

Meet the First Responders for Judicial Workplace Challenges

2022 NALP ANNUAL EDUCATION CONFERENCE

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Introductions

➤ **Liz Peck**

Yale Law School
Director, JD Counseling and Coaching

➤ **Michael Henry**

Administrative Office of the U.S. Courts
Judicial Integrity Officer

➤ **Mary Graber Thompson**

United States Courts, Fifth Circuit
Director of Workplace Relations

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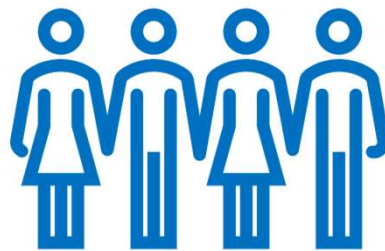
Overview

- People 
- Protections 
- Policies 
- Processes 

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Overview

- **People**
- Protections
- Policies
- Processes



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People

➤ **Judicial Integrity Officer (JIO)**

- Employed by the Administrative Office and reports to the Director of the Administrative Office

➤ **Directors of Workplace Relations (DWRs)**

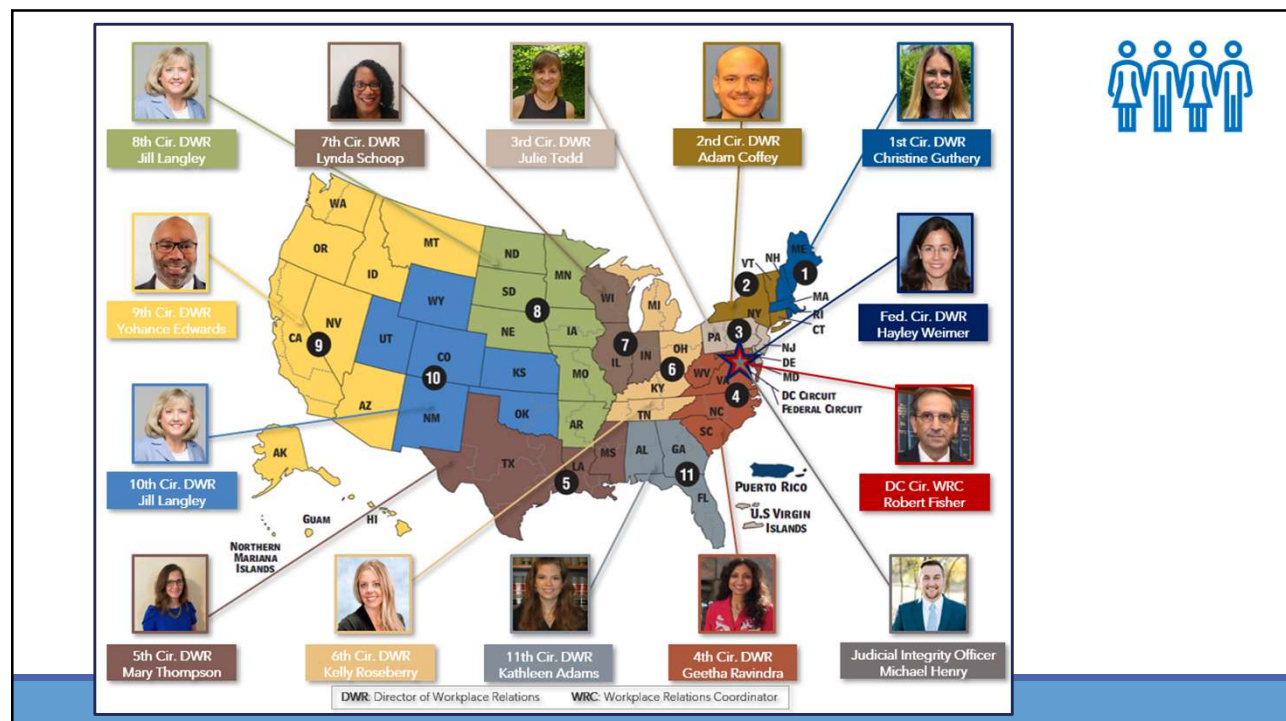
- Employed by the Circuit and report to the Circuit Executive

➤ **Employment Dispute Resolution (EDR) Coordinators**

- Employed in the local court

➤ **We work together**

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Overview

- People
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Protections



Judiciary employees, including law clerks and interns, are protected from:

- Discrimination
 - based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), and disability
- Discriminatory harassment
 - based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), and disability
- Abusive conduct
 - pattern of demonstrably egregious and hostile conduct not based on protected categories
- Retaliation
 - including whistleblower protection

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Overview

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Policies



- Codes of Conduct for U.S. Judges and for Judicial Employees
(Codes of Conduct)
- Employment Dispute Resolution Plan
(EDR Plan)
- Rules for Judicial-Conduct & Judicial-Disability Proceedings
(JC&D Rules)

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Policies: Codes of Conduct

- Codes of Conduct for U.S. Judges and for Judicial Employees
 - Apply to judges and judicial employees
 - Set standards and expectations for conduct in judicial workplaces
 - Do not have specific enforcement mechanism

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Policies: EDR Plan

- Employment Dispute Resolution Plan
 - Prohibits wrongful conduct by judges and judicial employees
 - Wrongful conduct includes discrimination, discriminatory harassment, abusive conduct, and retaliation
 - Provides options for employees and interviewed applicants to address concerns about wrongful conduct
 - Informal and formal options
 - Provides remedies for wrongful conduct

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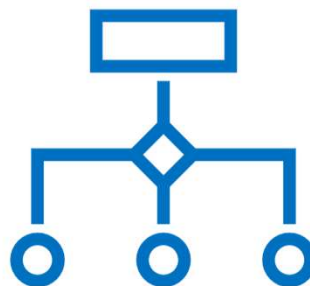
Policies: JC&D Rules

- Rules for Judicial-Conduct & Judicial-Disability Proceedings
 - Prohibit misconduct by judges
 - Misconduct includes discrimination, abusive or harassing behavior, and retaliation
 - Allow anyone to:
 - file a complaint regarding a judge's misconduct or disability
 - bring information to a chief judge (via a DWR or otherwise) regarding a judge's misconduct or disability
 - Allow for informal resolution or formal action by chief circuit judge and/or circuit judicial council

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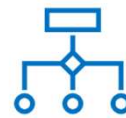
Important Aspect of Processes: Confidentiality



- Level of confidentiality depends on
 - Reporter's wishes
 - Process utilized
- Confidentiality always has two rare and limited exceptions:
 - Threat to someone's safety or security
 - Threat to the integrity of the Judiciary 
- When disclosure is required or requested:
 - Information shared only with those who need to know
 - Only necessary information is shared

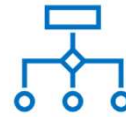
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Important Aspect of Processes: Considerations for Reporters



- **Reporter has control**
 - Who are you reporting to?
 - What are you disclosing?
 - What level of detail do you want to provide?
- How much confidentiality do you want?
 - Confidentiality determined by above
 - Two limited exceptions
- What are the outcomes you are seeking?
 - Possible outcomes are linked to process you select

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Processes

- Informal Advice
- Informal Reporting Options
- "Formal" Options

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Processes: **Informal Advice**

- People
 - Circuit Director of Workplace Relations (DWR)
 - National Judicial Integrity Officer (JIO)
 - Court EDR Coordinator (EDRC)
- Ask questions
- Understand when you might want to use different options
- Absolute confidentiality
 - Two limited exceptions
 - If disclosure is required, every effort will be made to protect reporter's identity
- No formal action taken - reporter/employee retains control

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Processes: **Informal Reporting (1)**



- Reporter has control of where they report, including to DWR or JIO
 - Reporter may report anonymously
- Reporter has control of what they disclose and in what level of detail
 - Report may or may not disclose the alleged victim
 - Report may or may not disclose the alleged bad actor
 - Report may or may not disclose all details of the conduct

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Processes: **Informal Reporting (2)**



- Reporter may request what action they want to see taken
 - Potential next steps depend on reporting choice and/or situation
- Range of options from no action to discussion with chief circuit judge
- Informal report to chief circuit judge (JC&D Rule 5)
 - Directly or shared via EDRC, DWR, or JIO
 - Chief circuit judge decides potential next steps, if any
 - Reporter controls level of disclosure and confidentiality

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Processes: **"Formal" Options**



- File Request for Assisted Resolution under EDR Plan
 - Work with court to determine resolution
- File Formal Complaint under EDR Plan
 - Federal judge oversees and adjudicates Complaint
- File Complaint under Judicial Conduct & Disability Act
 - Decided by chief circuit judge or Judicial Council
- EDR and JC&D options can run concurrently
- Confidentiality: need to know, only necessary info

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Introduction to next section

- Case Study: Sam
- Role Play: Jordan



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Case study: Sam - Scenario

A law school career advisor gets a call from Sam, a graduate who is a law clerk for Judge Blue. Sam tells the advisor that the judge makes them feel uncomfortable. The judge makes comments about what Sam is wearing and sometimes Sam feels that the judge sits or stands too close to Sam.

The advisor calls the Circuit DWR and shares Sam's story, not identifying Judge Blue or Sam. The advisor tells DWR that they asked for more detail, but Sam wouldn't elaborate. The advisor asks the DWR how they can help Sam.



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Case study: Sam – Act 1

- DWR will explain the processes provided by the EDR Plan and the JC&D Rules, including the confidentiality provisions in each process
- DWR will not tell anyone that the advisor has spoken to them
- No one will reach out to Judge Blue
- No action can or will be taken
- Goals
 - Provide information to advisor and Sam
 - Create trust so clerk will feel comfortable talking with the DWR
 - Adds to DWR's knowledge of potential issues in the circuit

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Role Play: Jordan – Scenario

Jordan was a law clerk for Judge Orange. At the end of their clerkship, Jordan emailed the clerkship coordinator at their law school. The email said, "Judge Orange yelled at me every day, and it was a terrible year. I don't want anyone else to have to go through that." Jordan doesn't want their identity disclosed but wants the Judiciary to know in case something can be done about this.

The advisor calls the JIO and says, "A law clerk who just completed a clerkship emailed me to tell me that the judge yelled at them every day and that the clerk had a terrible year. The clerk does not want to be identified. How can I help this former clerk?"

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Role Play: Jordan – Act 1

Informal Advice: The clerkship coordinator calls the Judicial Integrity Officer.

- JIO will ask questions
 - Is Jordan seeking a particular path or outcome?
 - Is the clerkship coordinator willing to have their school identified as the source?
- JIO will explain that the chief circuit judge has authority to take action
- JIO will offer to connect coordinator/Jordan with DWR in Circuit
- JIO will respect confidentiality requests
- Next steps depend on wishes of Jordan and clerkship coordinator



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Role Play: Jordan – Act 1 Debrief

- Information-gathering phase based on exact circumstances
- Coordinator may need to take questions back to Jordan
- School has choice not to identify itself
 - Understandable reasons that school might or might not want to identify
 - Identification can increase credibility
- JIO is asking questions to advise coordinator and Jordan about options
- Entirely confidential conversation
- The coordinator's goals
 - be a bridge between Jordan and people/resources
 - increase Jordan's comfort with confidentiality
 - support Jordan in making a fully informed decision



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Role Play: Jordan – Act 2

Informal Advice: Jordan talks to the DWR of the Circuit.

- DWR will explain confidentiality and impartiality
- DWR will ask Jordan to tell them the situation
- DWR will ask questions
 - Is Jordan seeking a particular path or outcome?
 - Is Jordan willing to be identified as the source of this information?
- DWR will explain EDR options
- DWR will explain JC&D options
- Next steps depend on wishes of Jordan



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Role Play: Jordan – Act 2 Debrief (1)

- Informal Advice: First Steps
- Highlights the value of confidential conversation with DWR
 - Uniqueness and complexity of situations
 - Opportunity to ask follow-up questions and seek clarification
 - Understanding of various options available
 - Can begin a series of conversations
- What DWR and chief circuit judge can do depends on confidentiality requested...



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Role Play: Jordan – Act 2 Debrief (2)

- Informal Advice: What Steps can DWR Take?
- DWR can
 - Aggregate multiple confidential reports and bring aggregated information to chief circuit judge
 - Adapt training to address issues raised confidentially
 - Serve as sounding board for clerk to empower clerk to take further steps
 - With permission, consult with other judges or courthouse staff
 - With permission, bring specific issue to chief circuit judge



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Role Play: Jordan – Act 2 Debrief (3)

- Informal Advice phase: Chief Circuit Judge's Role /Possible Next Steps
- Considerations
 - The more specific and credible the allegations, the more the chief circuit judge can do to begin inquiry
 - Chief circuit judge's actions also depend on severity of alleged conduct
- What the chief circuit judge can do:
 - Conduct an inquiry
 - Seek an informal resolution
 - Identify formal misconduct complaint



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Tips for Counselors

- Listen empathetically and without judgment
- Ask clerk what they would like to see happen
- Tell clerk about the people in the Judiciary who they can talk to confidentially
- Provide clerk with handouts from today's program (Four Ps)
- Ask clerk:
 - if they would like you to refer them to their DWR
 - if they would like you to discuss the issue with the DWR
- Do not discourage clerk from connecting with people and resources
 - Confidentiality will protect clerk and school
- If you receive multiple negative reports about a judge, consider contacting a DWR or the JIO

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Key Takeaways

- You can always speak confidentially with a DWR or the JIO
 - without disclosing a particular issue or involved person(s)
 - to get feedback, guidance, and resources
- DWRs and the JIO can aggregate confidential information
 - for anonymized reporting
 - to identify issues and trends
- DWRs and the JIO can use information to inform training programs
- DWRs and the JIO need to hear your concerns
 - Even confidentially
 - Even without formal action
 - Give them opportunity to provide informal advice
 - Give them opportunity to address concerns in creative ways