

# Judicial ethics and discipline

*A blog of the Center for Judicial Ethics of the National Center for State Courts*

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## Not a matter of management style

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The North Carolina Supreme Court found that a court of appeals judge had committed willful misconduct by allowing his executive assistant/law clerk, who was a close friend, to create a toxic work environment for the female law clerks in his chambers. *In re Inquiry Concerning Murphy*, 852 S.E.2d 599 (North Carolina 2020).

After he became a judge in January 2017, the judge hired his close, personal friend from high school, Ben Tuite, to serve as his executive assistant and permanent third law clerk. The judge gave Tuite “express and implied authority to supervise and manage the term law clerks and the operations of his chambers.” The judge hired Clark Cooper and Lauren Suber as his term law clerks. In March 2017, after Cooper suddenly resigned, the judge hired Mary Scruggs. After Suber completed her clerkship in August 2017, she was replaced by Chelsey Maywalt.

The Judicial Standards Commission found that Tuite “regularly used profanity during the workday, belittled others,” “used fear and intimidation while interacting with and supervising the law clerks,” “engaged in profane, violent and angry outbursts in the office,” and made “lewd or sexually inappropriate comments in the workplace.” For example:

- Tuite frequently used the word “f\*\*k” in the workplace.
- Tuite referred to the female law clerks more than once as “b\*\*\*h” or “b\*\*\*hing.”
- Tuite told Suber and Scruggs on separate occasions early in their clerkships that “he likes to have relationships with female co-workers but that they should not misconstrue his efforts to spend time with them.”
- Tuite told Suber that “he would like to see her in a wife beater’ tank top and shorts on a cold day” and that he “was married but not blind.”
- While reviewing a law clerk application with the judge, Suber, and Scruggs, Tuite repeated “derogatory and belittling online comments” that called the female applicant’s breasts “fun bags.”
- On one occasion, Tuite, “after being told of a problem with his work product, yelled ‘f\*\*k’ loud enough for everyone in the judge’s] chambers, including [the judge] who was in his office with the door open, to hear, and slammed his fist on a table hard enough to activate a panic alarm that was attached to that table.”
- On another occasion, during a meeting, Tuite, in the judge’s presence, got angry at Maywalt, slammed his fist on his chair, said, “Goddamn it, Chelsey,” and told her to shut her mouth and that “her opinion did not f\*\*king matter.”

The judge observed some of Tuite’s conduct, and the law clerks told him about other incidents, but he failed to take any action. The female clerks “were miserable, felt unsafe and uncomfortable working in [the judge’s] chambers and did not trust [the judge] to accurately portray their reports of workplace misconduct to others or to protect their well-being.” 2 of the clerks resigned before their terms were over; one did not accept the judge’s offer to extend her term.

Another judge reported his concerns about the environment in Judge Murphy’s chambers to the chief judge. In subsequent meetings with and emails to the Commission and the human relations department, the judge did not disclose the law clerks’ complaints about Tuite or any of the incidents he had observed and “downplayed, minimized, and mischaracterized” Tuite’s actions. “The judge dismissed the female clerks’ concerns as complaints about “‘how things are handled’ inside and outside of chambers.” The judge also regularly assured Tuite and indicated to others that Tuite’s employment at the court of appeals would continue. However, after a judicial colleague advised him to ensure that “his female law clerks were not uncomfortable” and after learning that Scruggs was interviewing for another position, the judge asked Tuite to resign, which he did in January 2018.

Finding that he had been “influenced by his close personal friendship with and loyalty towards Mr. Tuite,” the Commission concluded that, by failing to act, the judge condoned “Tuite’s workplace misconduct and therefore . . . contributed to and enabled a toxic work environment.” The Court adopted the findings of the Commission.

The Court rejected the judge’s argument that he could not be held accountable for others’ actions; it noted that the code of judicial conduct specifically states that a judge should require “dignified and courteous’ behavior of his staff” and require “staff and court officials subject to the judge’s direction and control to observe the standards of fidelity and diligence that apply to the judge.” The Court concluded:

The incidents for which respondent was present . . . were sufficient to warrant corrective action with regard to Mr. Tuite. Instead, respondent continued to turn a blind eye. This shortcoming is not, as [the judge] contends, simply a matter of managerial style. Rather, it is a failure to recognize the gravity of Mr. Tuite’s sexually explicit language and profane and suggestive language directed toward [the judge’s] law clerks and the impact on the law clerks of such unprofessional behavior.

Multiple acts of misconduct aggravated by a failure to acknowledge fault or show remorse and by a lack of candor often result in a judge’s removal or suspension without pay in judicial discipline cases.

However, the North Carolina Supreme Court only publicly censured Judge Murphy without explanation except the conclusion that his conduct “did not rise to the level of incurring suspension or removal as contemplated in other decisions of this Court.” The Court did not cite its other decisions, but since 2008, it has removed 2 judges and suspended 2 judges without pay, in addition to imposing several censures and reprimands. See *In re Chapman*, 819 S.E.2d 346 (North Carolina 2018) (30-day suspension without pay for failing to issue a ruling for more than 5 years on a motion for permanent child support); *In re Hartsfield*, 722 S.E.2d 496 (North Carolina 2012) (based on stipulated facts, 75-day suspension without pay for ticket-fixing); *In re Belk*, 691 S.E.2d 685 (North Carolina 2010) (removal of former judge for remaining on the board of directors of a corporation and making intentional misrepresentations during the Commission investigation); *In re Badgett*, 666 S.E.2d 743 (North Carolina 2008) (removal of judge for mishandling a domestic violence protective order case and, during the investigation, making untruthful, deceptive, and inconsistent statements to a State Bureau of Investigation agent and attempting to influence the recollections of a deputy clerk and

the plaintiff's attorney; the judge had been censured and suspended earlier in the year for unrelated misconduct).