

**UNDER THE EMPLOYMENT DISPUTE RESOLUTION PLAN OF THE  
[ ] DISTRICT [COURT]**

[COMPLAINANT],

v.

[DISTRICT COURT], AS THE  
RESPONDENT EMPLOYING OFFICE,

Respondent.

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Case No. [ ]

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**[REDACTED] WRITTEN DECISION**

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**I. STATEMENT OF THE CASE**

[Complainant] filed a Formal Complaint against the [ ] District [Court] alleging discrimination based on pregnancy, harassment based on pregnancy, abusive conduct, and retaliation. For the following reasons, I find [Complainant] has no claim against the [ ] District [Court].

**II. PROCEDURAL HISTORY**

On December 3, 2020, [Complainant] submitted a "Request for Assisted Resolution" (the "Request") pursuant to the [ ] District [Court]'s Employment Dispute Resolution ("EDR") Plan § IV.B.1. (Formal Complaint, Ex. 1, at 71-73.) The Request was reviewed by the [ ] District [Court]'s EDR Coordinator [ ] on December 4, 2020

and forwarded to [the] Chief Judge [ ] of the [ ] District [Court]. (Id. at 84.) [The] [C]hief Judge [ ] recused himself from overseeing the Request and appointed [another judge in the district] to assume the role. (Id. at 80, 82.) [The appointed judge] reviewed the allegations in the Request and interviewed all relevant parties/witnesses during his investigation. (Id. at 84.) On December 14, 2020, [the appointed judge] issued a Report determining [Complainant]'s claims could not be resolved by Assisted Resolution. (Id. 84-85.) The EDR Coordinator notified [Complainant] of [the appointed judge]'s Report and her right to file a formal complaint under the EDR Plan. (Id. at 82.)

[Complainant] filed her Formal Complaint on February 11, 2021. (Id. at 6.) On February 26, 2021, pursuant to § IV.C.3.d and § IV.C.3.e.i of the EDR Plan, Chief Judge William Pryor of the Eleventh Circuit appointed me as the Presiding Judicial Officer ("PJO") to act on behalf of the Eleventh Circuit Judicial Council. As the PJO, I reviewed the Formal Complaint and provided copies to the head of the [ ] District [Court] and the two individuals alleged to have violated rights under the EDR Plan [ ]. A Response to the Formal Complaint was filed on behalf of the [ ] District [Court] on March 4, 2021. (Response, Ex. 2.) Upon reviewing the Formal Complaint and Response, I determined a thorough investigation was necessary. On April 5-6, 2021, I conducted interviews of [the judge named in the Formal Complaint ("the

judge"))], [the judge's career law clerk], [Complainant], [the judge's courtroom deputy]<sup>1</sup>, and [the Clerk of the District Court]<sup>2</sup>. During the interviews, I requested that the parties/witnesses provide me with all relevant documents concerning the matter.<sup>3</sup> The transcripts from the interviews and all documents collected from the relevant parties/witnesses have been made available to [Complainant]. I have concluded my investigation and determined a hearing is not necessary to resolve the matter. See EDR Plan § IV.C.3.f.ii.<sup>4</sup>

I notified the Parties of a potential dispositive action on May 26, 2021 by sending them my Proposed Decision along with the Exhibits and transcripts upon which I relied. I allowed the Parties twenty-one days to file written objections to my Proposed Decision. On June 14, 2021, I received a "Proposed Clarification" from [the judge] (Ex. 19), on June 16, 2021, I received

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<sup>1</sup> [The courtroom deputy] worked for [the judge] during [Complainant]'s employment. She retired at the end of 2020 [ ].

<sup>2</sup> [Redacted name]

<sup>3</sup> [Complainant] stated during her interview that she had notes from her phone call with [the career law clerk] on April 14, 2020; however, she failed to submit any documentation during my investigation. [Complainant] asserts this was inadvertent and provided the notes with her objections; however, the notes do not provide any additional support for her arguments. (Ex. 22.) The notes appear to be in the form of an email addressed to [the judge]; however, [Complainant] stated the email was never sent. ([Complainant] Interview, at 30.)

<sup>4</sup> [Complainant] states she is "entitled to discovery, an opportunity to cross-examine Respondent, and a hearing." ([Complainant]'s Objections, at 1.) However, it is the PJO's responsibility to "provide for such discovery to the parties as is necessary and appropriate." EDR Plan § IV.C.3.e.v. I have "interview[ed] . . . persons alleged to have violated rights under this Plan and witnesses, review[ed] relevant records, and collect[ed] documents and other records" pursuant to the EDR Plan and determined additional discovery is unnecessary. See id.

[Complainant]'s "Objection to Proposed Order" (Ex. 20, [Complainant's] Objections), and on June 22, 2021, I received the [ ] District [Court]'s "Response to Proposed Final Decision" (Ex. 21).<sup>5</sup> After reviewing the submitted documents, relying on the record developed during these proceedings, and noting that the objections and assertions made on behalf of [Complainant] are rife with speculation and matters dehors the record, I conclude that [Complainant]'s objections are without merit and affirm my Proposed Decision that [Complainant] does not have a valid claim against the [ ] District [Court].<sup>6</sup>

### III. FINDINGS OF FACT<sup>7</sup>

[Complainant] was hired as a law clerk for [the judge] beginning July 5, 2019 for a two-year term. (Formal Compl., at 7.) [The judge] hired [Complainant] to replace his prior term law clerk, [ ]. (Id.; Ex. 3.) Before [the prior term law clerk] left, she cleared the six-month motions report that was due in September 2019. ([Judge] Interview, at 4; [Career Clerk] Interview, at 10.) [Complainant] worked directly with [the judge]'s career law clerk.

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<sup>5</sup> I note the [ ] District [Court]'s Response to my Proposed Decision was untimely; however, it contained no objections.

<sup>6</sup> The standard of proof for all claims under the EDR Plan is preponderance of the evidence. See EDR Plan § IV.C.3.e.vi.

<sup>7</sup> Throughout [Complainant]'s objections she quotes partial statements from the interviews and uses them out of context in an attempt to undermine my factual findings, analysis, and conclusions. Additionally, while all of [Complainant]'s objections and assertions were considered in revising and issuing this decision, I have only addressed those that warranted a specific discussion.

[The career law clerk] began working for [the judge] in 2005. ([Career Clerk] Interview, at 4.) [The career law clerk]'s responsibilities include training and mentoring new law clerks and "quality control" of all orders; this is consistent for all term law clerks, including [Complainant]. ([Judge] Interview, at 10, 41; [Courtroom Deputy] Interview, at 27-28.) [The career law clerk] reviews and edits every proposed order before it is submitted to [the judge] for review and signature. ([Judge] Interview, at 10; [Career Clerk] Interview, at 5.) During the first few months of [Complainant]'s employment, she worked on minor administrative motions and there were no apparent issues with her work. ([Career Clerk] Interview, at 11-12.)

In September 2019, Chambers began preparing for [the judge] to serve as a visiting judge on an upcoming 11th Circuit panel in Jacksonville, Florida. (Ex. 3.) [The judge] was assigned six cases that were divided evenly between [the career law clerk] and [Complainant]. ([Career Clerk] Interview, at 12; [Complainant] Interview, at 15.) Before going to Jacksonville, [the career law clerk] and [Complainant] prepared written memos that included the basic facts of each case and issues [the judge] should consider. ([Career Clerk] Interview, at 12; [Complainant] Interview, at 15.) [The career law clerk] and [Complainant] traveled to Jacksonville with [the judge] for oral arguments on November 4-7, 2019. (Id.)

Upon returning, [Complainant] was assigned to work on the [an opinion from the sitting], which was the first substantive proposal she worked on during her clerkship. ([Career Clerk] Interview, at 13, 23.) The [opinion] was designated as unpublished and [the judge] believed it would be fairly simple to complete since [Complainant] had already drafted the original bench memo. ([Judge] Interview, at 18.) He assumed [Complainant] should only need to "dot the I's and cross the T's" and estimated the opinion would take no more than 45 days to finish. (Id. at 18-19.) [The career law clerk] agreed that "it wasn't that complicated." ([Career Clerk] Interview, at 13.) Initially, [the judge] asked Complainant to complete the [opinion] by the end of December; however, [the judge] extended the deadline to the end of January due to the upcoming holidays. ([Judge] Interview, at 19.)

On November 15, 2019, [the judge] offered to extend [Complainant]'s clerkship for a second two-year term because everyone in Chambers "liked her so much." ([Judge] Interview, at 38; [Career Clerk] Interview, at 13.) Also, on January 9, 2020, [the District Court's Human Resources Specialist] informed [the judge] that [Complainant] had qualified for a raise based on her status changing from JSP 12, step 1, to JSP 13, step 1. (Ex. 4.) [The judge] approved the raise which became effective on February 17, 2020. (Id.) [The judge] always approves these types of raises, which are automatic adjustments based on work experience

that human resources tracks. ([Judge] Interview, at 12.) [The Clerk for the District Court] described the raise as an "attendance award" and stated that in his seven years working as the Clerk of Court, no judge had ever denied such a raise. ([Court Clerk] Interview, at 10.) Although [Complainant] said [the judge] made positive comments about her work performance at the time, she admitted she did not know why the raise was given. ([Complainant] Interview, at 11.)

The [opinion Complainant was assigned from the sitting] was not completed by the end of January, so [the judge] began asking [Complainant] for updates on its status. [Complainant] continuously told [the judge] throughout February and March she would "turn it in by Friday," but he did not receive the proposal until the beginning of April. ([Judge] Interview, at 19-20; [Complainant] Interview, at 16.) [The career law clerk] was also asking [Complainant] for updates on the [opinion] during this time. ([Career Clerk] Interview, at 18.)

Meanwhile, on January 23, 2020, [Complainant] notified Chambers that she was pregnant. (Formal Compl., at 8.) [The career law clerk] admits that she was not "overly excited" about the pregnancy announcement because she was concerned about [Complainant]'s work. ([Career Clerk] Interview, at 16-18.) At this point, [the career law clerk] had not seen a draft of [Complainant]'s [opinion from the sitting] and the deadline was

nearing. (Id. at 16.) Additionally, [the judge] had upcoming panel duties with the Ninth Circuit, which [the career law clerk] knew would be an added burden to the law clerks' workloads. (Id. at 24.)

Because of the COVID-19 pandemic, [the courtroom deputy], [the career law clerk], and [Complainant] began teleworking in March. ([Career Clerk] Interview, at 27.) On March 20, 2020, [Complainant] gave [the career law clerk] her first draft of the [opinion from the sitting]. (Id.; Ex. 5.) During [Complainant]'s interview she stated [the career law clerk] was to blame for the tardiness of the [opinion] because [the career law clerk] "had held on to it all of February." ([Complainant] Interview, at 16-17.) However, based on [Complainant]'s email, she did not provide the first draft to [the career law clerk] until the end of March, almost two months after it was due. (See Ex. 5.) [Complainant] also stated that the first draft was 40-pages long, but it was only 23-pages. ([Complainant] Interview, at 26; Ex. 5.) [The career law clerk] said the first draft she received "needed a lot of work." ([Career Clerk] Interview, at 28.) As a result, [the career law clerk] and [Complainant] edited the [opinion] and exchanged drafts from March 20, 2020 until April 9, 2020. (Id. at 28; Ex. 6.)

By this time, [the judge] had already told [the Clerk of the District Court] that a law clerk was struggling with the timeliness



and quality of her work. ([Clerk of Court] Interview, at 3.) [The judge] was concerned about [Complainant]'s production issues and knew he needed help, so he reached out to [the Clerk of Court] again around the end of March to discuss his options. (Id. at 3-4.) [The Clerk of Court] suggested [the judge] apply for temporary emergency funding to hire a third law clerk. (Id. at 4.) [The judge]'s workload met the threshold for three law clerk positions; however, after taking senior status his workload never required more than two law clerks. ([Career Clerk] Interview, at 4; [Judge] Interview, at 51.) Although these steps were initiated because of concerns with [Complainant]'s workload, her pregnancy was never discussed during [the judge] and [the Clerk of Court]'s conversations. ([Clerk of Court] Interview, at 8.)

On April 8, 2020, [the Clerk of Court] sent [the] Circuit Executive of the Eleventh Circuit a request from [the judge] for approval of temporary emergency funding for a third law clerk and a permanent third law clerk position. ([Judge] Interview, at 5; Ex. 7.) In the letter, [the judge] stated the reason for the request was "unanticipated additional workload." (Ex. 7.) Once the request was approved, [the judge] hired his prior [term] law clerk, [ ], who was pregnant at the time, to temporarily help with the Ninth Circuit cases and the backlog of [Complainant]'s work. ([Judge] Interview, at 20-21.)

On April 9, 2020, [Complainant] delivered the [opinion from the sitting] to [the judge]. (Ex. 8.) On April 13, 2020, [the judge] reviewed the [opinion] with [Complainant] and [the career law clerk] and sent the draft opinion to the Eleventh Circuit panel judges. ([Career Clerk] Interview, at 33; Ex. 9.) The same day, [the judge] met with [the career law clerk] and [the courtroom deputy] to discuss [Complainant]'s work performance and concerns about her "writing deficit." ([Judge] Interview, at 22-23.)

Then, on April 14, 2020, [the judge] held a meeting with [Complainant] and [the courtroom deputy] in his home's backyard. (Id. at 23-24.) During the meeting, [the judge] addressed his concerns about the [opinion from the sitting] and [Complainant]'s work performance. (Id. at 23-25.) He stated that "she knew she was in big trouble . . . [he] made it very clear. [He] told her what her problems were."<sup>8</sup> (Id. at 25.)

Later that day, [Complainant] and [the career law clerk] messaged about a proposed order [Complainant] was preparing. (Ex. 10.) [The career law clerk] was frustrated because the proposal failed to address pending motions on the docket, so she asked [Complainant] to call her. (Id.) During the phone call, [the career law clerk] admits to raising her voice while expressing her

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<sup>8</sup> [The judge] submitted a "Proposed Clarification" seeking to modify this sentence to include additional statements from his interview. (Ex. 19.) I have considered his clarification; however, since I address [Complainant]'s acknowledgment of her bad performance review in my analysis, I find it is unnecessary to address it here.

frustrations with [Complainant] about her increasing workload and her approaching maternity leave. ([Career Clerk] Interview, at 36-39.)

After their conversation, [the career law clerk] called [the judge] and reported what was said and apologized to [the judge] for losing her temper. ([Judge] Interview, at 26-27; [Career Clerk] Interview, at 40.) Additionally, [Complainant] sent a text message to [the judge] asking if she could return to his home to talk. (Formal Compl., at 12.) [The judge] responded that he would call her the following day. (Id.) During that phone call, [Complainant] told [the judge] about her conversation with [the career law clerk]. (Id. at 13.) [The judge] did not take action upon hearing [Complainant]'s concerns because [the career law clerk] previously told him she apologized to [Complainant], so he believed nothing further needed to be done. ([Judge] Interview, at 26-27.)

The only other time [Complainant]'s pregnancy was raised as a concern was while [the courtroom deputy] and [the career law clerk] were planning for the Ninth Circuit trip to California.<sup>9</sup> It was discussed in Chambers whether [Complainant] would be able to fly since she would be in her third trimester.<sup>10</sup> ([Career Clerk] Interview, at 25-26; [Courtroom Deputy] Interview, at 9-10.) [The

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<sup>9</sup> Due to the COVID-19 pandemic, the Ninth Circuit panel was held virtually.

<sup>10</sup> It is unclear who first raised the concern in Chambers.

judge] then raised the concern with [Complainant] and requested that she check with her doctor to ensure traveling would not be an issue. ([Judge] Interview, at 34-35.) Once [Complainant] told [the judge] that the status of her pregnancy would not be an issue, there were no other discussions regarding the trip and her pregnancy.

On April 15, 2020, [the judge] received redline edits of the [opinion from the sitting] from [an Eleventh Circuit judge who was on the panel]. (Ex. 11.) He was "deeply embarrassed . . . [by] all of the errors that had been made." ([Judge] Interview, at 6.) He felt that since "[Complainant] was on Law Review[,] [s]he should have known how to do these citations."<sup>11</sup> (Id.)

The next day, [the judge] contacted a [law school p]rofessor to discuss potential candidates for a third law clerk. (Ex. 3.) On April 22, 2020, [the judge], [the courtroom deputy], and [the career law clerk] interviewed [a candidate] for the third law clerk position. (Id.) The purpose of the additional law clerk was "to fill the gap because [Complainant] couldn't get the work done." ([Judge] Interview, at 2-3.) [The judge] intended that when [Complainant] returned from maternity leave, there would be three clerks for the remainder of her term. (Id. at 3, 15-16.)

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<sup>11</sup> Although [the career law clerk] helped edit the [opinion], "[her] responsibility is to make sure it's written in the way that [the judge] want[s] it done, and she has no duty to check cites, no duty to do research, no duty to search the record." ([Judge] Interview, at 10; see also [Career Clerk] Interview, at 44.)

[Complainant] speculates that [the candidate who was interviewed] was hired to replace her because of the timing of his hiring, the lack of an additional office in Chambers to accommodate him, and the law clerk's memorandum<sup>12</sup> was updated. ([Complainant] Interview, at 36; [Complainant]'s Objections, at 6-8.)

[Complainant] does not allege any significant events occurred between April and June. Based on my investigation, it appears [Complainant] and [the career law clerk] continued to communicate almost daily. On June 23, 2020, [Complainant] and [the judge] met to discuss [Complainant]'s upcoming maternity leave. ([Judge] Interview, at 29.) At that time, [the judge] reduced her clerkship to the original two-year term because "she was doing a very poor job." (Id.; [Complainant] Interview, at 34.) Then, on August 18, 2020, after seeing no improvement in her work or reduction to her motions list, [the judge] and [the Clerk of the District Court] met with [Complainant] to inform her that her employment would terminate after her twelve weeks of paid maternity leave. ([Judge] Interview, at 30; [Complainant] Interview, at 36-37.) [Complainant]'s employment officially terminated on November 20, 2020. (Formal Compl., at 24.)

According to [the judge], [Complainant] did her job so poorly that it took four law clerks and seven months to clear her backlog.

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<sup>12</sup> The law clerk's memorandum "is a document that is given to incoming law clerks to assist them in familiarizing themselves with chambers procedures." ([Complainant]'s Objections, at 7 n.3.)

([Judge] Interview, at 7-8.) Now that [the judge]'s Chambers has remedied the backlog, [the judge] has found his two law clerks are sufficient to timely complete all work and feels no need to utilize his authorized third law clerk position. (Id. at 51.) Despite her termination, [the judge] clarified that there was no ill-will toward [Complainant] when she left, simply disappointment. (Id. at 8.)

#### IV. ANALYSIS

[Complainant] alleges discrimination based on pregnancy, harassment based on pregnancy, abusive conduct, and retaliation.

##### A. Discrimination

"To make out a prima facie case of [pregnancy] discrimination a plaintiff must show (1) she belongs to a protected class; (2) she was qualified to do the job; (3) she was subjected to adverse employment action; and (4) her employer treated similarly situated employees outside her class more favorably." Crawford v. Carroll, 529 F.3d 961, 970 (11th Cir. 2008) (citing Knight v. Baptist Hosp. of Miami, Inc., 330 F.3d 1313, 1316 (11th Cir.2003)). *The Guide to Judiciary Policy*<sup>13</sup> (the "Guide") defines discrimination as "[a]n adverse employment action that . . . materially affects the terms,

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<sup>13</sup> The *Guide* is the official repository of the federal judiciary's administrative policies. *Chapter 2: Workplace Conduct and Protections* "appl[ies] to all judiciary personnel and units within the federal judiciary[.]" *Judiciary Policy* § 210.10.

conditions, or privileges of employment (e.g. hiring, firing, failing to promote, significant change in benefits) based on [a] . . . protected category." Judiciary Policy § 220.10.10(a).

[Complainant] alleged sufficient facts to satisfy the first three elements of a prima facie case of discrimination. As to element four, [Complainant] compares herself to [the career law clerk], [the individual interviewed and hired as a third term law clerk in April 2020], and [the judge's term clerk who preceded Complainant].<sup>14</sup>

The Eleventh Circuit requires comparators to be "similarly situated in all material respects." Lewis v. City of Union City, 918 F.3d 1213, 1218 (11th Cir. 2019) (citation omitted). A similarly situated comparator

will have engaged in the same basic conduct (or misconduct) as the plaintiff . . . ; will have been subject to the same employment policy, guideline, or rule as the plaintiff . . . ; will ordinarily (although not invariably) have been under the jurisdiction of the same supervisor as the plaintiff . . . ; [and] will share the plaintiff's employment or disciplinary history[.]

Id. at 1227-28.

I am not convinced [the career law clerk] is a proper comparator for [Complainant] based on her permanent position as a

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<sup>14</sup> [Complainant's term clerk predecessor] was not working for [the judge] at the time of [Complainant]'s employment. Moreover, [Complainant] makes no allegation that [the predecessor clerk] failed to complete her work in a timely manner or that she had any writing deficit. Her only argument is that [the prior clerk] ["]was also edited 'heavily' by [the career law clerk] in the beginning." ([Complainant]'s Objections, at 9.)

law clerk, fifteen years of experience, wider scope of job duties, and the lack of issues or concerns with her work product. [Complainant] argues this "conclusion defies logic" and "makes no sense" because [the career law clerk]'s ["]performance is the yardstick against which to measure Complainant's performance." ([Complainant]'s Objections, at 18.) However, as stated above, the Eleventh Circuit has expressed that "a similarly situated comparator . . . will have engaged in the same basic conduct (or misconduct) as the plaintiff" and "will share the plaintiff's employment or disciplinary history." Lewis, 918 F.3d at 1227-28. Therefore, I must compare [the career law clerk] and [Complainant]'s work and disciplinary history to determine whether they are proper comparators.<sup>15</sup> Thus, [Complainant]'s argument misses the mark.

Additionally, [the individual interviewed and hired as a third term clerk in April 2020] was not hired to replace [Complainant].<sup>16</sup> (Ex. 7.) [The judge] hired [that individual]

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<sup>15</sup> Also, my finding that [the career law clerk] is not a proper comparator does not prevent me from comparing [Complainant]'s and [the career law clerk]'s motions lists in other sections of my analysis. The comparator analysis is a discrete issue in the prima facie case of discrimination. Regardless, I assumed [the career law clerk] was a proper comparator when determining the validity of [Complainant]'s discrimination claim.

<sup>16</sup> [Complainant] argues it was clear [the individual hired as a third term clerk] was her replacement because "the day after [she] reported the discriminatory behavior to [the judge], [the judge] called [a] [p]rofessor . . . [ ] looking for another law clerk." ([Complainant]'s Objections, at 6.) However, [the judge] sought funding from the Eleventh Circuit for a third law clerk prior to [Complainant] reporting any alleged discriminatory conduct to him. (See Ex. 7.)



prior to [Complainant]'s termination and planned to employ three law clerks throughout the duration of [Complainant]'s clerkship. (Id.; [Judge] Interview, at 3, 15.) Despite clear evidence that [the judge] hired [the third term clerk] as an *additional* law clerk, [Complainant] disagrees with my finding. However, even if [the third term clerk] was hired to "replace" [Complainant], the outcome of my decision remains the same.

[Complainant] argues she satisfies the fourth element of the prima facie case because [the career law clerk], [the individual hired to be the third term clerk], and [Complainant's predecessor term clerk] are proper comparators. While I disagree with [Complainant]'s arguments on the comparator issue, in light of the dispute, I have not based my decision on a final resolution of this legal issue. Instead, I assumed [Complainant] satisfied all elements of the prima facie case. Therefore, her objections to my comparator analysis are irrelevant.

Assuming [the career law clerk], [the third term law clerk], or [Complainant's predecessor term clerk] are proper comparators, I am satisfied the [ ] District [Court] has articulated a legitimate, non-discriminatory reason for terminating [Complainant]'s employment - her poor work performance. See Crawford, 529 F.3d at 976 ("[I]f the plaintiff establishes a prima facie case, the burden shifts to the employer to 'articulate some legitimate, nondiscriminatory reason' for the adverse employment

action.” (quoting McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973))).

Because the [ ] District [Court] has stated a legitimate reason for terminating [Complainant], I have reviewed the allegations to determine whether [Complainant] “has cast sufficient doubt on the [ ] District [Court]’s proffered nondiscriminatory reason[]” to prove that her poor work product was not the actual motivation for her termination. Id. (“[T]he burden shifts back to the plaintiff to show that the employer’s stated reason was a pretext for discrimination. . . . [which] requires the court to determine, in view of all the evidence, ‘whether the plaintiff has cast sufficient doubt on the defendant’s proffered nondiscriminatory reasons to permit a reasonable factfinder to conclude that the employer’s proffered legitimate reasons were not what actually motivated its conduct.’”) (citations omitted).

Upon completion of my investigation, I find the issues regarding the timeliness and quality of the [opinion from the Eleventh Circuit sitting] were a significant factor in [Complainant]’s termination. [The judge] expressed his concerns about [Complainant]’s shortcomings and her inability to “do the work” required of a law clerk during their April 14, 2020 backyard meeting. ([Judge] Interview, at 24.) Throughout this time, [the

judge] "had no reason to believe that her pregnancy was causing a problem with her work . . . ." (Id. at 15.)

Further, despite [Complainant]'s allegation that "[she] thought [she] was doing a great job," she admitted on June 17, 2020 that since her April 14, 2020 discussion with [the judge] she had "been afraid of losing [her] job" and had never received "such a bad *performance* review."<sup>17</sup> (See Ex. 12; [Complainant] Interview, at 47.) Additionally, during her interview, [Complainant] also admitted she knew that "the [opinion from the sitting] was late and . . . [it] was something that . . . [she] had some control over" and that she told [the judge] she "felt like [she] could do better, especially with . . . writing." ([Complainant] Interview, at 26, 44.)

I find the issues with [Complainant]'s draft of the [opinion from the sitting] alone are legitimate reasons for her termination. [The judge] hoped his warning would clarify his expectations and provide [Complainant] an opportunity to improve. However, [Complainant] continued to fall below his expectations.

[The judge]'s concerns about [Complainant]'s production were confirmed in April 2020 when [the courtroom deputy] notified Chambers of the status of [the judge]'s motions report. (Ex. 13.) [The career law clerk] had seven pending motions while

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<sup>17</sup> [Complainant] does not address this admission in her objections.

[Complainant] had sixteen, which was a clear indication that [Complainant] was not completing her work in a timely manner. (Id.) Although [Complainant] alleges in her objections that I found her performance to be "poor" because she was not maintaining the same speed of completion as [the career law clerk], [Complainant] misunderstands my analysis. Simply, [Complainant] was not completing her work in a timely manner, which resulted in a backlog of unresolved motions.

[Complainant] also argues the depiction of her backlog is an exaggeration and asserts I mischaracterize the amount of work on the motions list because some of the motions were in the same case and must be decided together. ([Complainant]'s Objections, at 18-19.) However, even if, for example, "three of the motions of summary judgment were all in the same case," it does not minimize the amount of work required to address each motion. I do not find [Complainant]'s backlog was an overstatement.

[The judge] expressed his disappointment again in June 2020 by reducing [Complainant]'s clerkship by two years, hoping it would "set her on fire." ([Judge] Interview, at 14.) Despite [the judge]'s warnings, [Complainant] did not improve, and her motions report continued to grow. On July 17, 2020, [Complainant] had twenty-two pending motions and [the career law clerk] had three. (Id. at 30; [Career Clerk] Interview, at 63; Ex. 14.) That same day, [the judge] sought an update from [the career law clerk]

regarding [Complainant]'s progress on her motions. When [the career law clerk] reached out for an update, [Complainant] responded, "The motions to dismiss are coming slowly, I struggled . . . trying to figure out how I was going to write it. . . . I hope Judge is not disappointed[.]" (Ex. 15.) This further illustrates [Complainant]'s awareness of [the judge]'s concerns with her work.

Additionally, [Complainant] alleges [the career law clerk] became "overly critical of her work" after her pregnancy announcement and [the judge] fired her solely based on [the career law clerk]'s feedback. (Formal Compl., at 9.) She also asserts in her objections that [the judge] had no personal knowledge of her work product because [the career law clerk] was his only source of information. ([Complainant] Objections, at 14-15.) Although [the career law clerk] edited all of [Complainant]'s work and kept [the judge] informed of [Complainant]'s deficiencies, [the judge] was also personally informed. He continuously asked [Complainant] for the [opinion from the sitting], "[s]o it wasn't like there was some mystery about the fact she wasn't getting the work done." ([Judge] Interview, at 42.)

Further, upon reviewing the edits made by [the career law clerk], I find that they were thoughtful and constructive. (Ex. 6.) [Complainant] even thanked [the career law clerk] for her help with the [Eleventh Circuit] Opinion and told her on one

occasion that her work was "Extremely Clear!" and "I wish I could do this like you do!" (Ex. 6; Ex. 17.) [Complainant] has failed to show any discriminatory animus by the [ ] District [Court] and thus has no viable claim of discrimination.

B. Discriminatory Harassment/ Hostile Work Environment

The *Guide* defines harassment as "[a] workplace permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the employment and create an abusive working environment." Judiciary Policy § 220.10.10(b). In the Eleventh Circuit, "[t]o establish a claim of a hostile work environment, an employee must prove that 'the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment.'" Adams v. Austal, U.S.A., L.L.C., 754 F.3d 1240, 1248 (11th Cir. 2014) (quoting Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993)).

"[W]hether an environment is 'hostile' or 'abusive' can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris, 510 U.S. at 23. Additionally, "[t]he effect on the employee's psychological well-

being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. But while psychological harm, like any other relevant factor, may be taken into account, no single factor is required." Id.

[The career law clerk] and [Complainant] emailed and messaged almost daily about their lives, workload, and assigned cases. I have reviewed every message between [Complainant] and [the career law clerk] since February 7, 2020 and they appeared to be very cordial and friendly despite [Complainant]'s allegations that they "couldn't even communicate." ([Complainant] Interview, at 43; Ex. 16.)<sup>18</sup>

I also note there seems to be no change in tone or manner of the conversations after the April 14, 2020 phone call between [the career law clerk] and [Complainant]. In fact, [the career law clerk] continuously checked-in with [Complainant], edited her work, and encouraged her that she was making progress when they exchanged drafts.<sup>19</sup> (Ex. 16.) Overall, I did not find a single

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<sup>18</sup> I provided [Complainant] a CD containing all the correspondence between [the career law clerk] and her that was provided to me and that CD is part of the record of this matter. Exhibit 16 contains conversations that I have extracted that illustrate how [the career law clerk] and [Complainant]'s conversations were friendly after the announcement of her pregnancy. However, I reviewed and considered all correspondence contained on the CD and did not exclude any correspondence from Exhibit 16 that may have conflicted with my conclusions on this issue.

<sup>19</sup> [The career law clerk] recognizing [Complainant]'s progress when they exchanged drafts is not evidence that [Complainant] was performing well in her job.

message that was intimidating, ridiculing, or insulting to [Complainant].

Although [Complainant] alleges [the career law clerk] made "abusive phone calls to [her] several times," [Complainant] only discussed the facts surrounding one specific phone call in her Formal Complaint and interview.<sup>20</sup> (Formal Compl., at 11.) [Complainant] alleges on April 14, 2020, [the career law clerk] "screamed her frustrations," over the phone and told her she was "'furious' that [she] got pregnant so soon after starting her clerkship" and that her newborn baby was going to get in the way of [the career law clerk]'s son's senior year. (Id. at 11-12.) I find that even assuming [Complainant]'s allegations about [the career law clerk]'s phone call are true, the conduct does not rise to the level of severe or pervasive necessary to establish a claim for hostile work environment.

[The complainant] has not pointed to any other *specific* instances where [the career law clerk] was abusive towards her. [The career law clerk]'s edits of [Complainant]'s work never

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<sup>20</sup> [Complainant] mentions one other phone call in her objections that "escalated into a barrage of insults and teardowns from" [the career law clerk] on April 6, 2020. ([Complainant]'s Objections, at 21.) However, [Complainant] fails to make any specific allegations as to what [the career law clerk] stated during this phone call. In fact, at 7:21 AM on April 6, 2020, [the career law clerk] responded to an email from [Complainant] in which [Complainant] had thanked [the career law clerk] for feedback and discussed how difficult it has been for her transitioning to working at home stating, "[ ] We'll get it all done!! Everything is going to be fine!! . . . I hope you had a nice weekend . . . !" Multiple chat discussions between [Complainant] and [the career law clerk] occurred on this date and none of them were "hostile and abusive." (See Ex. 18.)



mentioned her pregnancy and did not contain any negative comments towards [Complainant]. The edits were constructive and in line with her assigned job duties as [the judge]'s permanent law clerk.

Therefore, [Complainant] has no claim for discriminatory harassment or hostile work environment.

#### C. Abusive Conduct

Abusive conduct is "[a] pattern of demonstrably egregious and hostile conduct not based on a protected category . . . that unreasonably interferes with an employee's work and creates an abusive working environment." Judiciary Policy § 220.10.10(c). It is conduct that is "threatening, oppressive, or intimidating," but it "does not include communications and actions reasonably related to performance management." Id.

[Complainant] alleges [the career law clerk] "was regularly threatening, oppressive, and intimidating." (Formal Compl., at 22.) However, for the same reasons stated above, I find all communications and actions taken by [the career law clerk] and [the judge] were reasonably related to [Complainant]'s work performance. [Complainant] has not alleged a *pattern* of conduct that rises to the level of "abusive." Therefore, she has no claim against the [ ] District [Court] for abusive conduct.

#### D. Retaliation

"A *prima facie* case of retaliation under Title VII requires the plaintiff to show that: (1) she engaged in an activity

protected under Title VII; (2) she suffered an adverse employment action; and (3) there was a causal connection between the protected activity and the adverse employment action." Crawford, 529 F.3d at 970 (citing Pennington v. City of Huntsville, 261 F.3d 1262, 1266 (11th Cir. 2001)). The *Guide* defines retaliation as "[a] materially adverse action taken against a judiciary employee: (1) for reporting wrongful conduct; (2) for assisting in the defense of rights protected by the Model EDR Plan; or (3) for opposing wrongful conduct." Judiciary Policy § 220.10.10(d).

[Complainant] alleges two instances of retaliation in her Formal Complaint. First, that she was terminated by [the judge] after she reported [the career law clerk]'s "discriminatory animus." (Formal Compl., at 26.) I have already determined that [Complainant]'s termination was based on her work performance. Additionally, there was "a substantial delay between the protected expression and the adverse action." Thomas v. Cooper Lighting, Inc., 506 F.3d 1361, 1364 (11th Cir. 2007) ("The burden of causation can be met by showing close temporal proximity between the statutorily protected activity and the adverse employment action."). "Merely showing that the alleged adverse action occurred sometime after the protected expression does not establish the causation element—for temporal progression to be enough, the events must be in very close proximity." Mitchell v. Mercedes Benz U.S. Int'l, Inc., 637 F. App'x 535, 537 (11th Cir.

2015), *abrogated on other grounds by* Est. of Bass v. Regions Bank, Inc., 947 F.3d 1352, 1356 (11th Cir. 2020).

[The judge] notified [Complainant] of her termination on August 18, 2020, which was more than four months after [Complainant] told [the judge] about the "abusive" phone call between [the career law clerk] and her.<sup>21</sup> In the Eleventh Circuit, "[a] three-to-four-month period between the protected activity and the adverse employment action does not rise to the level of 'very close' temporal proximity." Mitchell, 637 F. App'x at 538. Also, [the judge] revoked his offer to extend [Complainant]'s clerkship an additional two years more than two months after the phone call. Although the question of proximity is a closer issue with regards to her revoked offer, I still find the reason for the revocation was non-retaliatory. Thus, there is no causal connection between the protected activity and the adverse employment action.

Second, [Complainant] alleges the [ ] District [Court] provided "a negative reference to a potential employer."<sup>22</sup> (Formal Compl., at 26.) [Complainant] interviewed for a job in the civil division of the Air Force Material Command at Robins Air Force

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<sup>21</sup> [Complainant]'s employment officially ended on November 20, 2020; however, [the judge] asked [Complainant] on August 18, 2020 not to return to work after her maternity leave. (Formal Compl., at 24.)

<sup>22</sup> [Complainant] asserts an additional claim of retaliation in her objections. She cites to various parts of [the judge]'s interview and claims he "damaged [her] reputation by giving false reports to his colleagues." ([Complainant]'s Objections, at 23.) [Complainant] takes [the judge]'s statements out of context. [Complainant] has not clearly stated a claim for retaliation and there is no evidence [the judge] provided a negative reference to his colleagues.

Base after her termination from the [ ] District [Court]. (Id.) [Complainant] did not receive a job offer and speculates that it was because she received a negative reference. She stated, "I believe Judge might have given me a bad reference," but provides no justification for reaching this conclusion beyond not getting the job. ([Complainant] Interview, at 37-38.) However, [the judge], [the Clerk of the District Court], [the career law clerk], and [the courtroom deputy] never received a call from anyone asking for a reference for [Complainant] and were unaware that she had even applied for a job at Robins Air Force Base. ([Career Clerk] Interview, at 49; [Clerk of Court] Interview, at 17-18; [Courtroom Deputy] Interview, at 26-27; [Judge] Interview, at 32-33.) Thus, [Complainant]'s retaliation claims fail.

For these reasons, I overrule [Complainant]'s objections and find she has no claim against the [ ] District [Court].

This 25th day of June, 2021.

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J. RANDAL HALL  
PRESIDING JUDICIAL OFFICER

**UNDER THE EMPLOYMENT DISPUTE RESOLUTION PLAN OF THE  
DISTRICT [COURT]**

[COMPLAINANT, ]

v.

[DISTRICT COURT], AS THE  
RESPONDENT EMPLOYING OFFICE,

Respondent.

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Case No. [ ]

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**NOTICE TO PARTIES**

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Attached to this Notice is the final written decision in this matter, including exhibits. Pursuant to the [ ] District [Court]'s EDR Plan, the EDR coordinator will inform the Parties of appeal rights, procedures, and deadlines.

This 25th day of June, 2021.

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J. RANDAL HALL  
PRESIDING JUDICIAL OFFICER