female, or minority attorney argue the motion (or a portion of the motion).
2. If such a request is made, the Court will:
 - A. Grant the request for oral argument on the motion if it is at all practicable to do so.
 - B. Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated were a newer, female, or minority attorney not arguing the motion.
 - C. Permit other more experienced counsel of record the ability to provide some assistance to the newer, female, or minority attorney who is arguing the motion, where appropriate during oral argument.

See In Re: Increasing Opportunities for Courtroom Advocacy (Jan. 7, 2020) (“Yandle Order”) (Exhibit 1).¹ Chief Judge Rosenstengel entered a nearly identical standing order on January 17, 2020, followed by Judge David W. Dugan doing the same on October 6, 2020. *See In Re: Increasing Opportunities for Courtroom Advocacy* (Jan. 17, 2020) (“Rosenstengel Order”) (Exhibit 2);² *see also In Re: Increasing Opportunities for Courtroom Advocacy* (Oct. 6, 2020) (“Dugan Order”) (Exhibit 3).³ The orders do not define the term “minority attorney,” but Judicial Watch respectfully submits that it is both fair and reasonable to understand the term to refer to racial and ethnic minorities at a minimum.

II. Analysis.

The orders are patently discriminatory and unconstitutional as well as patronizing and deeply offensive. They also plainly imply that female and minority attorneys are less competent, less skilled, and less qualified than male and non-minority attorneys and require additional time and assistance to represent their clients. Moreover, they send a clear message to clients that, if they hire female or minority attorneys, they will be afforded advantages that they will not be afforded if they hire male or non-minority attorneys.⁴ They also erode litigants’ and the public’s

¹ Judge Yandle’s standing order can be found on the court’s website at <https://www.ilsd.uscourts.gov/documents/SMYStandingOrder.pdf> (last visited Feb. 24, 2024).

² Chief Judge Rosenstengel’s standing order can be found on the court’s website at <https://www.ilsd.uscourts.gov/forms/StandingOrderReCourtroomAdvocacyOpportunities.pdf> (last visited Feb. 24, 2024).

³ Judicial Watch has not been able to locate Judge Dugan’s standing order on the court’s website but learned of the order through media reports and other sources. *See, e.g.,* Nate Raymond, “Republican US senators seek info on Illinois judges’ diversity policies,” *Reuters*, Feb. 8, 2024 (available at <https://www.reuters.com/legal/government/republican-us-senators-seek-info-illinois-judges-diversity-policies-2024-02-08/> (last visited Feb. 24, 2024)).

⁴ To the extent the orders are applied in criminal cases, they are particularly problematic, especially where prosecutors are afforded special treatment not afforded to defendants’ counsel.

trust and confidence in the justice system. As such, the orders violate Rule 4(a)(3). They also violate Judicial Canon 2(A) and the equal protection guarantee of the Fifth Amendment to the United States Constitution.

The orders themselves provide “information constituting reasonable grounds for inquiry into whether a covered judge has engaged in misconduct” and constitute “clear and convincing” evidence of misconduct. *See* Rule 5(a). Because this complaint pertains to the imprudent nature of the orders themselves rather than the correctness of a decision in a particular case, it is appropriate for resolution as misconduct. *See* Rule 4(b).

1. *Rule 4(a) of the Rules for Judicial-Conduct and Judicial-Disability Proceedings.*

Misconduct is defined as “conduct prejudicial to the effective and expeditious administration of the business of the courts” and includes “intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability.” *See* Rule 4(a) and 4(a)(3). All three orders “encourage[] the participation of newer, female, and minority attorneys in proceedings” and “will” grant oral argument and potentially extra time and assistance to lawyers of the judges’ favored race, ethnicity, and sex/gender. *See* Exhibit 1 at 1; Exhibit 2 at 1; Exhibit 3 at 1. The orders plainly constitute intentional bias and unlawful and unconstitutional discrimination based on the race, ethnicity, or sex of an attorney seeking to argue before the court.

2. *Judicial Canon 2(A).*

Judicial Canon 2(A) requires judges to “comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” In

entering their orders, Chief Judge Rosenstengel, Judge Yandle, and Judge Dugan have exhibited both favoritism and condescension towards certain groups of people, assuming they need or deserve advantages in court based on their race, ethnicity, or sex. By doing so, they have undermined public confidence in the integrity and impartiality of the judiciary and harmed the reputation of the court and the legal system.

3. *Equal Protection Guarantee of the Fifth Amendment.*

The orders are unconstitutional because they equate to government-imposed, race-, ethnicity-, and sex/gender-based discrimination that violates the equal protection guarantee of the Fifth Amendment. *See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 143 S. Ct. 2141, 2161 (2023). The “[e]qual protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.” *Buckley v. Valeo*, 424 U.S. 1, 93 (1976). Our constitution requires that all citizens be treated equally in the judicial process, particularly by the judges presiding over their cases. This applies to both lawyers and the parties they represent. Yet, Chief Judge Rosenstengel, Judge Yandle, and Judge Dugan seemingly ignored these foundational principles and took it upon themselves to institutionalize discrimination within their courtrooms by entering their plainly unconstitutional orders.

III. Conclusion.

Courtroom time is a finite resource, and allowing oral argument, additional time, or the assistance of additional counsel based on immutable characteristics like race, ethnicity, and sex/gender is the antithesis of justice and fairness. It also does a substantial disservice to the very persons the orders purport to assist, implying that female and minority lawyers lack the competence, skills, and qualifications of male and non-minority lawyers. Whatever the judges’

intentions, their orders constitute misconduct. They endorse discrimination, and, making matters worse, do so with the imprimatur of judicial power – to the substantial detriment of lawyers, litigants, the legal profession, and the judiciary itself. Judicial Watch respectfully requests that swift, corrective action be taken to remediate this ongoing misconduct in the U.S. District Court for the Southern District of Illinois.

Respectfully submitted,

JUDICIAL WATCH, INC.



Thomas J. Fitton, President

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

IN RE:)
)
INCREASING OPPORTUNITIES)
FOR COURTROOM ADVOCACY)
)

STANDING ORDER

The Court is cognizant of a growing trend in which fewer cases go to trial and in which there are generally fewer in-court advocacy opportunities. This is especially true for newer attorneys (attorneys practicing for less than seven years) in general, and women and underrepresented minorities in particular.

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned Judge encourages the participation of newer, female, and minority attorneys in proceedings in my courtroom; particularly with respect to oral argument on motions where said attorney drafted or contributed significantly to the briefing for the motion.

To that end, the Court adopts the following procedures regarding oral argument as to pending motions:

1. After a motion is fully briefed, as part of a Motion Requesting Oral Argument, a party may alert the Court that, if argument is granted, it intends to have a newer, female, or minority attorney argue the motion (or a portion of the motion).
2. If such a request is made, the Court will:
 - A. Grant the request for oral argument on the motion if it is at all practicable to do so.
 - B. Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated were a female, or minority attorney not arguing the motion.

- C. Permit other more experienced counsel of record the ability to provide some assistance to the newer, female, or minority attorney who is arguing the motion, where appropriate during oral argument.

All attorneys will be held to the highest professional standards. Relatedly, all attorneys appearing in court are expected to be adequately prepared and thoroughly familiar with the factual record and the applicable law, and to have a degree of authority commensurate with the proceeding.

The Court also recognizes that there may be many different circumstances in which it is not appropriate for a newer attorney to argue a motion. Thus, the Court emphasizes that it draws no inference from a party's decision not to have a newer attorney argue any particular motion before the Court.

Additionally, the Court will draw no inference about the importance of a particular motion, or the merits of a party's argument regarding the motion, from the party's decision to have (or not to have) a newer attorney argue the motion.

IT IS SO ORDERED.

DATED: January 7, 2020



STACI M. YANDLE
United States District Judge

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
INCREASING OPPORTUNITIES)
FOR COURTROOM ADVOCACY.)
)

STANDING ORDER

The undersigned is cognizant of a growing trend in which fewer cases go to trial and in which there are generally fewer in-court advocacy opportunities. This is especially true for newer attorneys (attorneys practicing for less than seven years) in general, and women and underrepresented minorities in particular.

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned encourages the participation of newer, female, and minority attorneys in proceedings in my courtroom, particularly with respect to oral argument on motions where that attorney drafted or contributed significantly to the briefing on the motion.

To that end, the Court adopts the following procedures regarding oral argument as to pending motions:

1. After a motion is fully briefed, as part of a Motion Requesting Oral Argument, a party may alert the Court that, if argument is granted, it intends to have a newer, female, or minority attorney argue the motion (or a portion of the motion).
2. If such a request is made, the Court will:
 - A. Grant the request for oral argument on the motion if it is at all practicable to do so.

- B. Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated were a newer, female, or minority attorney not arguing the motion.
- C. Permit other more experienced counsel of record the ability to provide some assistance to the newer, female, or minority attorney who is arguing the motion, where appropriate during oral argument.

All attorneys will be held to the highest professional standards. All attorneys appearing in court are of course expected to be adequately prepared and thoroughly familiar with the factual record and the applicable law, and to have a degree of authority commensurate with the proceeding.

The Court also recognizes that there may be many circumstances in which it is not appropriate for a newer, female, or minority attorney to argue a motion. Thus, the Court emphasizes that it draws no inference from a party's decision not to have a particular attorney argue any motion before the Court.

The Court likewise will draw no inference about the importance of any motion, or the merits of a party's argument regarding the motion, from the party's decision to have (or not to have) a particular attorney argue the motion.

IT IS SO ORDERED.

DATED: January 17, 2020



NANCY J. ROSENSTENGEL
Chief U.S. District Judge

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
INCREASING OPPORTUNITIES)
FOR COURTROOM ADVOCACY.)
)

STANDING ORDER

The undersigned is cognizant of a growing trend in which fewer cases go to trial and in which there are generally fewer in-court advocacy opportunities. This is especially true for newer attorneys (attorneys practicing for less than seven years) in general, and women and underrepresented minorities in particular.

Recognizing the importance of the development of future generations of practitioners through courtroom opportunities, the undersigned encourages the participation of newer, female, and minority attorneys in proceedings in my courtroom, particularly with respect to oral argument on motions where that attorney drafted or contributed significantly to the briefing on the motion.

To that end, the Court adopts the following procedures regarding oral argument as to pending motions:

1. After a motion is fully briefed, as part of a Motion Requesting Oral Argument, a party may alert the Court that, if argument is granted, it intends to have a newer, female, or minority attorney argue the motion (or a portion of the motion).
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 - A. Grant the request for oral argument on the motion if it is at all practicable to do so.

- B. Strongly consider allocating additional time for oral argument beyond what the Court may otherwise have allocated were a newer, female, or minority attorney not arguing the motion.
- C. Permit other more experienced counsel of record the ability to provide some assistance to the newer, female, or minority attorney who is arguing the motion, where appropriate during oral argument.

All attorneys will be held to the highest professional standards. All attorneys appearing in court are of course expected to be adequately prepared and thoroughly familiar with the factual record and the applicable law, and to have a degree of authority commensurate with the proceeding.

The Court also recognizes that there may be many circumstances in which it is not appropriate for a newer, female, or minority attorney to argue a motion. Thus, the Court emphasizes that it draws no inference from a party's decision not to have a particular attorney argue any motion before the Court.

The Court likewise will draw no inference about the importance of any motion, or the merits of a party's argument regarding the motion, from the party's decision to have (or not to have) a particular attorney argue the motion.

IT IS SO ORDERED.

DATED: October 6, 2020



David W. Dugan
United States District Judge

COMPLAINT OF JUDICIAL MISCONDUCT OR DISABILITY

To begin the complaint process, complete this form and prepare the brief statement of facts described in item 4 (below). The RULES FOR JUDICIAL-CONDUCT AND JUDICIAL-DISABILITY PROCEEDINGS, adopted by the Judicial Conference of the United States, contain information on what to include in a complaint (Rule 6), where to file a complaint (Rule 7), and other important matters. The Rules are available in federal court clerks' offices, on individual federal courts' websites, and on www.uscourts.gov.

Your complaint (this form and the statement of facts) should be typewritten and must be legible. For the number of copies to file, consult the local rules or clerk's office of the court in which your complaint is required to be filed. Enclose each copy of the complaint in an envelope marked "COMPLAINT OF MISCONDUCT" or "COMPLAINT OF DISABILITY" and submit it to the appropriate clerk of court. **Do not put the name of any judge on the envelope.**

- 1. Name of Complainant: Thomas J. Fitton
 Contact Address: Judicial Watch, Inc.
425 Third Street SW, Suite 800
Washington, DC 20024
 Daytime telephone: (202) 646-5172
- 2. Name(s) of Judge(s): Nancy J. Rosenstengel, Staci M. Yandel, & David W. Dugan
 Court: U.S. District Court for the Southern District of Illinois

- 3. Does this complaint concern the behavior of the judge(s) in a particular lawsuit or lawsuits?
 Yes No

If "yes," give the following information about each lawsuit:

Court: _____
Case Number: _____
Docket number of any appeal to the _____ Circuit: _____

Are (were) you a party or lawyer in the lawsuit?

- Party Lawyer Neither

If you are (were) a party and have (had) a lawyer, give the lawyer's name, address, and telephone number:
