

BEFORE THE COURT COMMISSIONER CONDUCT COMMITTEE
STATE OF UTAH

In re: COMMISSIONER T.R. MORGAN	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS
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On October 21, 2021, the Court Commissioner Conduct Committee (“the Committee”) conducted a confidential formal hearing, pursuant to rule 3-201.02(4) of the Utah Code of Judicial Administration, to consider a complaint against Commissioner T.R. Morgan (“Commissioner Morgan”). The complaint was filed jointly by a former Second District Court law clerk (“Complainant”) and by Bart Olsen (“Olsen”), in his capacity as the Human Resources Director of the Administrative Office of the Courts. At the hearing, which was conducted via videoconference due to the COVID-19 pandemic, Complainant was present and unrepresented by counsel; Commissioner Morgan was present and unrepresented by counsel; and three members—Olsen, Jeremy Marsh, and Sarah Osmund—of the Human Resources Department (“HR”) of the Administrative Office of the Courts were present. All members of the Committee were present, as was Keisa Williams, General Counsel of the Administrative Office of the Courts. Prior to the hearing, the Committee reviewed Complainant’s complaint, a redacted version of a report prepared by HR, and Commissioner Morgan’s written response. At the hearing, the Committee placed both Complainant and Commissioner Morgan under oath, and

interviewed them. HR also called one additional witness, as described below, who was also placed under oath and interviewed by the Committee. No other witnesses testified. Complainant, HR, and Commissioner Morgan were afforded the opportunity to suggest questions for the Committee to put to the witnesses. After considering the evidence presented, including the sworn testimony of the witnesses, the Committee makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Commissioner Morgan was appointed to his current position as court commissioner in Utah's Second District Court in July 2016, and has served full-time in that capacity since then. At all times relevant here, Commissioner Morgan's courtroom and chambers have been located at the Second District Court's Farmington location.
2. In April 2017, the Second District Court hired Complainant as a law clerk. Complainant had completed law school, and was thus law-trained, but was not yet licensed to practice law in the State of Utah.
3. In the Second District Court, as with most district courts in Utah, law clerks do not work for just one judge. Instead, law clerks are shared between several judicial officers. Complainant was assigned to work in the Farmington location for multiple judicial officers, including—for most of her tenure—both Judge John Morris and Commissioner Morgan.
4. Complainant spent most of her time working for Judge Morris. Complainant spent no more than 30% of her time assisting Commissioner Morgan.
5. But because of the proximity of her office to Commissioner Morgan's, and because of perceived common interests, Complainant and Commissioner Morgan would interact on

more or less a daily basis, and would engage in conversations not only about legal topics but about current events and other things. In the beginning, for the first months of Complainant's tenure, the conversations were constructive, mutual, and friendly.

6. Over time, however, Commissioner Morgan began to, in his words, become "too comfortable" around Complainant, and the conversations began to involve other topics, including homosexuality, gender identity or expression, sexual behavior, and religion; Commissioner Morgan indicated that many of these conversations occurred, or at least began, in the context of discussing issues that had arisen in pending cases.
7. Complainant identifies as queer, but had not disclosed her sexual orientation to Commissioner Morgan, and there is no indication that Commissioner Morgan was aware of Complainant's sexual orientation.
8. Many of the conversations in question took place in Complainant's small office, with Commissioner Morgan sitting in a chair by the door. Complainant testified that, in some of the conversations, she felt uncomfortable but did not feel like it was easy to leave, given the physical layout of the office.
9. Complainant worked for the Second District Court for more than three years, until June 2020. During that time, she had literally hundreds of interactions with Commissioner Morgan, many of which Complainant considered inappropriate, and some of which she described for the Committee during her testimony.
10. The Committee finds Complainant to be a credible witness. Even Commissioner Morgan acknowledged Complainant's credibility, and while Commissioner Morgan did not remember all of the events Complainant described, he testified that he did not take issue

with her credibility. Thus, the Committee credits Complainant's account of the events she described.

11. On numerous occasions, Commissioner Morgan referred to members of the LGBTQ community as "homos." In Complainant's words, this happened "over and over." Complainant told Commissioner Morgan that she considered his use of that term inappropriate and derogatory, and asked him to "cool it" with his use of that term, and he responded by asking, "What else am I supposed to call them?" Complainant suggested various alternative terms Commissioner Morgan might consider using, but he did not immediately desist in his use of the term and continued to use it in Complainant's presence even after being asked not to.
12. Complainant's account regarding Commissioner Morgan's use of the term "homos" was corroborated by the other witness ("Witness") who testified at the hearing. Witness worked as a judicial assistant to Judge Morris in the Farmington location for several years, including the time period in question here, although she no longer works for the courts. The Committee finds Witness's testimony, like Complainant's, to be credible. Witness also heard Commissioner Morgan make derogatory use of the term "homos" on multiple occasions.
13. The Committee finds Commissioner Morgan's use of the term "homos" to have been inappropriate, derogatory, and demeaning.
14. Commissioner Morgan made other inappropriate comments regarding members of the LGBTQ community. For instance, Commissioner Morgan told Complainant that he "could never imagine anyone taking it up the butt," and asked her "why do gay men talk like women?"

15. On another occasion, while discussing a request by two women for a same-sex marriage, he asked Complainant, “Why can’t I get a hot lesbian couple in my court?”
16. Commissioner Morgan also expressed antipathy toward transgender individuals, stating (in both Complainant’s and Witness’s presence) that “Transgender people are mentally ill, and going to therapy wouldn’t help them.” He also remarked to Complainant that, “If you want to be a man, you should go out and get a penis,” but then asked, “Why would anyone do that?” He also told Complainant that transgender youth were “brainwashed kids who think they’re something they aren’t.”
17. On other occasions, Commissioner Morgan’s conversations with Complainant would turn inappropriately sexual. For instance, on several occasions, while discussing cases involving custody of children, Commissioner Morgan would say to Complainant something like “if we were to have sex” or “if we had sex,” and then would add “you’re welcome, by the way” and would wink or smirk at Complainant in a way that communicated to her that Commissioner Morgan thought that Complainant would be fortunate to be able to have sex with him.
18. Complainant told Commissioner Morgan she was uncomfortable with him saying this to her and suggested that they could have a conversation about the relevant issues without the necessity of imagining the two of them having sex. Nevertheless, even after she asked him not to say such things, he said it to her again on more than one occasion.
19. Commissioner Morgan attempts to excuse his behavior in this regard by indicating that, when evaluating cases, he sometimes attempts to imagine himself in the shoes of the litigants, and finds it helpful to role-play this with another individual. The Committee makes no determination about whether this technique can, in the abstract, be a useful way

to evaluate cases. But in any event, Commissioner Morgan's use of this technique to ask a subordinate employee to imagine having sex with him, then telling her "you're welcome" and smirking, is not an appropriate application of it.

20. The Committee also does not credit Commissioner Morgan's explanation that he just "forgot" that Complainant had asked him not to do this.

21. On another occasion, in a similar vein, Complainant expressed to Commissioner Morgan that she was having "déjà vu" and that she "must have dreamt" something, and Commissioner Morgan responded, "If you dreamt about me, you must have liked it."

22. On two occasions, Commissioner Morgan—unbidden and unsolicited—rubbed Complainant's shoulders in a massage-like manner. One of these occasions occurred in Witness's office, in the presence of both Witness and Complainant. On this occasion, as soon as Commissioner Morgan began to rub Complainant's shoulders, Witness testified that both she and Complainant told Commissioner Morgan to stop it, but he did not immediately do so, and continued to rub Complainant's shoulders for another twenty to thirty seconds before finally stopping. Complainant clarified that she did not remember saying something herself; rather, she recalled that she tensed or "froze" up because she so dislikes being touched, and was extremely uncomfortable.

23. On the other occasion, Commissioner Morgan rubbed Complainant's shoulders as they were both walking in a hallway in the courthouse. Complainant shrugged her shoulders to get him to remove his hands, and he did so.

24. Sometimes, as part of reviewing cases, Commissioner Morgan would be required to look at exhibits submitted by parties that contained explicit photographs of women. On

occasion, Commissioner Morgan remarked to Complainant, as he was looking at such photos, “Ugh, I don’t want to look at that” or “It’s not worth looking at.”

25. Commissioner Morgan got in the habit of calling another judicial assistant in the office “a heifer.” This judicial assistant did not testify before the Committee; according to other information at the Committee’s disposal, this banter may not have bothered the judicial assistant in question, who responded in kind by calling Commissioner Morgan “a heifer.” There is also some indication that it was actually the judicial assistant who first used this term. But Commissioner Morgan’s use of the term made others in the office uncomfortable, and he was eventually asked to stop using the term, and he did so. However, he lamented to Complainant that he was unhappy about it, and told her that, in his view, the office staff who reported him for using the term “heifer” were “just jealous I didn’t have a nickname for them.”

26. Commissioner Morgan made occasional comments about Complainant’s style of dress. Nothing about Complainant’s dress style was inappropriate. Complainant often wore black clothing, and Commissioner Morgan expressed his view, to both Witness and Complainant, that he would “dress [Complainant] differently” and have her wear more color.

27. Commissioner Morgan also expressed to Complainant some of his views regarding diversity in employment. After Commissioner Morgan was not selected for a position with the courts, he complained that “If I were a woman I would have gotten the job” and that he was not selected due to his status as “a white man.” Complainant attempted to push back on these comments, but Commissioner Morgan snapped at her, raising his voice and telling her to “shut up and listen.”

28. Commissioner Morgan, in discussing alimony cases with Complainant, often expressed his view that he had a bias against men being caretakers or stay-at-home dads, and that he was uncomfortable awarding alimony to men, because in his view women are supposed to stay home with the children and men are supposed to work.
29. While Commissioner Morgan expressed these views to Complainant in private, Complainant did not ever observe—and there is no evidence before the Committee—that Commissioner Morgan issued rulings that reflected these biases. Indeed, Complainant testified that, in her view, Commissioner Morgan made every effort to be fair in his rulings despite his acknowledged biases.
30. Commissioner Morgan would also discuss his religious beliefs with Complainant. Commissioner Morgan is an active member of the Church of Jesus Christ of Latter-day Saints, and he would mention this often to Complainant and encourage her to adopt those same beliefs. For instance, he would tell her that she needed to do genealogy, and spoke of a religious song called “I Know that My Redeemer Lives” and told Complainant that “you know that song to be true.” Witness also testified to hearing Commissioner Morgan talk about religion on other occasions, and considered these conversations inappropriate.
31. Complainant testified that the conversations and comments she described were only a portion of the similar comments Commissioner Morgan made to her on almost a daily basis.
32. Toward the end of her tenure with the Second District Court, Complainant had become extremely uncomfortable even being in the same office building as Commissioner Morgan. As a result, she would seek leave to do more of her work from home, and would attempt to time her visits to the office during times when she knew Commissioner

Morgan would be on the bench or otherwise unavailable, all so that she could minimize her interaction with Commissioner Morgan.

33. Complainant left the employ of the Second District Court in June 2020, in part because of her discomfort with Commissioner Morgan, and in part for other reasons.

34. Upon her departure, she sent a letter to the presiding judge of the Second District Court, explaining her concerns with Commissioner Morgan's behavior. That letter was forwarded to HR, which conducted a full investigation into the matter. As part of that investigation, HR interviewed several witnesses, including some witnesses that did not testify before this Committee, as well as Complainant. HR did not, however, notify Commissioner Morgan of the complaint, and did not interview him in connection with its investigation.

35. Eventually, after completing its investigation, HR concluded that Commissioner Morgan had committed harassment, as that term is defined in HR's written policies. However, because of Commissioner Morgan's status as a judicial officer, HR was not in a position to take corrective or disciplinary action against Commissioner Morgan. At that point, in late 2020, the matter was referred to this Committee.

36. The rules governing this Committee require that proceedings be initiated by the filing of a complaint, which complaint will then be shared with the commissioner in question. *See* Utah Code of Jud. Admin. § 3-201.02(2). In this situation, Complainant was for a time unsure about whether she wished to proceed with a complaint before this Committee. Once it was confirmed that Complainant wished to move forward, the Committee began the process of reviewing the complaint under applicable rules, and in July 2021 determined that a hearing would be necessary.

CONCLUSIONS OF LAW

1. Commissioner Morgan violated Rule 2.3(B). That rule states that judicial officers “shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice or engage in harassment.” The term “harassment” is defined as “verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.”
2. All of the conduct described above occurred “in the performance of” Commissioner Morgan’s “judicial duties.” While none of it occurred in the courtroom, it occurred during deliberation and evaluation of judicial cases, and in interactions with subordinate judicial employees in the courthouse.
3. While performing those judicial duties, Commissioner Morgan committed harassment toward Complainant on multiple occasions. Much of the conduct described above served to denigrate Complainant, members of the LGBTQ community, and others, on the basis of sex, gender, or sexual orientation. Using derogatory terms (“homos”) toward members of the LGBTQ community, especially in the presence of Complainant who is a member of that community (and after requests that he stop doing so), constituted harassment. Asking Complainant—a subordinate employee—to imagine having sex with him, and telling her “you’re welcome” and smirking, constituted harassment. Rubbing the shoulders of Complainant, especially after being asked not to, constituted harassment.
4. The Committee is especially concerned about two aspects of this situation. First, the Committee is concerned that Commissioner Morgan does not fully understand the importance of the power imbalance dynamic inherent in the judicial workplace.

Individuals who work for judicial officers are often very eager to please their employer, and perhaps hesitant to challenge their employer or report improper actions on the part of that employer,¹ because their employer can have a wide and important influence on their future job prospects. This is especially true with regard to law clerks, who are generally young lawyers just starting out in the legal profession. Commissioner Morgan's comments that he considered Complainant "an equal" and that he did not consider himself to be in a position of power over her belie a fundamental misunderstanding of the situation.

5. Second, the Committee is concerned that some of the behavior described involved Commissioner Morgan taking action—using the term “homos” around Complainant, asking Complainant to imagine having sex with him, rubbing her shoulders—after he had specifically been asked not to do so. Commissioner Morgan's persistence in taking certain actions even after he learned that such actions were unwelcome and that others considered them inappropriate is a matter of no small concern.
6. The Committee therefore concludes that Commissioner Morgan's actions, considered in their totality, served to denigrate or show aversion to Complainant on the basis of sex, gender, or sexual orientation, and therefore constitute harassment.²
7. Commissioner Morgan violated Rule 2.8(B). That rule requires judicial officers to “be patient, dignified, and courteous to . . . court staff.” For the reasons just discussed, the Committee concludes that Commissioner Morgan's actions, considered in their totality,

¹ We note that HR had originally intended to call five witnesses (other than Complainant) to testify to the Committee, but in the end only one appeared (Witness), and she no longer works for the Second District Court. We do not know the reasons why the other witnesses did not appear, and apparently neither does HR, but we note that the only two witnesses to appear before the Committee to testify against Commissioner Morgan in this matter are both *former* (and not current) employees of the courts.

² Commissioner Morgan testified that he did not intend to harass Complainant. We note that Rule 2.3 does not contain a “scienter” requirement.

were not dignified or courteous toward Complainant and other members of the court staff.

8. Finally, Commissioner Morgan violated Rule 1.2. That rule requires judicial officers to “act at all times in a manner that promotes—and shall not undermine—public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.” The term “impropriety” is defined as “conduct that violates the law, court rules, or provisions of this Code.” By taking actions that constitute harassment of court staff, Commissioner Morgan has failed to avoid impropriety.


RECOMMENDATIONS TO THE JUDICIAL COUNCIL

1. The Committee unanimously agrees that a severe sanction is appropriate in this case, and that a mere censure—whether public or private—will not suffice. In considering an appropriate sanction, the Committee is constrained by Rule 3-201(7) of the Code of Judicial Administration, which provides that, with regard to corrective actions taken during a commissioner’s term of office, any “suspension without pay” must be limited to “a period not to exceed 60 days.” In addition to corrective actions, the Committee may also consider recommending removal from office.
2. In considering appropriate sanctions, the Committee inquired of HR, during the argument portion of the hearing, what level of sanction it would have considered imposing had HR been able to impose one. Olsen stated, in response to that question, that had these actions been committed by a non-judicial-officer supervisory employee of the courts, HR would have recommended termination of employment as the most appropriate sanction, with a

significant suspension without pay, perhaps coupled with remedial education requirements, as a minimum sanction.

3. The Committee unanimously recommends that those two options be given the highest consideration by the Council. The Committee sees no reason for judicial officers to be treated differently—and certainly not more leniently—than other judicial branch supervisors. Thus, the committee recommends that Commissioner Morgan either be removed from office, or that at a minimum he be suspended for a significant period of time and, during that time, be required to undergo meaningful remedial education regarding tolerance, diversity, implicit bias, sexual harassment, and other similar topics.
4. The Committee is concerned, however, that a suspension of only sixty days—the longest allowable suspension under the governing rule—may not be long enough under the circumstances, even coupled with meaningful remedial education.
5. Thus, as between removal from office and a sixty-day suspension, a majority of the Committee recommends that the Council remove Commissioner Morgan from office. However, if the Council can fashion an appropriate suspension-based remedy within the strictures of the governing rule, the Committee believes that such a remedy could be appropriate as well.

Dated this 19th day of November, 2021.



Judge Ryan M. Harris, Chair
Court Commissioner Conduct Committee