

Meet the First Responders for Judicial Workplace Challenges

Tips for when a federal law clerk comes to you with an issue

- ☐ Listen sensitively
- ☐ Ask the law clerk what they would like to see happen
- ☐ Tell the law clerk who their confidential resources in the Judiciary are:
 - ☐ Circuit Director(s) of Workplace Relations (DWR)
 - ☐ Judicial Integrity Officer (JIO)
 - ☐ EDR Coordinator(s)
- ☐ Provide the law clerk with a copy of:
 - ☐ People - Protections - Policies - Processes
 - ☐ People - Federal Judiciary Workplace Resources Map
 - ☐ Protections and Policies - Relevant Excerpts Regarding Conduct
 - ☐ Processes - Considering Your Options
- ☐ Ask the law clerk if they would like you to refer them to their DWR
 - ☐ If not, ask the law clerk if they would like you to discuss the issue with the DWR, and obtain more information, without identifying the clerk
 - ☐ If the law clerk is hesitant, suggest that the law clerk think about whether they would be comfortable talking to the DWR (or having you do so) after some time has passed
- ☐ Do not discourage the law clerk from reporting the issue
- ☐ If law school receives multiple reports about negative experiences in a particular chambers, consider contacting a DWR or the JIO
- ☐ **Remember:**
 - ☐ You can always speak confidentially with a DWR or the JIO without disclosing a particular issue or involved person(s) - they can give you feedback, guidance, and resources
 - ☐ DWRs and the JIO can aggregate confidential information
 - ☐ DWRs and the JIO can use information to inform training programs
 - ☐ DWRs and the JIO need to hear your concerns

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People - Protections - Policies - Processes

People	Protections	Policies	Processes
Every law clerk may seek <i>confidential</i> Informal Advice from: Circuit Director of Workplace Relations National Judicial Integrity Officer Local Court EDR Coordinator	Every law clerk is protected from the following forms of wrongful conduct: Discrimination based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), disability Discriminatory harassment based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), disability Abusive Conduct, which is a pattern of demonstrably egregious and hostile conduct not based on a protected category Retaliation including whistleblower protection	Every law clerk should be aware of the following policies: Codes of Conduct for United States Judges and Judicial Employees Set standards and expectations for conduct in judicial workplace Employment Dispute Resolution (EDR) Plan Provides options for employees to address concerns about discrimination, harassment, abusive conduct, and retaliation Rules for Judicial-Conduct & Judicial-Disability Proceedings (JC&D Rules) Allows anyone to report or file a complaint of misconduct or disability against a federal judge	Every law clerk has the right to use the following processes: Confidential Informal Advice under EDR Plan from a DWR, JIO, or EDR Coordinator Informal Options ▪ Report to DWR or JIO ▪ Report to chief circuit judge under JC&D Rules “Formal” Options ▪ File EDR Request for Assisted Resolution ▪ File EDR Formal Complaint ▪ File complaint under JC&D Rules
Note: Chambers confidentiality requirements do not prevent any employee from disclosing wrongful conduct. See Model EDR Plan, § III.			

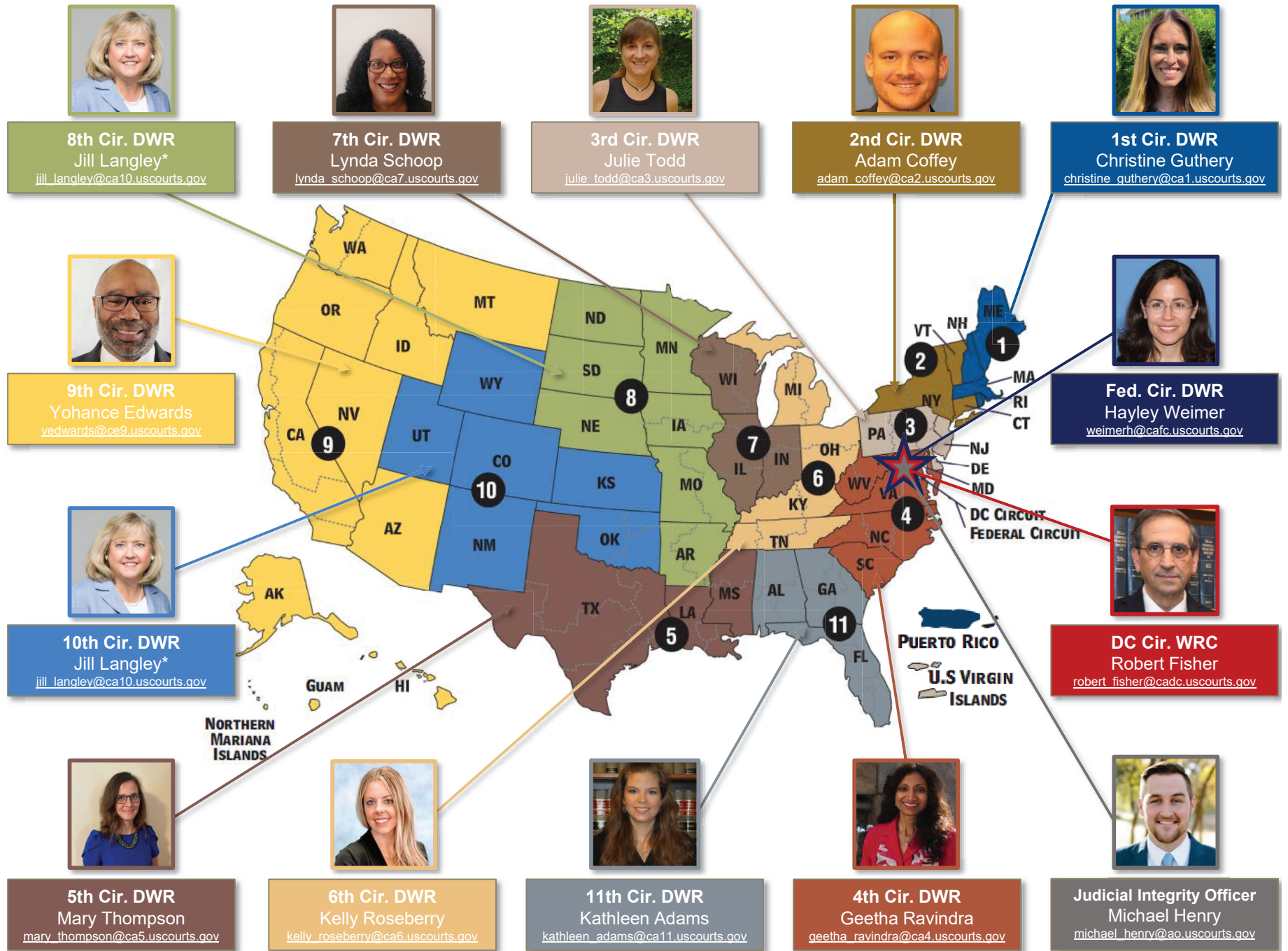
DWR: Director of Workplace Relations **JIO:** Judicial Integrity Officer
EDR: Employment Dispute Resolution **JC&D:** Judicial Conduct & Disability

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People

Federal Judiciary Workplace Resources



DWR: Director of Workplace Relations

WRC: Workplace Relations Coordinator

* Jill Langley is the DWR for 8th and 10th Circuits

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Protections and Policies
Relevant Excerpts Regarding Conduct➤ **Code of Conduct for United States Judges****Canon 3: A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently**

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

...

(B) Administrative Responsibilities.

...

(4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge's direction to similar standards.

➤ **Code of Conduct for Judicial Employees****Canon 3: A Judicial Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office**

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

...

C. Standards of Conduct (1) A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including other employees and the general public. A judicial employee should not engage in sexual or other forms of harassment of court employees or retaliate against those who report misconduct. A judicial employee should hold court personnel under the judicial employee's direction to similar standards. A judicial employee should take appropriate action upon receipt of reliable information indicating a likelihood of conduct contravening this Code. Appropriate action depends on the circumstances and may include, for example, reporting such conduct to a supervisor, court executive, or chief judge. For relevant elaboration, see Code of Conduct for United States Judges, [Commentary to Canons 3B\(4\) and 3B\(6\)](#).

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Protections and Policies

Relevant Excerpts Regarding Conduct

➤ **Model Employment Dispute Resolution Plan**

I. INTRODUCTION

The Federal Judiciary is committed to a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment. These values are essential to the Judiciary, which holds its Judges and Employees to the highest standards. All Judges and Employees are expected to treat each other accordingly.

This Plan provides options for the reporting and resolution of allegations of wrongful conduct (discrimination, sexual, racial, or other discriminatory harassment, abusive conduct, and retaliation) in the workplace. Early action is the best way to maintain a safe work environment. All Judges, Employing Offices, and Employees have a responsibility to promote workplace civility, prevent harassment or abusive conduct, and to take appropriate action upon receipt of reliable information indicating a likelihood of wrongful conduct under this Plan. See Code of Conduct for Judicial Employees, Canon 3(C).

...

II. WRONGFUL CONDUCT

A. This Plan prohibits wrongful conduct that occurs during the period of employment or the interview process (for an applicant). Wrongful conduct includes:

- discrimination;
- sexual, racial, and other discriminatory harassment;
- abusive conduct; and
- retaliation (including retaliation as described in the Whistleblower Protection Provision in Guide to Judiciary Policy, Vol. 12, § 220.10.20(c)).

Wrongful conduct can be verbal, non-verbal, physical, or non-physical.

...

B. **Discrimination** is an adverse employment action that materially affects the terms, conditions, or privileges of employment (such as hiring, firing, failing to promote, or a significant change in benefits) based on the following Protected Categories: race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability.

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Protections and Policies
Relevant Excerpts Regarding Conduct

C. **Discriminatory harassment** occurs when a workplace is 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. Discriminatory harassment includes sexual harassment.

Examples of conduct that may give rise to discriminatory harassment: racial slurs; derogatory comments about a person's ethnicity, culture, or foreign accent; or jokes about a person's age, disability, or sexual orientation.

Examples of conduct that may give rise to sexual harassment: suggestive or obscene notes, emails, text messages, or other types of communications; sexually degrading comments; display of sexually suggestive objects or images; unwelcome or inappropriate touching or physical contact; unwelcome sexual advances or propositions; inappropriate remarks of a sexual nature or about physical appearance; or employment action affected by submission to, or rejection of, sexual advances.

D. **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. Abusive conduct is threatening, oppressive, or intimidating.

Abusive conduct does not include communications and actions reasonably related to performance management, including but not limited to: instruction, corrective criticism, and evaluation; performance improvement plans; duty assignments and changes to duty assignments; office organization; progressive discipline; and adverse action.

E. **Retaliation** is a materially adverse action taken against an Employee for reporting wrongful conduct; for assisting in the defense of rights protected by this Plan; or for opposing wrongful conduct. Retaliation against a person who reveals or reports wrongful conduct is itself wrongful conduct.

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➤ **Rules for Judicial-Conduct and Judicial-Disability Proceedings**

4. (a) Misconduct Generally. Cognizable Misconduct is conduct prejudicial to the effective and expeditious administration of the business of the courts. Cognizable misconduct includes, but is not limited to, the following:

...

(2) Abusive or Harassing Behavior. Cognizable misconduct includes:

(A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault;

(B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or

(C) creating a hostile work environment for judicial employees.

(3) Discrimination. Cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability;

(4) Retaliation. Cognizable misconduct includes retaliating against complainants, witnesses, judicial employees, or others for participating in this complaint process, or for reporting or disclosing judicial misconduct or disability;

...

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Processes

Considering Your Options

Informal Advice under the EDR Plan

"An Employee may contact an EDR Coordinator, Circuit Director of Workplace Relations, or the national Office of Judicial Integrity for confidential advice and guidance . . ." [Model EDR Plan, § IV.C.1.](#)

Use this option if...

- You want to make a confidential inquiry to a DWR, JIO, or EDR Coordinator
- You want to learn about all of your options based on the situation
- You want to ask questions about all possible concerns before disclosing any information
- You want no formal action to be taken or are unsure what options you wish to pursue, if any

Note: If you disclose information about a threat to someone's safety or security or to the integrity of the Judiciary, some limited disclosure may be required. See [Model EDR Plan, § IV.B.1.](#)

Reporting Informally

"The Judiciary encourages early reporting and action on wrongful conduct. Employees who experience, observe, or learn of reliable evidence of sexual, racial, or other discriminatory harassment or abusive conduct are strongly encouraged to take appropriate action, including reporting it to a[n] . . . Employment Dispute Resolution ("EDR") Coordinator, . . . Circuit Director of Workplace Relations, or to the national Office of Judicial Integrity. . . . Court and chambers' confidentiality requirements do not prevent any Employee—including law clerks—from revealing or reporting wrongful conduct by any person. [Model EDR Plan, § III.](#)

If a chief circuit judge has information constituting reasonable grounds for inquiry into whether a federal judge has engaged in misconduct or has a disability, the chief judge may conduct an inquiry as he or she deems appropriate. See [JC&D Rule 5.](#)

Use this option if...

- You believe *you* or *someone else* has experienced wrongful conduct under the EDR Plan, or misconduct by a judge, and you want to make a confidential report to a DWR or the JIO

Note:

- Reporter has control of where they report, including to DWR or JIO
- 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
- Reporter may request (but not control) what action they want to be taken, including sending the report to the chief circuit judge
- Employees may report anonymously to JIO
- DWRs and JIO can aggregate information
- DWRs and JIO can use information to inform training even if no action is taken

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Processes **Considering Your Options**

EDR Request for Assisted Resolution

"Assisted Resolution is an interactive, flexible process that may include: discussing the matter with the person whose behavior is of concern; conducting a preliminary investigation, including interviewing persons alleged to have violated rights under this Plan and witnesses to the conduct; engaging in voluntary mediation between the persons involved; and/or resolving the matter by agreement." [Model EDR Plan, § IV.C.2.](#)

Use this option if...

- You believe you have experienced wrongful conduct and you want to work with the court to determine a resolution to the issue

Note: Necessary information will be shared with those whose involvement is necessary to address the situation. See [Model EDR Plan, § IV.B.1.](#)

EDR Formal Complaint

"An Employee may file a Formal Complaint . . . with any of the Court's EDR Coordinators to address a claim of wrongful conduct." [Model EDR Plan, § IV.C.3.](#)

Use this option if...

- You believe you have experienced wrongful conduct and you want a federal judge to oversee and adjudicate a Complaint of wrongful conduct (including ordering remedies if the judge finds a violation of the EDR Plan)

Note: Necessary information will be shared with those whose involvement is necessary to address the situation. See [Model EDR Plan, § IV.B.1.](#)

Complaint under the JC&D Rules

A complainant may file a complaint alleging a federal judge's misconduct or disability for consideration by the Chief Circuit Judge. See JC&D Rules [6](#); [7](#); [11](#).

Use this option if...

- You believe a judge has committed misconduct or has a disability and you want the chief circuit judge and/or the circuit judicial council to decide

Note: Necessary information will be shared with those who need to know, including subject judge. See JC&D Rules [8\(b\)](#); [15](#); [23](#).

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