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Judge As Chambers' Manager for Berkeley Judicial Institute

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Hypothetical 1

Lori is your judicial clerk. She has long, straight hair, that is, until today. Today, she walks into Chambers with short, curly hair. You say to her “your new style looks nice.” She responds: “That’s inappropriate.” How do you respond?

Analysis of Hypothetical 1

1. Was the comment on Lori's hair inappropriate?
2. What factors may be relevant in assessing context?

Hypothetical 1: What Not to Say

1. “I meant it as a compliment.”
2. “Are you kidding?”
3. “You’re being hypersensitive.”

Hypothetical 1: What About?

1. “I did not mean to offend you.”

Hypothetical 1: Consider the following

1. “Thank you for telling me.”
2. Options:
 - a. “I will be more aware of this in the future.”
 - b. “I won’t make any comments on your appearance in the future.”
 - c. “I am so sorry”

Follow-up on Hypothetical 1

1. Avoid other comments on appearance.
2. But don't avoid interacting with the employee (potential retaliation).
3. **How can judges encourage employees in their Chambers to let them know if they or someone else has said or done something that makes them uncomfortable?**

Hypothetical 2

Karl is your deputy clerk. He tells you that Judge X made a racial slur in his presence about 6 months ago. He then begs you not to tell anyone, expressing regret that he raised the issue with you.

Hypothetical 2—What Not to Say (in response to the complaint)

1. “That does not sound like Judge X.”
2. “That sounds like Judge X.”
3. “Are you sure that’s what Judge X actually said?”
4. “Why did you wait so long to tell me?”

Hypothetical 2—Consider the following (in response to the complaint)

1. “Thank you for telling me.”
2. “Your allegation is serious and I take it seriously.”

Hypothetical 2—What Not to Say (in response to request for confidentiality)

1. “I don’t know if you realize what a difficult position you have placed me in.”
2. “I will keep what you have told me confidential so long as you promise you will tell me if Judge X makes any other racial slurs.”

Hypothetical 2—Consider the following (in response to request for confidentiality)

1. “I will keep what you have told me as confidential as possible; however, I do need to discuss it with the appropriate person under the EDR plan/court rules.”
2. “Please be assured that there will be no retaliation.”

Hypothetical 3

It is St. Patrick's Day. A group of judicial clerks are talking in your Chambers. You overhear them telling "jokes" about the Irish and drinking. Everyone is laughing, including one of your law clerks who you know is Irish.

Question on Hypo 3

1. Should you say something?
2. What should you say?

Hypo 3: What Not to Say

1. Looking at the clerk who is Irish: “they’re just kidding around.”
2. Looking at the clerk who is Irish: “does this make you uncomfortable?”

Hypo 3: Consider the following

1. Looking at everyone: “That’s not appropriate; please stop.”
2. Looking at everyone: “That’s not fair; it’s not only the Irish who drink.”

Hypothetical 4

You are writing an opinion and one of your judicial clerks asks to speak with you. The employee, Carla, tells you that she is transitioning and wishes to be called Carl. Carl also tells you that his pronouns are he, his and him.

Hypothetical 4: What Not To Say?

1. “Are you kidding me?”
2. “I will call you what I want.”
3. “That’s wonderful.”

Hypothetical 4: Consider the following

1. “Thank you for telling me.”
2. “What I can do to support you?”

Then, contact appropriate court personnel for guidance on next steps in terms of what you should and should not ask.

Hypothetical 5

Shari asks to speak with you. She tell you that she is pregnant.

Hypothetical 5: What Not to Say

1. “Not you, too!”
2. “I thought so. You look like you have been gaining weight.”
3. “Your timing is not very good.”

Hypothetical 5: Consider the following

1. “Congratulations.”
2. Options:
 - a. “Thank you for telling me.”
 - b. “I’m happy for you.”

Then, contact appropriate court personnel for guidance on next steps in terms of what you should and should not ask.

Concluding Thoughts

1. Employment issues usually arise in Chambers when you are busy focusing on other issues relative to your role as “judge as judge” as opposed to “judge as Chambers’ manager.”
2. In responding to the issues raised by an employee:
 - a. Try to avoid judging or commenting substantively on what the employee shares with or discloses to you.
 - b. Focus instead on the process—generally, thank the employee for talking with you.
 - c. And, remember, “pausing” is your friend! You always can ask or say more later.

Concluding Thoughts

4. And, don't forget the pause: okay to let the employee know you will get back to them after you have had an opportunity to think about the issue and/or seek appropriate guidance.

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