

Workplace Conduct Protections in the U.S. Courts

NALP
National Association for
Law Placement

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Virtual Conference

Workplace Conduct in the Federal Judiciary



What are the Judiciary's standards of workplace conduct?



What are the Judiciary's policies and options for resolving alleged workplace wrongful conduct?



What is the Office of Judicial Integrity (OJI) and who are the Circuit Directors of Workplace Relations (DWRs)?

The Judiciary is Committed to an Exemplary Workplace:

- A workplace of respect, civility, tolerance and dignity
- Free of discrimination, harassment, abusive conduct, or retaliation
- Committed to justice and fairness
- Applies to:
 - Current/former Judiciary employees
 - Applicants who've been interviewed
 - Paid/unpaid interns
 - Externs and other volunteers



What can law schools do with law clerk feedback?

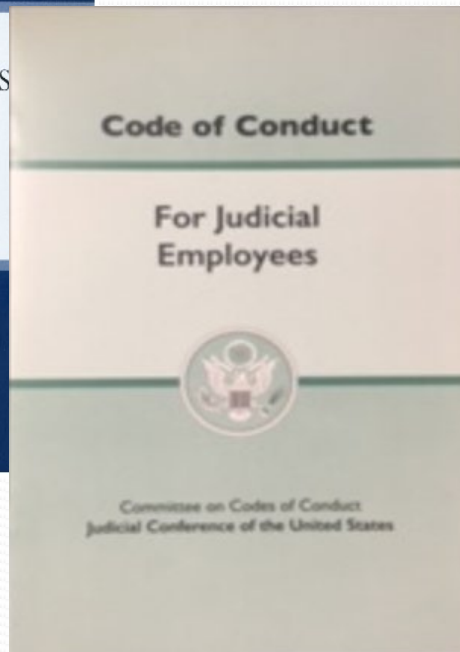
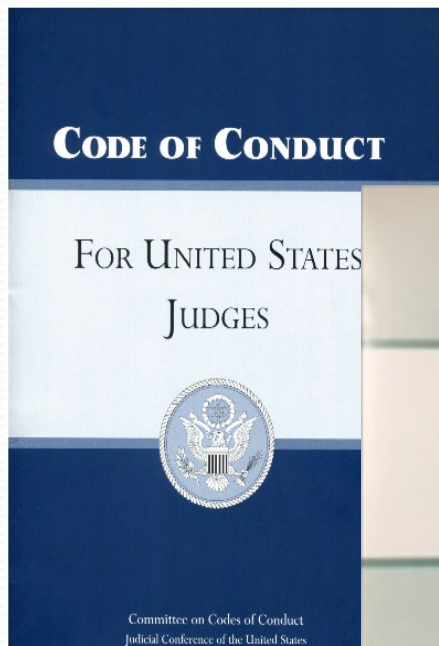
- Help them understand their options within the Judiciary
 - Multiple Reporting Avenues
 - Office of Judicial Integrity
 - Circuit Directors of Workplace Relations
 - Chief Judges
 - EDR Plan rights and Options for Resolution
 - The Judicial Misconduct process
- Law Schools can contact the Office of Judicial Integrity or a Circuit Director of Workplace Relations
 - Can ask for confidentiality

Recent Workplace Conduct Initiatives in the Federal Judiciary

- Revised Policies:
 - **Then:** Sexual and discriminatory harassment was always prohibited
 - **Now:** clearer, plain-English, and all forms of harassment now prohibited
- More Avenues to Report Workplace Wrongful Conduct:
 - **Then:** Always had resources in courthouse
 - **Now:** Multiple *additional* reporting options outside of courthouse
 - National Office of Judicial Integrity
 - Circuit Directors of Workplace Relations

The Judiciary's Standards of Workplace Conduct

- Codes of Conduct



- Model EDR Plan adopted by all courts

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN *[Guide to Judiciary Policy, Vol. 12, Appx. 2A]*

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).

This Plan applies to all Judges, current and former Employees (including all law clerks; chambers employees; paid and unpaid interns, externs, and other volunteers; federal public defender employees; and probation and pretrial services employees), and applicants for employment who have been interviewed. The following persons cannot seek relief under this Plan: Judges, applicants for judicial appointment, Criminal Justice Act panel attorneys and applicants, investigators and service providers, community defender employees, volunteer mediators, and any other non-Employees not specified above. See Appendix 1 for full definitions of Judges and Employees.

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.

Wrongful conduct also includes conduct that would violate the following employment laws and policy, as applied to the Judiciary by Judicial Conference policy:

Wrongful Workplace Conduct in the Federal Judiciary

- Discrimination based on race, gender, sexual orientation, gender identity, religion & other protected categories
- Sexual, racial & other discriminatory harassment
- Abusive conduct: egregious and hostile behavior: **ALL FORMS OF HARASSMENT ARE PROHIBITED**
- Retaliation for reporting wrongful conduct or opposing harassment/discrimination
- Violating any of the EDR employment rights



Judge Code of Conduct Canon 3(B)(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 engage in retaliation for reporting of allegations of such conduct.

Commentary:

- A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as **harassment, abusive behavior, or retaliation** for reporting such behavior.”
- Harassment includes **sexual/discriminatory harassment** “and other **abusive, oppressive**, or inappropriate conduct **directed at judicial employees or others.**”

Judge Code of Conduct Canon 3(B)(6)

- A judge should **take appropriate action** upon receipt of reliable information indicating:
 - the likelihood that a judge's conduct contravened the Code of Conduct, or
 - that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or

JC&D Rules: Cognizable Judicial Misconduct

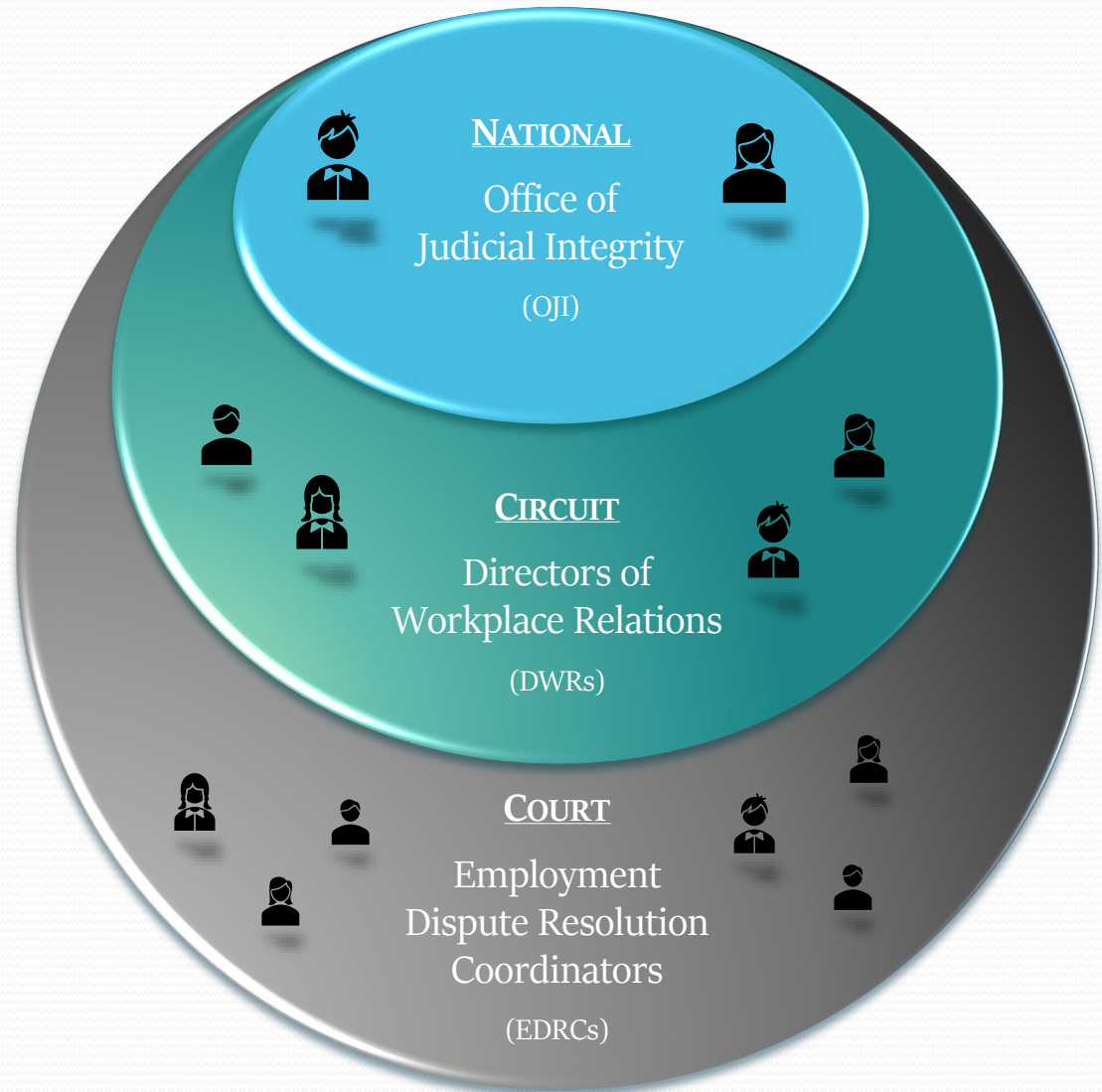
- Engaging in unwanted, offensive, or abusive sexual conduct, including **sexual harassment** or assault;
- Treating litigants, attorneys, **judicial employees**, or others in a **demonstrably egregious and hostile** manner; or
- Creating **a hostile work environment for judicial employees**

New Avenues to Report Wrongful Conduct

National and Regional Reporting Avenues

Multiple Avenues for Reporting

- OJI at the **National** level
 - DWRs at the **Circuit** level
 - Multiple EDRCs at each **local** court
-
- Options both inside and outside employing court
 - All are independent and neutral
 - Not advocates
 - All provide confidential advice and guidance
 - Not decision-makers
 - Can contact whomever you feel most comfortable



Office of Judicial Integrity

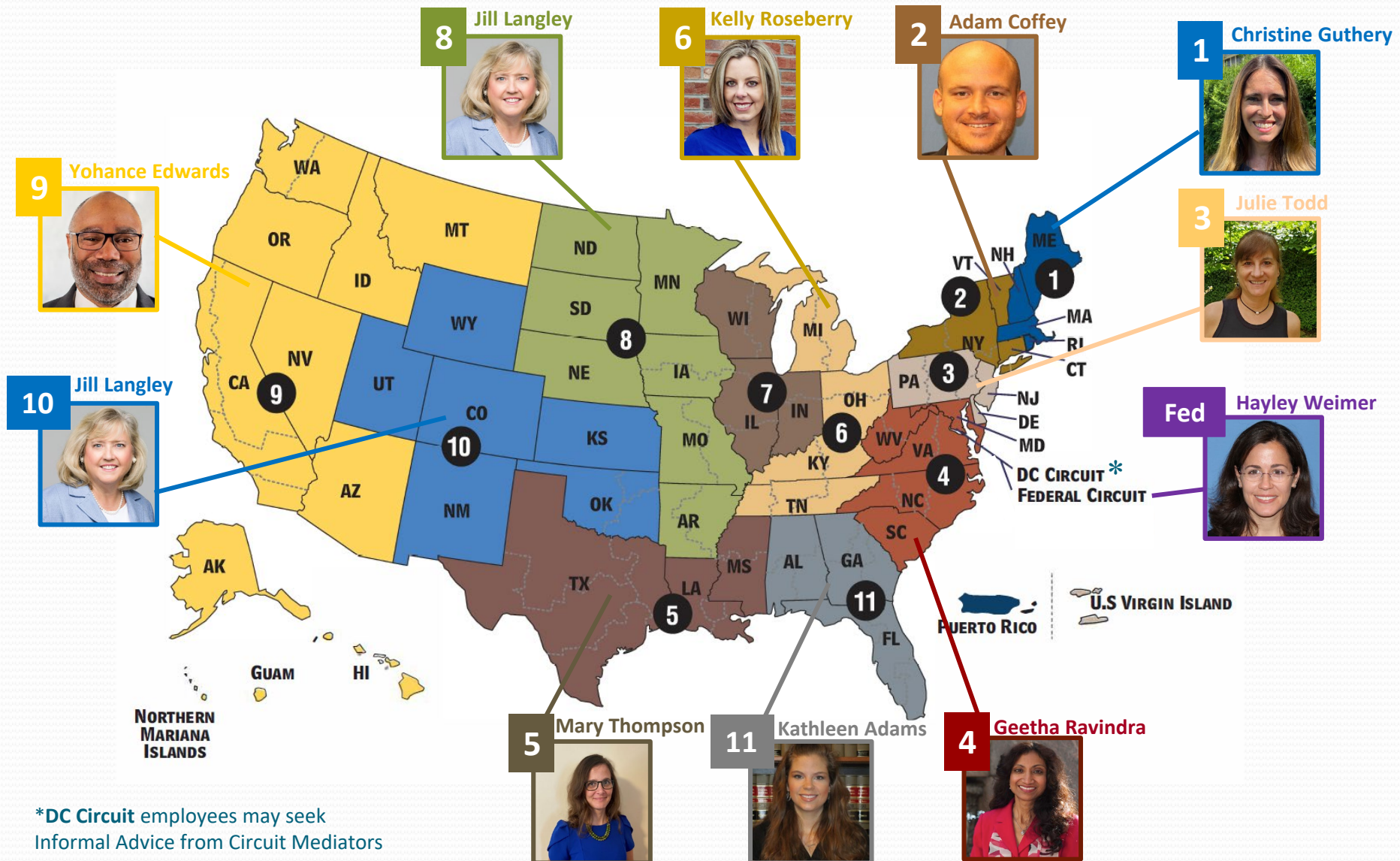
Administrative Office of US Courts

- Resource for former and current Judiciary employees nationwide
- Provides confidential guidance and informal advice about rights, reporting avenues, and resolution procedures
- Neutral and independent; outside of courts' chain of command
- Refers employee to appropriate local circuit and court resource



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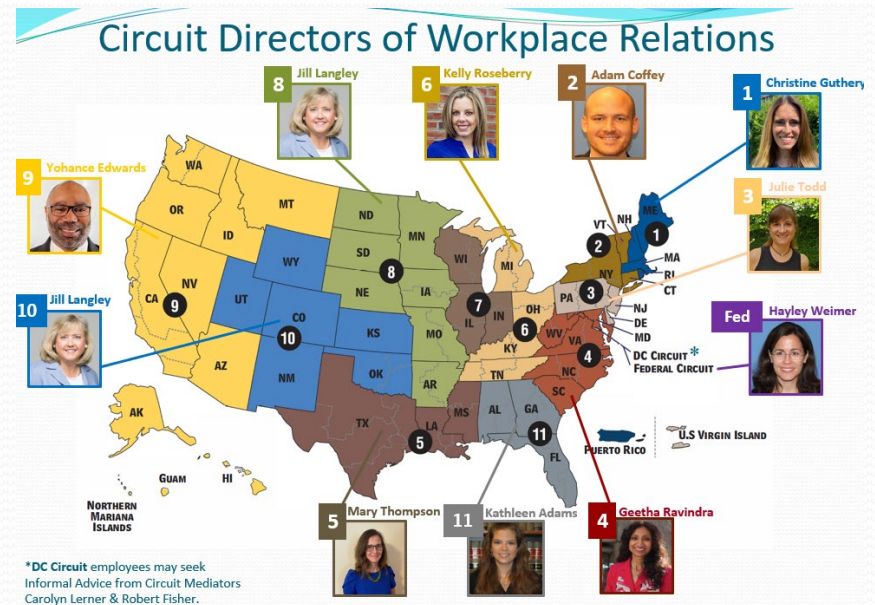
Circuit Directors of Workplace Relations



***DC Circuit** employees may seek
Informal Advice from Circuit Mediators
Carolyn Lerner & Robert Fisher.

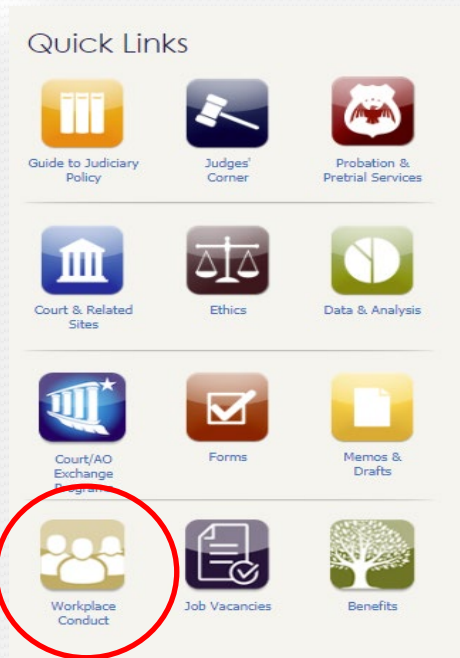
Circuit Directors of Workplace Relations

- Resource for former and current Judiciary employees in the circuit
- Confidential informal advice and guidance about rights, reporting avenues, and procedures
- Can facilitate Assisted Resolution requests
- Can conduct workplace investigations
- Provides training throughout the circuit.



Workplace Conduct Information Posted on Intranet and Internet

- Link on the Intranet JNet's Home Page:
- Public Website: USCourts/gov



Workplace Conduct Information Posted on Internet (and internal JNet)

- USCourts.gov



The screenshot shows the USCourts.gov homepage. The header includes the United States Courts logo and navigation links for Email Updates, Federal Court Finder, Careers, News, and Listen to this page. A red navigation bar contains links for About Federal Courts, Judges & Judgeships, Services & Forms, and Court Records. The main content area is titled 'Workplace Conduct in the Federal Judiciary' and features a quote from the federal judiciary about its commitment to a workplace free from discrimination. Below this, there is a section titled 'Avenues for Reporting & Advice' and another titled 'Reporting Workplace Harassment & Other Wrongful Conduct'.

Workplace Conduct in the Federal Judiciary

The federal Judiciary is committed to a workplace free from discrimination, sexual or other discriminatory harassment, and abusive conduct. It is also committed to ensuring that every employee has clear avenues to obtain confidential advice, report misconduct, and seek and receive remedial action.

Avenues for Reporting & Advice

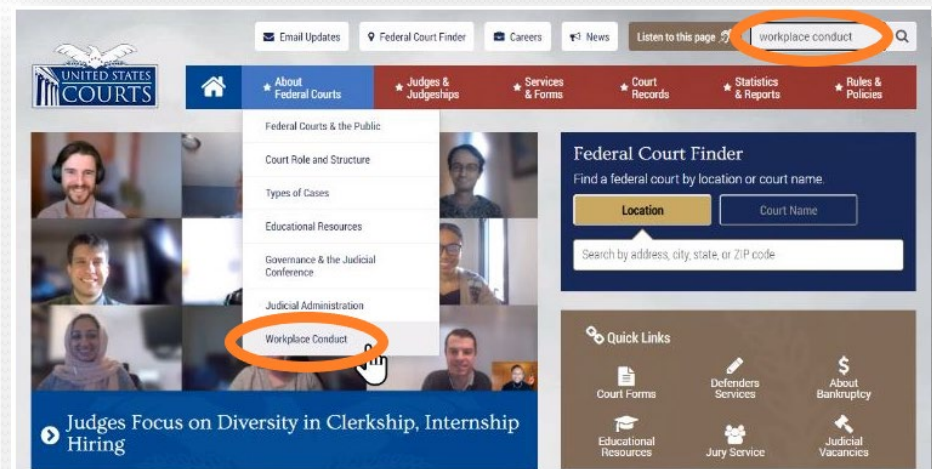
Current and former Judiciary employees, and interviewed applicants for positions within the Judiciary, have multiple avenues available to them, both inside and outside of their employing court, to seek support and guidance regarding workplace conduct concerns. Points of contact at the national, circuit, and local court levels can all provide confidential advice and will explain the resources and options available, including how to request an assisted resolution or how to file a formal complaint under a court's Employment Dispute Resolution Plan (EDR) or under the Judicial Conduct & Disability Act. Employees are free to contact whomever they feel most comfortable.

Reporting Workplace Harassment & Other Wrongful Conduct

Report unwelcome harassment and other wrongful conduct as soon as possible, before it becomes severe or pervasive, so that the misconduct can be corrected immediately and further harassment can be prevented.

Anyone wishing to withhold their name or other personally identifiable information can do so by simply stating that request when calling and/or by using an email account that does not include this information when emailing.

- To find this page, either use a search term, such as “Workplace Conduct,” or use the “About the Federal Courts” dropdown menu



The screenshot shows the USCourts.gov homepage with the search bar and the 'About Federal Courts' dropdown menu highlighted. The search bar contains the text 'workplace conduct'. The dropdown menu lists various categories, with 'Workplace Conduct' highlighted. The 'Federal Court Finder' section is also visible, along with a 'Quick Links' section at the bottom.

Search

workplace conduct

About Federal Courts

- Federal Courts & the Public
- Court Role and Structure
- Types of Cases
- Educational Resources
- Governance & the Judicial Conference
- Judicial Administration
- Workplace Conduct**

Federal Court Finder

Find a federal court by location or court name.

Location Court Name

Search by address, city, state, or ZIP code

Quick Links

- Court Forms
- Defenders Services
- About Bankruptcy
- Educational Resources
- Jury Service
- Judicial Vacancies

Can Submit Anonymous Reports

- Anonymous reports possible on both the JNet and uscourts.gov site
- JNet: form allows complete anonymity: impossible to determine sender or the computer that was used
- USCourts.gov and DWR websites: do not use identifying email or name



**Submit an
Anonymous
Report**

Court Employment Dispute Resolution (EDR) Plans

Prohibits Wrongful Conduct and Offers Options for Resolution

EDR Plan applies substantive rights

comparable to federal employment laws

EDR Plan prohibits discrimination and harassment

- Title VII, Civil Rights Act of 1964
- Age Discrimination in Employment Act
- Americans with Disabilities Act
- Anti-Retaliation
- Whistleblower Protection
- New: Abusive Conduct Policy

EDR Plan applies to all law clerks and chambers employees and unpaid and paid interns and externs

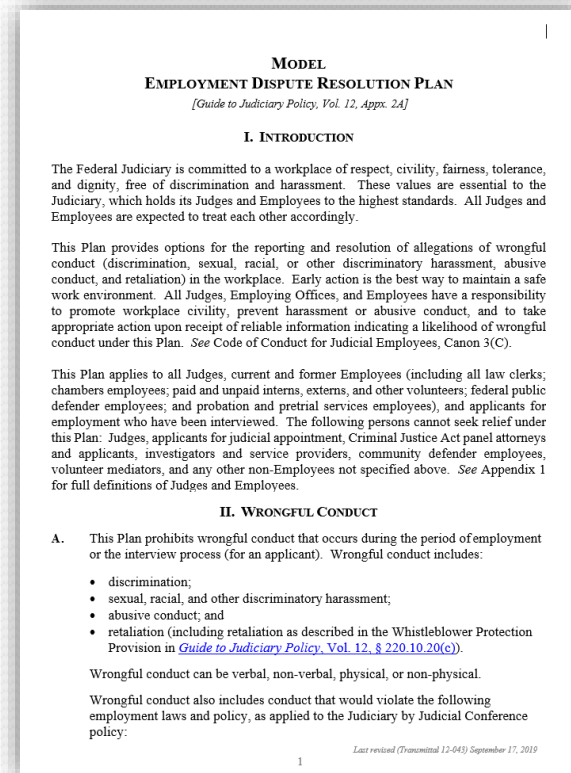


Court Employment Dispute Resolution (EDR) Plans

Prohibits Wrongful Conduct & Offers Options for Resolution

- Court EDR Plans apply substantive employment protections comparable for federal employment laws to judicial employees
- Internal claims process
- Informal and formal options to address wrongful conduct claims

Each Court Adopts an approved EDR Plan based on the Model EDR Plan



EDR Plan Prohibits Discriminatory Harassment

- Hostile, intimidating, offensive discrimination-related conduct that is . . .
- . . .sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment



EDR Plan Prohibits Sexual Harassment

- Any unwelcome physical, verbal, or non-verbal conduct of a sexual nature ...
- ... that interferes with employee's ability to work or that creates an uncomfortable atmosphere.
- Examples
 - Suggestive/lewd communications
 - Sexually demeaning comments
 - Unwelcome or inappropriate touching
 - Unwelcome advances or propositions
 - Tangible employment actions based on sexual favors/relationship



EDR Plan Prohibits Abusive Conduct

- Pattern of demonstrably egregious hostile, intimidating or demeaning conduct, regardless of motivation, that interferes with work
- Examples:
 - Belittling or humiliating behavior or remarks
 - Insults
 - Profanity
 - Yelling, shouting, screaming
 - Repeated teasing or making fun of someone
 - Humiliating criticism in front of others



EDR Plan Prohibits Retaliation



- Retaliation is strictly prohibited against an employee who:
 - reports any wrongful conduct;
 - participates in a workplace conduct investigation; or
 - exercises employment rights

EDR Options for Resolution

For Law Clerks and Judiciary Employees

1. Informal Advice:

- From OJI, DWR, or EDRC
- Strict Confidentiality
- No employer involvement

I need some confidential guidance.

I need someone to help me with an issue.

2. Assisted Resolution:

- Can file with DWR or EDRC
- DWR/EDR facilitates
- CUE or CJ responds

I want to file a formal complaint.

3. Formal Complaint:

- File with EDRC
- Chief Judge appoints Presiding Judicial Officer
- EDRC serves as “clerk of court” for EDR Process
- Employing Office responds



EDR Rights: Confidentiality



- All EDR matters are **highly confidential**:
 - Information may only be shared with those who “need-to-know”
 - As necessary to investigate or resolve the matter
 - Only information *necessary* to address the information will be shared
- **Very** limited exceptions to confidentiality, namely:
 - So serious that I poses a threat to the integrity of the judiciary; or
 - Presents a risk to the safety and security of judicial employees
- *Even then*: only shared on “need to know” basis

Informal Advice

- Law clerks and employees can seek **confidential guidance and advice** about a wrongful conduct matter from:
 - The Office of Judicial Integrity
 - Their Circuit Director of Workplace Relations, *or*
 - One of their court's EDR Coordinators
- Can ask any questions that help them understand their rights, reporting avenues, and options for resolution
- No action will be taken unless the law clerk/employee is ready
 - (unless safety risk or threat to judiciary)

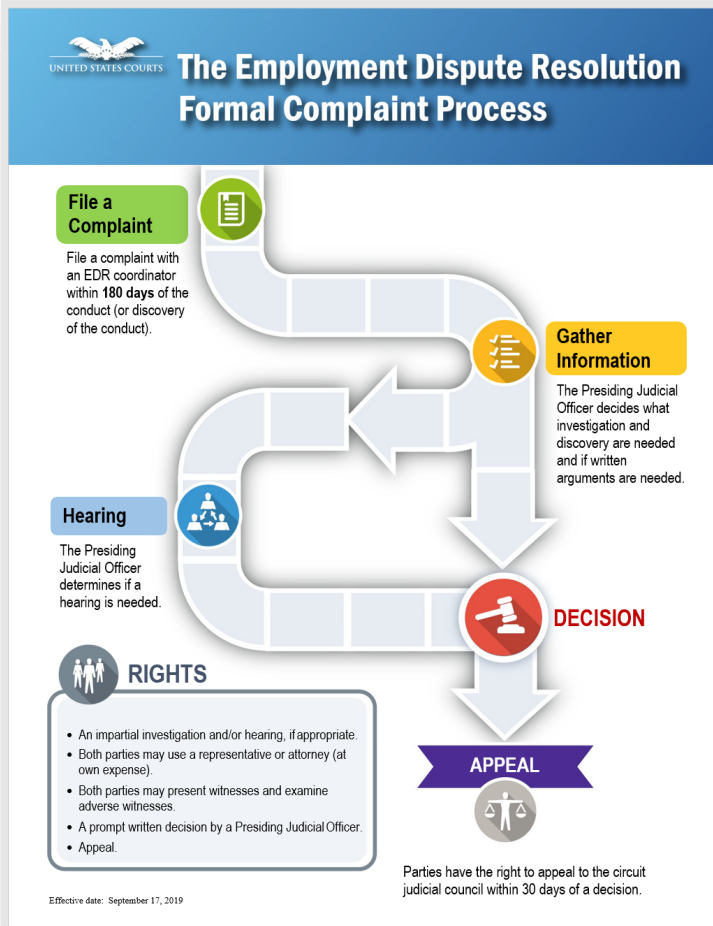


Assisted Resolution

- An Employee can ask for some help, action, or remedy for a wrongful conduct issue
- Submit a request for Assisted Resolution with DWR or EDR Coordinator
- No deadlines
- This is an interactive and flexible process
 - facilitated by a Director of Workplace Relations or EDR Coordinator



Formal EDR Complaint



- File with an EDR Coordinator within 180 days of adverse action
- Chief Judge appoints a Presiding Judicial Officer who oversees the process and determines what investigation or discovery is appropriate
- Holds a hearing if there are material factual disputes
- Issues a written decision within 60 days
- Can appeal an unfavorable decision to Judicial Council

EDR Allegations of Wrongful Conduct by Judges

- Law clerks and employees can file a judicial misconduct complaint and/or an EDR claim asserting wrongful conduct
- Difference:
 - Focus of judicial misconduct is whether judge acted unethically
 - Focus of EDR is whether employee is entitled to a remedy
- Likely that the judicial misconduct complaint would be handled first, with any appropriate interim relief granted to EDR complainant



Judicial Misconduct

Informal Inquiries and Formal Complaint

Judicial Misconduct Generally

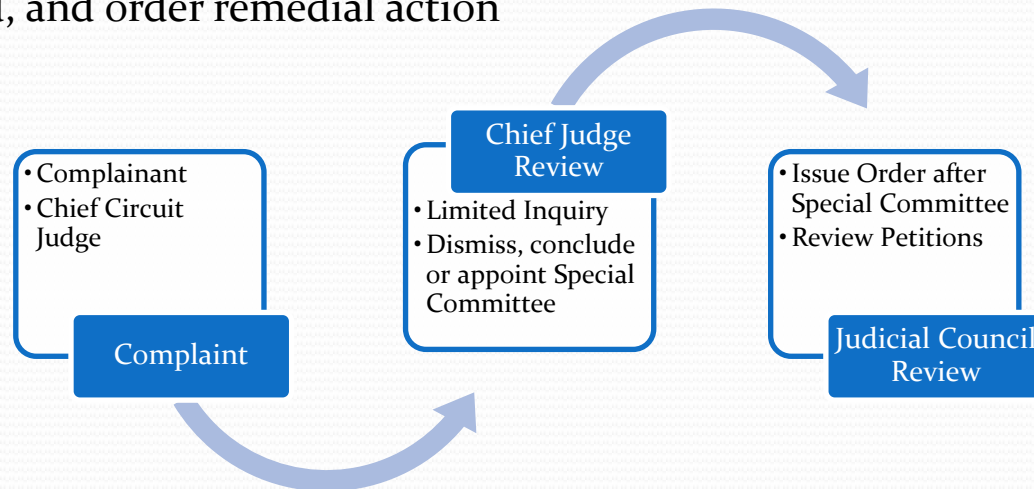
- Judicial Misconduct Complaints are handled at the circuit level, starting with the Chief Circuit Judge
- A complaint can be brought by *any* person against a federal judge; need not be the aggrieved victim or subject of the misconduct
- Governed by the Rules for Judicial-Conduct and Judicial-Disability Proceedings
 - Includes both Informal Inquiry and Formal Complaint
 - Rules are posted on every Circuit Court of Appeals website and [USCourts.gov](https://uscourts.gov)

Informal Inquiry

- Rule 5 Inquiry: If a Chief Circuit Judge has information that provides reasonable grounds for inquiring into whether a judge has engaged in misconduct, the chief circuit judge may *conduct an inquiry* into the accuracy of the information **even if no complaint has been filed**.
- If the Chief Circuit Judge finds probable cause that misconduct occurred, they may seek an informal resolution OR may initiate a formal complaint just as if a complaint was filed.
 - If the evidence of misconduct is clear and convincing and there is no informal resolution, the chief judge **must** identify a complaint.
- For example, if a law school provides information to a court about potential misconduct by a judge, the Chief Circuit Judge will likely consider conduct a Rule 5 inquiry.

The JC&D Complaint Process: Overview

- The Chief Circuit Judge receives the complaint and may conduct a limited inquiry and decide to:
 - dismiss the complaint
 - conclude the complaint because of voluntary corrective action or intervening events (such as retirement or resignation)
 - appoint a Special Committee of judges to investigate and make recommendations to the Circuit Judicial Council
- Only the Circuit Judicial Council may make findings of fact, determine whether misconduct has occurred, and order remedial action



Confidentiality of Misconduct Process

- With some exceptions, the existence of a judicial misconduct complaint and the judicial misconduct process are not disclosed to the public.
 - Chief Circuit Judge can determine it is in the public interest to disclose the existence of a complaint.
- The complainant is always free to disclose the existence of the complaint, the name of the judge, and the resolution.
- Public versions of orders, usually with the complainant's and subject judge's names redacted, are issued at the end of the process and posted on each circuit's website.
- The subject judge is free to issue a statement or allow disclosure of information.

Partnerships with Law Schools

How can we enhance reporting and information sharing?

A Conversation: Risk Factors for Law Clerks

- Power disparities between judges and law clerks
 - Judges have life tenure
 - Law clerks rely on judges for references and career advancement
 - law clerks are often reluctant to report objectionable conduct and misconduct
- High degree of confidentiality
 - Law clerks mistakenly believe confidentiality requirements prevent reporting harassment
- Lack information: difficult for law clerks to learn about judge personalities and expectations



How to Enhance Reporting of Judicial Misconduct Allegations

- Contact the OJI or the Circuit DWR
 - We're an ever-present and confidential resource – for law clerks and law schools
- The reporting law school and reporting person may remain anonymous if they wish
 - Schools could designate an appropriate internal point person to receive reports of potential judicial misconduct from law clerks, alumni, faculty and others
 - “What about things I hear about or the rumor mill?”
- After receiving a report, OJI or DWR normal practice will be to notify the appropriate local court or circuit resource who is best able to address the matter as appropriate.
- We hope this is an ongoing conversation and partnership