

**REPORT OF THE  
FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP  
TO  
THE JUDICIAL CONFERENCE OF THE UNITED STATES**  
*March 15, 2022*

**INTRODUCTION**

The Workplace Conduct Working Group (Working Group) was launched in January 2018, at a time when many individuals came forward as part of the #MeToo movement to relate distressing accounts of sexual abuse and sexual harassment in workplaces throughout the country. The federal Judiciary was not immune. In his 2017 year-end report, Chief Justice John G. Roberts Jr. called for the creation of a Working Group to recommend any changes needed to promote an exemplary workplace and to protect Judiciary employees from harassment and other misconduct.

“These concerns warrant serious attention from all quarters of the judicial branch,” the Chief Justice wrote. “I have great confidence in the men and women who comprise our judiciary. I am sure that the overwhelming number have no tolerance for harassment and share the view that victims must have clear and immediate recourse to effective remedies.”

For the past four years, the Workplace Conduct Working Group, the Judicial Conference, the courts and circuits, the Federal Judicial Center, and the Administrative Office of the U.S. Courts, have been engaged in a substantive and deliberate effort to ensure a safe, respectful, and professional environment. The federal Judiciary is committed, without reservation, to sustaining an exemplary workplace and to the well-being of all its employees.

Workplace protections have long existed for Judiciary employees, including explicit prohibitions on discrimination and harassment. Soon after its formation, the Working Group began a dialogue with Judiciary employees to identify necessary improvements to the Judiciary’s workplace policies and procedures. These conversations led to a series of policy changes and

new initiatives. Significant revisions have expanded and clarified the scope of employee protections, strengthened the obligations of judges and employees to report misconduct, and expanded the avenues for addressing reports of misconduct.

This report summarizes the extensive steps the federal Judiciary has taken since January 2018, when the Working Group was formed. The Judiciary's priorities have included not just meaningful revisions and improvements to its conduct policies, complaint procedures, and ethics codes, but an equally important and enduring commitment to promoting an exemplary workplace through engaged leadership and more expansive education in the areas of civility, respect, and communication. In brief, the Judiciary has improved the environment in which its employees work and serve the public in numerous ways:

- The Judiciary's employment dispute resolution processes have been significantly streamlined and improved, including effective formal and informal avenues to address concerns.
- Workplace protections were significantly expanded to include an express prohibition against abusive conduct, addressing harassing behavior even when it is not discriminatory.
- A national Office of Judicial Integrity was established and Directors of Workplace Relations were hired in every circuit, creating an interlaced network of local, circuit, and national workplace specialists who are outside the supervisory chain of command, positioned to provide confidential guidance and assistance to all Judiciary employees.
- Codes of Conduct have been updated to clarify confidentiality obligations, to remove barriers to reporting, and to emphasize the responsibility of all judges and Judiciary employees to take appropriate action upon learning of potential misconduct.
- The Judicial Conduct and Disability (JC&D) Rules were expanded and, among other changes, now include a mandatory "bystander" reporting obligation.

- A new Model Federal Public Defender Organization Employment Dispute Resolution (EDR) Plan was developed, addressing the issues unique to the federal public defender community.
- An EDR Interpretive Guide and Handbook was created and made available Judiciary-wide, providing detailed explanations and step-by-step directions for each of the EDR options for resolution, which is especially useful to EDR coordinators, Directors of Workplace Relations, unit executives, judges, and others directly involved in or who support the formal and informal EDR processes.
- Training and awareness at all levels is vastly greater than in 2018, including nationwide, circuit, and local workplace conduct training programs aimed at judges and Judiciary employees, as well as additional programs on promoting civility and respect, and other initiatives designed to prevent misconduct from occurring and foster an exemplary workplace.

Notwithstanding all of these significant enhancements, the Judiciary's work is not done. After reflecting on the major changes already made, this report recommends that the Judiciary adopt more tools and policies to build on the progress to date. Recommendations to better measure how well the Judiciary's systems are functioning, to further strengthen policies and procedures, and to expand communication and training are being forwarded to committees of the Judicial Conference for consideration. A full list of recommendations may be found in Section 2.

Specifically, the Working Group recommends that an in-depth nationwide climate survey of Judiciary employees be conducted at regular intervals. It also recommends additional data reporting to measure the utilization of and effectiveness of resources available to employees.

The Working Group is further proposing that, in addition to existing recusal requirements, the Judiciary's policies be amended to require that complaints about wrongful conduct always be reviewed by judges outside the court where a complaint originates, fostering greater employee trust and confidence in the complaint process. And the possibility of

incorporating additional monetary remedies into the Judiciary’s employee complaint process, comparable to those available to other federal employees, should be assessed.

A continuing focus is to build confidence and trust in the changes that already have occurred. A groundbreaking 2016 report by the U.S. Equal Employment Opportunity Commission (EEOC) concluded that employees in most workplaces significantly underreport sexual harassment and other misconduct. The EEOC identified various reasons, common to all workplaces, why employees may be reluctant to come forward, including distrust in their workplace policies and an unwillingness to become embroiled in formal proceedings. As the EEOC noted, underreporting weakens any organization’s ability to respond consistently and effectively, even if its system is otherwise sound.

The Working Group structured its reforms around the EEOC’s recommendations, and the Judiciary’s initial set of reforms was later endorsed by the Chair of the EEOC as “the type of effort that we need to see more of.”

Consistent with the EEOC’s research, the Working Group has prioritized reducing barriers to employee reports of misconduct. Every circuit now has a Director of Workplace Relations—a high level and functionally independent professional—whom employees can approach confidentially for informal advice, support, and information about how to initiate formal proceedings. The Judiciary has revised its confidentiality policies to clarify that employees are always permitted to bring forward reports of misconduct. And, consistent with EEOC recommendations, the Judiciary has created a flexible and accessible process for those employees who wish to attempt resolving their concerns informally in the first instance.

In the Judiciary, building trust begins with a clear explanation of how we are addressing workplace misconduct. It is essential that employees have the opportunity to receive confidential

advice and guidance without fear of retaliation or professional injury. They must also know it is possible to come forward and report their concerns and have them addressed without harm to their careers. To further strengthen accountability, the Judiciary has adopted robust whistleblower protections and has imposed a mandatory obligation on all judges and Judiciary employees to report any misconduct they learn of or witness.

Training programs are communicating these points to judges and employees in every court, court unit, and circuit. Employee focus groups and informal workplace dialogues also are creating a safe environment to discuss workplace conduct concerns and protections. The Working Group is expanding its own emphasis on direct discussions with employees, which provide valuable feedback that informs the Judiciary's continued efforts. Several circuits have also created law clerk advisory committees to ensure that law clerks have direct input into their workplaces' policies.

As this report demonstrates, the recommendations made by the Working Group in 2018 are proving effective, and they are well designed to meet the workplace needs of federal Judiciary employees within the unique governance structure of the Branch. The Judiciary's strong and far-reaching response promotes a positive workplace environment and, when misconduct occurs, enhances the chance of early reporting, meaningful intervention, and long-term prevention of abusive conduct. Judiciary employees now have access to direct assistance, clear and immediate recourse, and effective remedies.

The recommendations for further action contained in this report represent the next steps in the Judiciary's ongoing effort to ensure an exemplary workplace for all its employees. In making these recommendations, the Working Group has sought to build on its progress to date, rather than make premature or sweeping changes that could undo several years of constructive

change. It is the view of the Working Group that concrete and iterative improvements to the Judiciary's policies allow for a more meaningful dialogue with employees and preserve employees' familiarity with the Judiciary's existing procedures.

The Judiciary has developed initiatives and revised its procedures to promote an exemplary workplace. As in any workplace, continual review and thoughtful revision are needed, but the Working Group believes that the Judiciary's process for protecting employees is demonstrating its promise and should be given time to build upon the significant strides made to date.

### **SECTION 1: The Judiciary's Response**

Drawing on the expertise of the EEOC, the Working Group's initial proposals addressed five key areas that work in harmony to define a healthy workplace:

- Committed and Engaged Leadership
- Cultural Assessment
- Consistent and Demonstrated Accountability
- Effective Policies and Procedures
- Training that Works

Of equal importance, the Working Group's findings, and its recommendations for change, emerged from extensive dialogue with Judiciary employees. The Working Group conferred with many groups of Judiciary employees and reviewed anonymous email comments. The Working Group met multiple times with law clerks and law clerk groups. The Working Group also met with groups representing a cross-section of all Judiciary employees, including staff from federal defender offices, probation and pretrial services offices, clerks of court staff, chambers staff, and other employees.

The Judiciary’s strategy and tools for supporting a respectful workplace align closely with the needs and concerns expressed by employees in these conversations. Based on the communications, the Working Group concluded that abusive behavior, rather than sexual harassment, was the most common form of wrongful conduct in the Judiciary. The Working Group also concluded that workplace misconduct was likely being underreported in the Judiciary.

“The Working Group believes that inappropriate conduct, although not pervasive in the Judiciary, is not limited to a few isolated instances. This information suggests that, of the inappropriate behavior that does occur, incivility, disrespect, or crude behavior is more common than sexual harassment,” the Working Group stated in June 2018. The report noted that formal complaint procedures under the Judicial Conduct and Disability Act and EDR plans “generally work well in addressing workplace misconduct in the instances when they are invoked.” But the Working Group added that formal complaints by Judiciary employees against judges and senior staff were rare.

Although the sexual harassment of law clerks by judges was an initial emphasis and focus, the Working Group defined a broader scope, proactively seeking a positive work environment for all of the Judiciary’s 30,000-plus employees. “The Judiciary should set as its goal the creation of an exemplary environment in which every employee is not only free from harassment or inappropriate behavior, but works in an atmosphere of civility and respect,” the Working Group’s first report said in June 2018.

That report contained more than 30 recommended changes, all of which were quickly adopted by the Judiciary. Since then, courts and circuits have worked aggressively to implement those changes, and have taken additional steps to carry out the Judiciary’s shared vision of an

exemplary workplace.

A timeline of Working Group and Judiciary activity is available in Appendix A, including links to the Working Group's [2018](#) and [2019](#) reports. Appendix B provides a detailed summary of specific measures and initiatives undertaken since the Working Group's last report. But a true understanding of what the Judiciary has achieved, and what the Working Group believes is needed going forward, is helped by explaining the Group's history in narrative form. This report seeks not merely to catalog the Working Group's original recommendations, but also to illustrate how those recommendations are working in practice—especially focusing on how employees' experience has improved.

### **Recognizing Barriers to Reporting**

One of the key issues facing the Judiciary, as with all employers, is reluctance to report wrongful conduct.

The 2016 EEOC report on sexual harassment in the workplace served as a foundation for the Working Group's efforts. The EEOC said workplace harassment exists in virtually all workplaces, and that in most instances a victim does not report perceived mistreatment to superiors.

Every organization seeking to eliminate harassment and other workplace misconduct must address employees' reluctance to report when they believe they have been mistreated. A key goal of the Judiciary's program, as first laid out by the Working Group, is to make it safer for all employees to come forward when inappropriate behavior is identified. Key areas of the Judiciary's workplace strategy—changes to policy, expansion in training, multiple channels to receive confidential guidance and support from workplace specialists at the circuit and national



levels, and the opening of informal avenues to resolve workplace concerns—all work together to make reporting of misconduct more likely to occur.

In detailed conversations with Judiciary employees, including current and former law clerks, the Working Group probed the complex and conflicting choices employees face when choosing whether or not to report workplace concerns.

The Judiciary recognized the need to expand employees' reporting options. In early 2018, an employee could file a formal complaint under the Judicial Conduct & Disability Act or under a court's EDR plan. Or they could take their complaint to a chief judge. Some employees told the Working Group that they perceived all of these choices as highly risky.

### **Expanding Avenues to Reporting and Assistance**

Employees frequently requested a clearly identifiable and independent person to whom employees could report misconduct and discuss other workplace concerns. Employees stressed that the person should be outside of the supervisory chain of command.

To address these concerns, the Judiciary established separate and independent reporting channels outside the court or unit where an employee works. These include the national Office of Judicial Integrity, headed by the Judicial Integrity Officer, and a Director of Workplace Relations in each circuit. The Directors of Workplace Relations and the Judicial Integrity Officer are workplace conduct specialists who bring wide-ranging experience to their roles. The Directors of Workplace Relations include former federal circuit court law clerks, Title IX officers, mediators, employment law attorneys, and EEOC administrative law judges.

The impact of these workplace officers for employees is immediate and positive. Today, when Judiciary employees need help with a workplace concern, they are not isolated or limited.

Their choices in whom they can confidentially contact and how they can address concerns are far more varied and effective than in 2018.

First, employees continue to be served by a court-level EDR coordinator. While there were EDR coordinators before 2018, changes in the Model EDR Plan greatly expanded the ways they can assist employees. They can counsel employees on informal resolution options and even assist in face-to-face conversations between employees and their coworkers or superiors. EDR coordinators now receive enhanced training to support their expanded role.

In addition to local EDR coordinators, employees now have two additional channels for confidential guidance that exist entirely outside their court's chain of command. The Office of Judicial Integrity provides confidential help, information, referral, and guidance to any Judiciary employee on options to address workplace harassment, abusive conduct, or other forms of wrongful conduct. Similarly, circuit Directors of Workplace Relations confidentially discuss issues with judges and employees (including law clerks, supervisors, managers, and court unit executives), provide information about policies and procedures, and help facilitate informal resolutions and support formal complaint procedures. Additionally, Directors of Workplace Relations coordinate and provide numerous training programs throughout their circuits, propose and assist in the implementation of various policy initiatives, and collaborate on best practices to foster consistency across the circuits and courts.

Directors of Workplace Relations serve all court units within a circuit—the court of appeals, district and bankruptcy courts, probation and pretrial offices, and federal public defender offices. Because the Directors of Workplace Relations are available to employees in all court units, they function as centralized and uniform resources for employees to learn about their

rights and options without fear that their supervisors or local leadership will be informed of their confidential conversations.

This approach is consistent with the EEOC Study recommendation that “Employers should offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment.”

This increased level of assistance has improved the experience of Judiciary employees, including those who work in chambers and other isolated settings. If an employee needs help or guidance, the assistance of trained professionals who understand workplace issues is available every step of the way. The request for help remains confidential and, if the employee chooses, completely independent of the court’s chain of command. By creating a national, regional, and local network to receive workplace conduct reports, assistance is fully accessible to all employees, who can choose the communication path that feels safest to them. These officers also provide the Judiciary with an internal network of experts who can spot systemwide workplace trends and are well-positioned to recommend additional improvements to the Judiciary’s policies, processes, and structures for addressing workplace issues. This approach is far more effective and comprehensive in providing help than one centralized national office.

### **Providing Informal Advice and Assisted Resolution**

Early conversations with Judiciary employees identified another factor that discouraged reporting of workplace misconduct.

The Judiciary has long had processes for addressing misconduct, and they carry potentially significant consequences, including referral to Congress for possible impeachment in the case of judges. But employees reported that these two processes—formal complaints under

the Judicial Conduct and Disability Act or through their court’s EDR Plan—often seemed excessive in relation to the more common, but less egregious issues of concern they faced.

As the 2018 Working Group report said: “The JC&D Act and the EDR Plans provide useful formal mechanisms for responding to serious cases of harassment and workplace misconduct, but the Working Group found that they are not well suited to address the myriad of situations that call for less formal measures. For example, an employee may be uncomfortable with a well-meaning supervisor’s familiarity or avuncular physical contact and seek advice on how to express discomfort. Or an employee may encounter crude or boorish behavior from a coworker and not want to file a formal complaint, but may want a supervisor to step in and curtail the conduct. . . . Neither the JC&D Act procedures nor the EDR Plans are designed to address those situations.”

The EEOC’s 2016 report said that “Increasing informal, confidential options within the complaint–response system is important . . . to create more supportive environments for those who have experienced sexual harassment.” Judiciary employees concurred that they feel more confident pursuing grievances when informal advice and multiple communication channels are available to them.

In accordance with these recommendations and the supporting research, the Judiciary undertook significant reforms to its complaint processes in 2019. Those reforms included changes to the Model EDR policy that emphasized informal resolutions as an important tool for addressing workplace conduct issues.

“Informal Advice” is an option that allows an employee to air their concerns and receive confidential advice and guidance from a local EDR Coordinator, a circuit Director of Workplace Relations, or the national Judicial Integrity Officer. This confidential guidance may include

providing information on the employee's rights, discussing ways to respond to the conduct, and providing an outline of potential options for how to proceed with their concerns. Having an informal advice channel also can overcome any perceived barriers to reporting in a more formal process.

The "Assisted Resolution" option available under court EDR plans is an interactive and flexible process that may include discussions with the source of the conduct, voluntary mediation, preliminary investigations including interviewing witnesses, and/or seeking a mutually agreeable resolution. Consistent with the EEOC Report, this option gives employees an informal method to resolve a workplace matter, typically at an early stage. At all stages, an employee retains the option of filing a formal complaint.

Early evidence indicates that the creation of multiple and confidential informal avenues for reporting has been successful in removing barriers to reporting. The Directors of Workplace Relations report that they spend more of their time on confidential informal advice than anything else, and that these interactions involve a range of workplace issues, not just harassment. Those confidential conversations have provided opportunities for a variety of interventions that would not have been possible if employees were uncomfortable either coming forward or engaging in a more formal process.

The interventions have included informal actions to stop inappropriate behavior, mediations and facilitated conversations, and investigations that resulted in settlements. These informal, confidential, and flexible options can counter-balance some of the power disparities inherent in the Judiciary. And again, pursuing these options does not preclude the filing of a formal complaint.

## **Clarifying and Strengthening Employee Workplace Protections**

The Working Group’s conversations with Judiciary employees revealed that some employees were unsure about the scope and meaning of certain provisions of the Judiciary’s policies and Codes of Conduct as they related to workplace conduct. The Judiciary collectively spent much time and energy clarifying and strengthening its policies and codes of conduct, as well as enacting significant enhancements to the Model EDR Plan.

For example, the Working Group learned that there was confusion and ambiguity about whether confidentiality obligations impeded the reporting of harassment. The Working Group stressed that the “confidentiality obligations [of Judiciary employees] must be clear so both judges and judicial employees understand these obligations never prevent any employee—including a law clerk—from revealing abuse or misconduct by any person.”

Judiciary employees and judges also said it was unclear whether they were supposed to report potential misconduct by workplace colleagues. The Codes of Conduct for employees and judges were thus amended to emphasize the responsibility to take appropriate action upon learning of potential wrongful conduct, and the Judicial Conduct and Disability Rules were expanded to include a mandatory “bystander” reporting obligation for judges.

Under the revised JC&D Rules, judges engage in misconduct if they fail “to bring ‘reliable information reasonably likely to constitute judicial misconduct’ to the attention of the relevant chief district judge or chief circuit judge.” This change is significant, as the information ultimately must be shared with chief circuit judges who, in addition to an individual complainant, have the authority to initiate a complaint against a judge.

The revised Model EDR Plan also provides that those managing or presiding over an EDR process must recuse if they witnessed, or were otherwise involved in, the alleged conduct.

It also requires recusal if the matter creates an actual or perceived conflict of interest. Where appropriate, it allows for a judge from a different court to be brought in to preside over a complaint. In January 2020, the Judiciary issued an internal EDR interpretive guide and handbook for all employees, managers, and judges, so that EDR claims can be processed in a uniform, conflict-free manner nationwide.

One of the more impactful policy enhancements to the Model EDR Plan is the addition of express protections against “abusive conduct,” defined in the Model EDR Plan as “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.” This protection affords Judiciary employees a specific standard and meaningful avenues for addressing workplace concerns that previously lacked recognition. It also extends beyond similar protections under federal employment laws, as it defines and prohibits workplace harassment even when it is not based on the recipient’s membership in a protected class.

As courts and employing offices have updated their EDR Plans to include a defined prohibition against abusive conduct, the bulk of inquiries and concerns among Judiciary employees have related to this type of non-discriminatory abusive conduct or other forms of uncivil behavior, according to the experience collected. Positively, employees are using the new informal avenues of Informal Advice and Assisted Resolution to raise, address, and resolve these concerns. This experience demonstrates that the improvements to the EDR process were both necessary and have made a difference.

### **Leadership, Training, and Trust**

Key elements tying the Judiciary’s workplace conduct program together are leadership and education. Chief judges, judges, and unit executives are actively engaged in training and

other initiatives, and they are leading by example through their personal commitment to maintaining an exemplary workplace. Since 2018, there has been a dramatic increase in training related to workplace conduct.

This has led to two beneficial developments. Knowledge about issues and resources related to workplace conduct has steadily grown as trainings have been conducted by the Federal Judicial Center, the Office of Judicial Integrity, and the circuit Directors of Workplace Relations. In addition, the Directors of Workplace Relations have become much better known inside courts and offices as they lead workplace conduct trainings. Direct interaction has made these workplace specialists reliable and trustworthy to court employees, and has opened up informal communication channels when help is needed.

Throughout the Working Group's early deliberations, an urgent need for training was expressed in all quarters. Survey responses and other feedback revealed that, prior to 2018, many employees were unaware of policies prohibiting misconduct, their rights under those policies, and to whom they could turn with workplace conduct concerns. In addition, some judges, managers, and supervisors were unsure of their obligations and responsibilities if they observed or otherwise became aware of misconduct.

Examples of specific national training requirements and initiatives include:

- The revised Model EDR Plan now requires annual EDR training to be provided for all employees, including law clerks, and judges.
- All EDR coordinators in the Judiciary must now be trained and certified on the information and skills necessary to fulfill their function, and the Office of Judicial Integrity has developed a uniform national training and certification curriculum for EDR Coordinators. This training is in addition to the annual training provided for all employees.



- Information on workplace conduct protections, resolution options, and resources is provided as part of orientations for new law clerks, recently appointed judges, and new chief judges.
- The Federal Judicial Center regularly organizes educational programs for judges, court unit executives, managers and supervisors, and Judiciary staff.
- The Federal Judicial Center also has conducted trainings and programs on respect in the workplace, civility, implicit bias, and other workplace topics.

Extensive training also is being offered at the circuit level. As an example, one circuit has developed special initiatives focusing on law clerks—expanded law clerk orientation agendas that include sessions on discrimination and harassment policies and employment dispute procedures, and sample chambers checklists on workplace expectations. These resources also explain how law clerks can seek help.

Increased education about the workplace makes employees aware of their rights, makes judges more aware of their obligations and responsibilities, reinforces behavioral expectations, and sends a clear message that these issues matter and are taken seriously. When employees, including law clerks, are informed—early, clearly, and repeatedly—of their rights and options and of the expectations and obligations placed on judges and Judiciary employees, the Judiciary’s commitment to a fair and transparent workplace is reinforced.

While imparting knowledge about workplace conduct is essential, the trainings also are building trust in, and use of, the system that has been created. The Directors of Workplace Relations work across their circuits, providing training for all levels of Judiciary employees in different court units. The Directors of Workplace Relations and Judiciary employees are forming direct channels of communication with one another. Such connections are vital in letting employees know there is a reliable person to turn to if needed.

The Judicial Integrity Officer, chief judges, and Directors of Workplace Relations are seeing the impact of increased communications and training through additional inquiries about possible misconduct. Many employees have stated that these trainings alerted them to the inappropriate nature of certain behaviors and to the resources available to address them.

By creating a training network with local as well as national and circuit level resources, the enhanced commitment to an exemplary workplace is permeating courts and other Judiciary offices. The Working Group believes that broad changes at the local level, supported by local and circuit training, are the best path to a sustainable and positive environment for federal Judiciary employees.

### **Finding Solutions That Work**

Testifying before Congress in 2020, a co-author of the EEOC's 2016 study on sexual harassment noted that "two essential components of a successful effort to shape workplace culture are leadership from the top and a focus on the unique needs of a particular workplace."

Finding solutions that work requires consideration of the unique culture and governance of a particular workplace. Any effort to promote an exemplary workplace must take into account the Judiciary's dispersed, regionalized governance structure. Individual courts possess significant administrative autonomy, including the authority to address workplace conduct matters.

Chief Justice Roberts has demonstrated decisive leadership from the top, and the Judiciary and Workplace Conduct Working Group have been well served by his commitment to an exemplary workplace. In the federal Judiciary, "leadership from the top" requires leadership from many "top" individuals, not just one national leader or agency. At a minimum, this includes the chief judge of each court and also the head of each court unit. The personal commitment of

judges and court leaders sends a powerful signal that everyone must support a safe and civil workplace.

The policies and procedural changes adopted since 2018 took careful account of the Judiciary's decentralized governance and culture. By establishing Directors of Workplace Relations at each circuit, by training and empowering EDR coordinators in each court, and by requiring the courts to provide annual training for every judge and employee, among other things, the Judiciary's approach is making itself known, available, and trusted in every court and Judiciary office. This comprehensive approach, operating locally, regionally by circuit, and nationally, is supporting necessary culture changes that can sustain themselves over time. Judges and other court leaders are actively engaged, and employees are learning that they can discuss inappropriate workplace behavior, and receive confidential guidance, without incurring professional risk.

Change is happening, and it is happening at the courthouse — the place where employees work and where the authority to address workplace issues actually resides.

In its early discussions, the Working Group concluded that an approach that empowers employees to bring complaints in their local courthouses or circuits is more likely to be used and to be effective than a single national oversight body. For many years, the Judiciary has long had a formal complaint process. But the historic lesson is that without on-the-ground training and counseling, the Judiciary's formal complaint process did not inspire trust among employees to use it.

As employees described their views and recommendations to the Working Group and in surveys, it became apparent that proposals for a national commission to investigate workplace complaints could suffer from the same trust and safety issues that historically limited employee

use of the Judiciary's formal workplace complaint procedures. Further, the employees were not in favor of an outside body to oversee workplace issues.

Without employee trust and participation, any workplace conduct program is at high risk of failure. And in the Judiciary, that means any proposed program to report and prevent abuse must earn trust in the local workplace. That is where the investment has been made, and that is where the important work is being done. As the Working Group's 2018 recommendations have been adopted, the necessary trust is taking root.

The Working Group believes that the Judiciary's response to workplace conduct concerns is succeeding, locally, by circuit, and nationally. While the Judiciary has made significant strides and improvements, and has done so expeditiously, some changes don't occur overnight. There is a continuing effort to monitor what we have done, and we expect some of the cultural changes will need time to take root. That said, we do not condone misconduct at any level. The Working Group recommends that the Judiciary's strategy for an exemplary workplace continue on its current course.

## **SECTION 2: Recommendations for Additional Improvements**

Workplace conduct programs in any workplace must always evolve to address a constantly changing workforce. The Judiciary, like any workplace, must continue to take stock of what it has accomplished and find those areas where more can be done. Section 2 contains nine recommendations to address further areas of improvement. Where needed, the Working Group asks that these recommendations be considered by appropriate committees of the Judicial Conference.

#### *A. Measure the Use and Effectiveness of Existing Procedures*

Now that the Judiciary has implemented the various changes in policies, procedures, and education described in this report, the time is appropriate to assess the workplace climate in the Judiciary and the effectiveness of the changes in addressing workplace conduct issues. The Working Group has two recommendations in this regard.

**Recommendation 1: Conduct a nationwide climate survey**, disseminated at regular intervals to all Judiciary employees, to assess the workplace environment and to provide insight into the prevalence of workplace conduct issues and the impact and effectiveness of the improvements the Judiciary has made to its policies and processes.

**Background:** Several circuits and individual courts have conducted their own climate surveys or workplace environment assessments, and the resulting information has proven useful for their respective populations. A uniform climate survey across the Judiciary as a whole can provide additional valuable insight into not only the prevalence of certain types of workplace conduct issues in the Judiciary, but also the impact and effectiveness of the numerous improvements the Judiciary has made to its policies and processes since 2018.

The Working Group has partnered with the Federal Judicial Center to develop a draft Judiciary climate survey. The Working Group recommends that the Federal Judicial Center administer and disseminate the survey to all Judiciary employees, managers, unit executives, and judges for their voluntary participation.

The draft climate survey would:

- provide a general picture of the federal Judiciary workplace environment, including employee assessments of how the Judiciary's overarching commitment to civility, respectfulness, equity, diversity, and inclusion have been realized;

- help the Judiciary understand the nature and extent of any wrongful conduct employees may have experienced;
- explore whether wrongful conduct has been disclosed or reported and identify any potential barriers to reporting;
- assess the knowledge of and satisfaction with how reports of wrongful conduct are handled;
- assess the effectiveness of confidential advice provided by the Office of Judicial Integrity and Directors of Workplace Relations; and
- gather information and feedback that will help improve the Judiciary’s policies, procedures, and education and training initiatives.

**Recommendation 2: Augment annual EDR-related data collection** to include data related to Informal Advice contacts, while ensuring that confidentiality is protected.

**Background:** Judicial Conference policy currently requires the annual collection of certain data regarding use of the EDR process throughout the Judiciary. Judiciary EDR Plans provide three distinct options for addressing instances of wrongful conduct: (1) Informal Advice, (2) Assisted Resolution, and (3) Formal Complaint. Only the latter two are currently the subject of nationwide data collection.

The Working Group recommends that, in addition to current EDR-related data collection, the Judiciary also collect anonymized data regarding the number of Informal Advice contacts received by the Office of Judicial Integrity and circuit Directors of Workplace Relations. Data should be collected at a high level (i.e., only the *number* of contacts), to avoid even the perception that the strong confidentiality protections attached to Informal Advice might be lessened by the collection of court- or allegation-specific data. This will provide a “usage rate” for how often the Judiciary’s new positions at the circuit and national level are being used by employees for confidential advice and guidance.

*B. Strengthen Policy and Procedure*

**Recommendation 3: Enhance the Formal Complaint process by revising the Model EDR Plan to specify that an employee complaint must be overseen by a Presiding Judicial Officer from outside the court from which the complaint originated.**

**Background:** The Model EDR Plan includes a number of procedural safeguards to ensure that the informal and formal EDR options for addressing workplace conduct concerns are consistent, unbiased, and effective. Among these safeguards are robust recusal requirements.

Moving the investigative and adjudicative functions within the Formal Complaint process to a different court could further enhance the perceived impartiality of the process. The Working Group believes that employee confidence in the Formal Complaint process could be strengthened if the Model EDR Plan were revised to require the role of Presiding Judicial Officer to be outside of the court from which the complaint originated.

**Recommendation 4: Develop an express policy regarding romantic relationships** that exist or develop between employees where there is a supervisory or evaluative relationship. The policy should apply to all Judiciary employees and judges.

**Background:** Current Judicial Conference policy specifically prohibits instances of nepotism and favoritism, and relevant advisory opinions by the Committee on Codes of Conduct provide further guidance for the application of existing policies to various, more nuanced situations. Some non-Judiciary workplaces have adopted an express policy for both pre- and post-appointment situations in which romantic relationships exist or develop, particularly between individuals where there is a supervisory or evaluative relationship.

The Working Group believes an express Judiciary-wide policy in this area is necessary and suggests that it should apply to all Judiciary employees, managers, unit executives, and

judges. The Working Group recommends that the Office of Judicial Integrity work with others in the Administrative Office and relevant advisory councils to further examine the issue and develop a proposed policy for consideration by the relevant Judicial Conference committees.

**Recommendation 5: Assess incorporation of additional monetary remedies as part of the EDR complaint process.**

**Background:** The Model EDR Plan applies to Judiciary employees the protections accorded to many federal employees under the federal employment statutes. Certain monetary remedies and attorney fees are already available within the EDR complaint process through its incorporation of the Back Pay Act. However, the Judiciary is one of the few workplaces that does not include the additional monetary remedies available to employees in other agencies or organizations, including other federal employees. With enhanced protections and improved policies now in place through a significantly revised Model EDR Plan, the Working Group recommends that the Judiciary assess incorporation of additional monetary remedies into the EDR framework.

*C. Expand Communication*

**Recommendation 6: Direct the Office of Judicial Integrity, with the assistance of the Directors of Workplace Relations, to issue an annual Judiciary workplace conduct report.**

**Background:** As the Judiciary's Strategic Plan states, "Public trust and confidence and workforce morale and productivity are enhanced when the Judiciary provides an exemplary workplace for everyone." One necessity for public trust and confidence is regular reporting on the progress and evolving challenges of fostering an exemplary workplace. The Working Group believes that the Office of Judicial Integrity can help pursue this goal through the publication of an annual report.



## **Recommendation 7: Expand Outreach and Engagement.**

**Background:** As this report and the Working Group’s June 2018 report make clear, the Working Group’s efforts have benefited immensely from interactive dialogue with numerous Judiciary employees, including law clerks, court executives, and employees in defender offices, probation and pretrial services, and a wide range of administrative positions. In August 2021, that outreach was expanded by way of a letter sent to approximately 200 law schools across the country, highlighting the Office of Judicial Integrity and circuit Directors of Workplace Relations as confidential avenues for law school administrators to seek guidance and/or report concerns of which they become aware.

The Working Group encourages circuits to continue, institute, or expand interactive-listening efforts with focus groups and possibly advisory bodies to ensure that they fully understand employee concerns. The Working Group, in turn, will increase its own emphasis on interactive listening, by inviting employee groups to meet directly with the Working Group, and also to partner with circuits to attend circuit-level discussions.

### *D. Additional Recommendations*

**Recommendation 8: Strengthen annual EDR training** by revising the Model EDR Plan to emphasize that courts and employing offices have a responsibility to ensure that EDR training is offered and accessible to all employees and judges on an annual basis, and to take affirmative steps to ensure completion.

**Background:** Under existing policy, the Model EDR Plan currently requires courts and employing offices, including federal public defender offices, to conduct training annually for all judges and employees, including chambers staff, to ensure that they are aware of the rights and obligations under the EDR Plan and the options available for reporting wrongful conduct and

seeking relief. However, there is no requirement that courts and employing offices ensure that all employees attend training that is offered or that they keep track of who has completed training each year.

The Working Group believes the Model EDR Plan's current training efforts could be further strengthened if courts and employing offices ensured that all their employees not only have access to but also complete EDR training on an annual basis. Tracking and ensuring consistent completion of annual training is especially important for employees in term positions, such as law clerks, who may serve in the Judiciary for only a year or two.

**Recommendation 9: Develop a system for regular review of the Judiciary's workplace conduct policies to ensure comprehensive implementation across courts and circuits.**

**Background:** The Working Group emphasized in its 2018 report the value of systemic institutional review and recommended further steps be taken to ensure the consistent application of workplace conduct policies across the Judiciary. A system for regularly assessing the comprehensive implementation of the Judiciary's workplace conduct policies achieves this goal.

The resources necessary for conducting such regular assessments were provided with the creation of the Office of Judicial Integrity and the Directors of Workplace Relations. These professionals already provide training, guidance, and programmatic support for courts and employing offices throughout the year, and are well-positioned to reinforce ongoing efforts by the Judiciary to ensure an exemplary workplace for employees.

## APPENDIX A

### Federal Judiciary Workplace Conduct Working Group Timeline

**December 31, 2017:** In his [Year-End Report on the Federal Judiciary](#), Chief Justice John G. Roberts, Jr., calls for creation of a working group to undertake “a careful evaluation of whether [the Judiciary’s] standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure exemplary workplace conduct for every judge and every court employee.”

**Early January 2018:** The [Federal Judiciary Workplace Conduct Working Group](#) is established. It is chaired by James C. Duff, then director of the Administrative Office of the U.S. Courts (AO), and among its members are chief judges, district and appeals court judges, a circuit executive, the current Director of the Federal Judicial Center, and the counselor to the Chief Justice.

**January to May 2018:** The Working Group holds a series of meetings with current and former law clerks, a cross-section of Judiciary employees, Judiciary advisory councils, industry experts, and the authors of a 2016 report from the Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace. They review employee surveys and set up a comment mailbox on the Judiciary’s public website for employees to offer suggestions, anonymously if desired.

The Judiciary takes several [early actions](#) to improve workplace protections. Confidentiality provisions in the law clerk handbook are revised to clarify that they do not prohibit reports of misconduct by judges, supervisors, or any Judiciary employee. A session on sexual harassment and other workplace conduct issues is added to the training program for newly appointed judges.

**June 1, 2018:** The Workplace Conduct Working Group issues [a report](#) with more than 30 detailed recommendations for improvements in policies and procedures.

**August 2018:** The U.S. circuit courts begin the process of recruiting and hiring circuit Directors of Workplace Relations to provide confidential guidance and assistance to employees within the circuit, assist in resolving workplace issues (including those involving both mediation and workplace investigations), and offer training on identifying and reporting workplace misconduct. The Tenth Circuit hires the first Director of Workplace Relations.

**September 13, 2018:** Based on the Working Group’s recommendations, the Judicial Conference approves several of the changes to the Model Employment Dispute Resolution plan (EDR) – to cover interns and externs and extend the time for initiating EDR complaints from 30 to 180 days. A list of [proposed amendments](#) is published for public comment.

**October 2018:** An EDR Working Group is appointed and begins work on additional revisions to the Model EDR Plan. The working group consists of judges, court executives, and Judiciary employees.

**October 30, 2018:** Judicial Conference committees hold a [public hearing](#) on the proposed changes to the judges' Code of Conduct, the employees' Code of Conduct, and the Judicial Conduct and Disability Rules in Washington, DC.

**December 2018:** Based on recommendations from the Working Group, the Judiciary hires its first national [Judicial Integrity Officer](#) to provide confidential advice and guidance on conflict resolution, mediation, and formal complaint options. Local court EDR coordinators serve as a resource for employees within their respective courts, while circuit Directors of Workplace Relations and the national Office of Judicial Integrity serve as additional points of contact from whom employees can seek guidance and assistance outside their court's chain of command.

**January 2019:** The Judicial Integrity Officer begins holding twice monthly meetings with circuit Directors of Workplace Relations to discuss best practices, trends, and training needs. Within the first months of 2019, the Office of Judicial Integrity develops a workplace conduct section for the Judiciary's intranet to make information easy to find and to provide a portal for employees to submit anonymous reports. Throughout 2019 and early 2020, the Judicial Integrity Officer travels extensively around the country to educate judges, managers, and employees about the Judiciary's standards for workplace conduct and the EDR options for resolution.

**March 12, 2019:** The Judicial Conference [approves](#) the Working Group's recommendations for changes to the Codes of Conduct for judges and Judiciary employees, and to the Judicial Conduct and Disability Rules. These include: 1) expressly stating that judges and judicial employees should neither engage in nor tolerate workplace misconduct and that workplace harassment is within the definition of judicial misconduct; 2) emphasizing that judges and judicial employees have a responsibility to take appropriate action upon learning of potential workplace misconduct and including within the definition of judicial misconduct a judge's failure to report or disclose misconduct; 3) further clarifying that confidentiality obligations do not preclude reporting or disclosing judicial misconduct; 4) clarifying that judicial misconduct includes retaliation against employees for reporting or disclosing misconduct; and 5) recognizing that the Judicial Conference and judicial councils have the authority to assess potential institutional issues related to a judicial misconduct complaint, such as an analysis of conditions may have enabled misconduct or prevented its discovery, even in cases where a subject judge resigns.

**September 17, 2019:** The Judicial Conference approves a new [Model EDR plan](#) that expands the options for addressing wrongful workplace conduct. The new plan includes definitions and examples of wrongful conduct; three flexible options for addressing workplace conduct issues; flowcharts that explain EDR rights and options; and training and certification requirements for court EDR coordinators. The [changes](#) were all recommended by the Working Group to improve the Judiciary's procedures for identifying and correcting wrongful conduct and providing more informal and flexible ways to report and address workplace conduct issues.

**September 2019:** The Working Group issues a [status report](#) on the actions taken on its recommendations and notes that "nearly all" of them have been implemented through a concerted effort by the Judicial Conference, the courts, the AO, and the Federal Judicial Center.

**January 2020:** The Office of Judicial Integrity and the EDR Working Group issue a 150-page Employment Dispute Resolution Interpretive Guide and Handbook for employees, managers, and judges to foster uniform and effective processes to resolve workplace conduct issues through the EDR options for resolution.

**July 2020:** An online workplace conduct training course for EDR coordinators is distributed to the courts. All EDR coordinators must pass tests in five modules to become certified. Amidst the global pandemic, the Office of Judicial Integrity and Directors of Workplace Relations continue to provide workplace conduct training to courts and judicial employees remotely via Zoom and Teams.

**August 2020 to July 2021:** Additional training programs are developed; circuits continue outreach efforts to both internal and external stakeholders; specialized training and tailored resources are developed for law clerks; and websites are updated to provide clear information on workplace resources.

**August 2021:** All of the circuits have a [Director of Workplace Relations](#) in place to provide confidential guidance and assistance to employees within the circuit and to provide training.

A letter is sent to every American Bar Association-accredited law school in the country, explaining how the Office of Judicial Integrity and Directors of Workplace Relations can assist law clerks and law school administrators, and emphasizing that these officials offer a confidential forum for law schools to seek guidance and report workplace conduct concerns when they become aware of them.

Nearly all courts adopt the revised EDR plan. The Working Group and the Director of Workplace Relations Advisory Group continue to meet regularly to monitor and assess workplace conduct matters throughout the Judiciary.

## **APPENDIX B**

### **Major Actions in 2020 and 2021**

The improvements implemented throughout 2020 and 2021 include the following:

- The Judiciary has in place a strong network of professionals who are expert in matters of workplace conduct and are outside of the traditional court chain of command to support and provide services to both employees and employing offices. Key to this network are the Directors of Workplace Relations, and every circuit now has a Director of Workplace Relations (or analogous position). These positions focus on workplace conduct issues and serve all courts and employing offices within a circuit.

In addition, the national Office of Judicial Integrity, headed by the Judicial Integrity Officer, was established by the Administrative Office to also serve as an independent avenue for employees and employing offices. The Office of Judicial Integrity collects information about the use of EDR processes nationally, monitors workplace issues to identify trends, and provides leadership on policy initiatives. The Office of Judicial Integrity is in the process of expanding to include additional staff to assist with national efforts. Together, this network of individuals provides confidential advice and guidance to employees, managers, and judges; supports and facilitates EDR processes; coordinates training programs; proposes and assists in the implementation of policy initiatives; and collaborates on best practices to foster consistency across the circuits and courts.

- Judiciary employees benefit from a wide range of outreach and engagement opportunities provided by Directors of Workplace Relations. The Office of Judicial Integrity and Directors of Workplace Relations provide training to clearly communicate employee rights and the workplace conduct process, and disseminate resources through websites, newsletters, posters, and other outreach initiatives. A recent virtual training series in November and December 2021 was viewed live by over 6,000 employees and judges, and another tailored for chambers staff was attended by nearly 100 staff, including law clerks and judicial assistants. Several circuits have formed workplace conduct committees, diversity and inclusion task forces, focus groups, and employee advisory groups, such as those specific to law clerks and probation/pretrial employees, to garner valuable feedback and inform future initiatives.
- The Judiciary has taken active steps to establish clear and trusted lines of communication with law schools to ensure they are aware of the Judiciary's workplace protections and available processes for addressing concerns and highlighting the Office of Judicial Integrity and Directors of Workplace Relations as confidential avenues for law school administrators to seek guidance and/or report concerns of which they become aware. This has resulted in outreach from law schools seeking guidance or inviting the Office of Judicial Integrity or Directors of Workplace Relations to provide presentations or training

to their staff or students regarding the Judiciary's workplace conduct policies and processes.

- The Federal Judicial Center, in concert with the Office of Judicial Integrity and Directors of Workplace Relations, has increased the availability and dissemination of workplace conduct training to the entire Judiciary – judges, law clerks, chamber staff, and other staff – tailored to their roles and responsibilities. The Federal Judicial Center provides sessions that address various aspects of workplace conduct at orientations for new judges and through continuing education programs. Virtual and in-person programs, webinars, and podcasts for new and current Judiciary employees address topics such as preventing workplace harassment, civility in the workplace, dealing with difficult situations, and the codes of conduct.
- The strengthened and streamlined Model EDR Plan has been adopted by every circuit and virtually all courts and employing offices. The Model EDR Plan includes enhanced policy protections, including an express prohibition for abusive conduct, covers all paid and unpaid employees, provides specific informal avenues (Informal Advice and Assisted Resolution) for reporting and addressing wrongful conduct, and provides a more streamlined formal complaint process and allows for more time to file a formal claim. Employees are aware of their enhanced protections regarding abusive conduct and are using the EDR options to effectively address those concerns. The addition of informal advice and assisted resolution has broken down barriers to reporting as indicated by the increased use of these processes and has allowed issues to be resolved more quickly. This demonstrates that the improvements to the EDR process, addressing this newly defined category of wrongful conduct and providing flexible options for resolution, were both necessary and have proven impactful.
- A new Model Federal Public Defender Organization EDR Plan was developed and approved by the Judicial Conference, designed to address the issues unique to the federal public defender organization community, including: the distinct employment relationship between the federal public defenders and their employees, their role as legal representatives with ethical obligations to clients on whose behalf they appear in court, and the need to mitigate concerns regarding access to sensitive information. The foundational policy protections and general processes, timelines, and standards for reporting wrongful conduct, filing complaints, conducting investigations, and achieving resolution under this plan remain consistent with those set forth in the Judiciary's Model EDR Plan previously adopted.
- New requirements in the Model EDR Plan have helped to ensure that every court and employing office has at least two trained and certified EDR coordinators. An online training course must be taken and passed by EDR coordinators in order to become certified, and over 400 EDR individuals have been certified to date.

- The EDR Interpretive Guide and Handbook (EDR Handbook) was prepared by the Office of Judicial Integrity, in collaboration with the Directors of Workplace Relations, and made available Judiciary-wide, but especially useful to EDR coordinators, Directors of Workplace Relations, unit executives, judges, and others directly involved in or who support the formal and informal EDR processes. The EDR Handbook provides detailed explanations for each of the EDR options for resolution, step-by-step directions for each process, information about the remedies available under the EDR Plan, proactive and responsive steps for safeguarding the rights and protections afforded under the EDR Plan, and more.
- Policies for the provision of interim and permanent relief related to allegations of wrongful conduct were clarified and streamlined. Courts and employing offices can provide immediate interim remedies such as temporary reassignment or relocation as allegations of wrongful conduct are being investigated. To streamline the process, the Judicial Conference delegated to the Committee on Judicial Resources the authority to more expediently grant permanent relief without diminution of an employee's salary, grade, and employment status.
- The Codes of Conduct – for judges, employees, and federal public defender office employees – were modified to ensure that judges and employees understand that confidentiality obligations should never prevent any employee, including a law clerk, from revealing abuse or reporting misconduct by any person. In addition, the Codes of Conduct and Judicial Conduct and Disability Rules were modified to provide clear obligations for judges and employees to take appropriate action upon learning of potential misconduct. Extensive training, highlighting these changes, has been conducted for judges and employees throughout the Judiciary.