

**STATUS REPORT FROM THE FEDERAL JUDICIARY WORKPLACE CONDUCT
WORKING GROUP TO THE JUDICIAL CONFERENCE OF THE UNITED STATES
SEPTEMBER 17, 2019**

INTRODUCTION

This status report summarizes progress made on recommendations in the [Federal Judiciary Workplace Conduct Working Group Report](#) (Report), submitted to the Judicial Conference of the United States on June 1, 2018. At the direction of Chief Justice John G. Roberts, Jr., the Federal Judiciary Workplace Conduct Working Group (Working Group) was established in January 2018 to evaluate the Judiciary's standards of conduct and procedures for investigating and correcting inappropriate workplace conduct. The Working Group made more than thirty detailed recommendations to improve the Judiciary's policies and procedures and achieve the Chief Justice's goal of creating an exemplary workplace for every federal judicial employee and judge.

The Working Group's recommendations cover three general categories:

- Revisions to the Codes of Conduct for United States Judges (Codes of Conduct or Code) to state clear and consistent standards describing inappropriate workplace behavior.
- Improvements to the Judiciary's procedures for identifying and correcting misconduct and providing more informal and flexible ways to report and resolve workplace conduct issues, including revising the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) and the Model Employment Dispute Resolution (EDR) Plan, and creating a national Office of Judicial Integrity (OJI) and circuit directors of workplace relations as independent

resources for employees to report and receive advice about workplace misconduct; and

- Enhancements to the Judiciary’s educational and training programs to raise awareness of workplace conduct issues, prevent discrimination and harassment, and promote civility throughout the Judicial Branch.

Prior to the submission of the Report, the Judiciary took several actions that did not require Judicial Conference action. Those included:

- Revising the confidentiality provisions in the law clerk handbook to clarify that nothing in those provisions prevents revealing workplace misconduct, including harassment, and removing the Model Confidentiality Statement from JNet, the courts’ intranet website;
- Establishing a comment mailbox on the uscourts.gov public website for current and former law clerks and other employees to send comments and suggestions to the Working Group;
- Meeting with the authors of the 2016 report from the Equal Employment Opportunity Commission Select Task Force on the Study of Harassment in the Workplace;
- Meeting with a group of law clerks, and a cross-section of Judiciary employees to hear their workplace experiences;
- Adding instructive in-person programs on Judiciary workforce policies and procedures and workplace sexual harassment to the curricula at Federal Judicial Center programs for chief district and chief bankruptcy judges; and

- Providing a session on sexual harassment during ethics training for newly appointed judges.

Since the receipt of the Working Group's Report in June 2018, the Judicial Conference of the United States, the Administrative Office of the U.S. Courts (AO), the Courts, and the Federal Judicial Center have acted on nearly all of the Working Group's recommendations. These actions include the following:

- The Judicial Conference approved revisions to the Codes of Conduct for United States Judges and Codes of Conduct for Judicial Employees, as well as the JC&D Rules in March 2019 to state expressly that sexual and other discriminatory harassment, abusive conduct, and retaliation are cognizable misconduct, as is the failure to report misconduct to the chief district or chief circuit judge.
- AO Director James C. Duff appointed Jill Langley to head the newly-created OJI and that office began actively providing confidential advice and guidance since her January 2019 appointment.
- Many federal circuits and courts established workplace conduct committees and created directors of workplace relations (or similar positions) to provide circuit-wide guidance and oversight of workplace conduct matters.
- The Federal Judicial Center (FJC) has provided nation-wide training on preventing harassment, workplace civility, and diversity and inclusion.
- Most recently, on September 17, 2019, the Judicial Conference approved a significantly revised and simplified Model EDR Plan that clearly states that harassment, discrimination, abusive conduct, and retaliation are prohibited; provides several options for employees to report and seek redress for wrongful

conduct; and ensures that Judiciary employees know the many resources available to them.

This report addresses these improvements in more detail below. The Working Group has been encouraged by the initiatives at the national and local levels to assure professionalism, civility, and accountability in the workplace. The Working Group remains in place to monitor the progress and success of these initiatives and the ongoing work on the remaining recommendations.

I. AMENDMENTS TO THE CODES OF CONDUCT

The Judicial Conference took action in response to several recommendations in the Working Group’s Report. This action includes the overall recommendation that the Judiciary “revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior.” Report at 21. The Judicial Conference Committee on the Codes of Conduct’s (Codes Committee) proposed revisions to the Codes of Conduct were published for written comment in September 2018. In October 2018, the Codes Committee held a public hearing to consider comments on the proposed amendments. After further consideration of all comments, the Codes Committee developed final recommendations, which the Judicial Conference approved in March 2019. The [revisions to the Codes](#) addressed the following Working Group recommendations.

A. Promoting Appropriate Workplace Behavior and Prohibiting Workplace Harassment

In its Report, the Working Group suggested clarifying in the Codes of Conduct that a judge has an affirmative duty to promote civility not only in the courtroom but throughout the courthouse. This includes the duty to promote appropriate behavior in the workplace, especially in chambers. The Working Group further recommended that the Code explicitly affirm that a

judge must not engage in or tolerate any workplace misconduct, including harassment, abusive behavior, or retaliation for reporting such conduct.

In response to these recommendations, the Judicial Conference amended the Codes of Conduct at Canon 2A (Commentary), the introduction to Canon 3, Canon 3B(4), and Canon 3B(4) (Commentary). These amendments make clear that a judge should promote and practice civility—by being patient, dignified, respectful, and courteous—in dealings with court personnel, including chambers staff. The amendments also prohibit judges from taking part in, or allowing, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct.

B. Prohibiting Impermissible Harassment, Bias, or Prejudice

The Working Group recommended Code amendments to clarify that harassment, bias, or prejudice based on race, color, religion, national origin, sex, age, disability, or other bases (including sexual orientation or gender identity) is impermissible. In response, the Judicial Conference added Commentary to Canon 3B(4) that “harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others.”

C. Requiring Appropriate Action Concerning Misconduct

The Report recommended clarifying a judge’s existing obligation under the Code to “take appropriate action” against misconduct extends to the inappropriate treatment of court employees, including those in chambers. The Report advised that “appropriate action” should reasonably address the misconduct, prevent harm to those affected by it, and promote public confidence in the integrity and impartiality of the Judiciary.

The Code amendments that are responsive to these recommendations are in Canon 3B(6) and Canon 3B(6) Commentary. As noted in the Commentary, “Public confidence in the integrity and impartiality of the Judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence.”

D. Clarifying Confidentiality and Reporting

The Report stressed that confidentiality obligations 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. In response, the Codes Committee recommended, and the Judicial Conference approved, an amendment to the Code of Conduct for Judicial Employees at Canon 3D(3) to clarify that the “general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.”

E. Coordinating Amendments with Other Codes of Conduct

The Working Group recommended making similar changes to the codes of conduct that apply to all judicial employees (including the Code of Conduct for Judicial Employees and the Code of Conduct for Federal Public Defender Employees). In response, the Judicial Conference adopted amendments to the Code of Conduct for Judicial Employees at Canon 3C and 3D. These amendments include a duty to promote appropriate workplace conduct, prohibit workplace harassment, take appropriate action to report and disclose misconduct, and prohibit retaliation for

reporting or disclosing misconduct. The Codes Committee expects to recommend similar revisions to the Code of Conduct for Federal Public Defender Employees later this year.

The Working Group also asked the Codes Committee to consider whether there was a continuing need to use the existing model confidentiality statement to inform employees about their confidentiality obligations. The Working Group viewed the statement—and the Codes Committee agreed—as an impediment to reporting workplace misconduct. The confidentiality statement was rescinded in February 2018. The Codes Committee further decided that developing a new confidentiality statement may not be necessary, as working groups at the circuit level have issued a variety of proposals to improve understanding of employee confidentiality issues. The Codes Committee intends to develop ethics education programs on this topic, including assisting judges and court executives to educate judicial employees about their confidentiality obligations.

F. Improving Educational and Guidance Materials

The Report included a recommendation to review and revise all written ethics guidance concerning workplace conduct. The recommendation aims to ensure that the Judiciary provides a consistent and accessible message that it will not tolerate harassment or other inappropriate conduct. The Report further recommended developing ethics education programs, in cooperation with the FJC, on these topics. The Codes Committee has begun to review and revise existing written educational materials that inform judges and judicial employees of their ethical obligations related to workplace conduct and is working with the FJC to develop new ethics education programs for judges and court employees on these topics.

II. AMENDMENTS TO THE PROCEDURES AND NEW INITIATIVES FOR IDENTIFYING AND CORRECTING WORKPLACE MISCONDUCT

A. *Rules for Judicial-Conduct & Judicial-Disability Proceedings (JC&D Rules)*

In response to the Working Group’s recommendations, the Committee on Judicial Conduct and Disability (JC&D Committee) proposed amendments to the JC&D Rules. The JC&D Committee released final draft proposed amendments to the JC&D Rules on September 13, 2018, for a sixty-day public comment period that ended on November 13, 2018. The JC&D Committee, in coordination with the Codes Committee, held a public hearing on October 30, 2018, to hear testimony and comments concerning the proposed amendments to the JC&D Rules, as well as the Codes of Conduct. The JC&D Committee prepared a final set of proposed amendments, which the Judicial Conference approved at its March 2019 session. The [amendments](#) address the following Working Group recommendations.

1. *Requiring Judges to Report or Disclose Misconduct*

Most significantly, the Working Group recommended that the JC&D Committee “provide additional guidance . . . on a judge’s obligations to report or disclose misconduct and to safeguard complainants from retaliation” and that the Committee “reinforce the principle that retaliation for reporting or disclosing judicial misconduct constitutes misconduct.” Report at 31. In response, the JC&D Committee recommended, and the Judicial Conference adopted, an expansion of the JC&D Rules’ misconduct definition to include retaliation for reporting or disclosing judicial misconduct or disability. *See* Rule 4(a)(4) (“Retaliation”). The Judicial Conference also added a new provision that includes a judge’s failure to bring “reliable information reasonably likely to constitute judicial misconduct” to the attention of the relevant chief district judge or chief circuit judge within the definition of cognizable misconduct. *See*

Rule 4(a)(6) (“Failure to Report or Disclose”) & Commentary; *see also* Rule 23 (“Confidentiality”) Commentary.

2. *Expressly Prohibiting Workplace Harassment*

In its Report, the Working Group suggested that the JC&D “Rules or commentary include express reference to workplace harassment within the definition of misconduct,” and include changes “clear[ly proscribing] harassment based on sexual orientation or gender identity.” Report at 30. The Judicial Conference responded by revising the JC&D Rules and related Commentary to include abusive or harassing behavior (including unwanted, offensive, or abusive sexual conduct; hostile work environment; and discrimination based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, and disability) within the definition of misconduct. *See* Rule 4(a)(2) (“Abusive or Harassing Behavior”); Rule 4(a)(3) (“Discrimination.”)

3. *Exempting Reports of Misconduct from Confidentiality Rules*

The Working Group proposed that “the Committee on Judicial Conduct and Disability make clear . . . that confidentiality obligations should never be an obstacle to reporting judicial misconduct or disability” in order to ensure that complainants “understand that the obligations of confidentiality that judicial employees must observe in the course of judicial business do not shield a judge from a complaint under the JC&D Act.” Report at 30-31. In response, the Judicial Conference adopted a new JC&D Rule and related Commentary emphasizing that nothing in the JC&D Rules regarding confidentiality of the complaint process prevents a judicial employee from reporting or disclosing misconduct or disability. *See* Rule 23(c) (“Disclosure of Misconduct and Disability”). *See also* Rule 4 (“Misconduct and Disability Definitions”) Commentary; Rule 6 (“Filing of Complaint”) Commentary.

4. Clarifying Eligibility to File a JC&D Complaint

The Working Group recommended that the “Rules or associated commentary state with greater clarity that traditional judicial rules respecting ‘standing’— viz., the requirement that the complainant himself or herself must claim redressable injury from the alleged misconduct—do not apply to the JC&D Act complaint process.” Report at 29–30. In response, the Judicial Conference revised the JC&D Rules and related Commentary to note that traditional standing requirements do not apply, and that individuals and organizations may file a complaint even if they have not been directly injured or aggrieved. *See* Rule 3(c)(1) (“Complaint”) & Commentary.

5. Improving Transparency

The Working Group recommended that “the Judiciary as a whole consider possible mechanisms for improving the transparency of the JC&D Act process.” Report at 31. The Judicial Conference approved various changes to the JC&D Rules, including: expanding the provision regarding confidentiality to allow judicial councils and the JC&D Committee (and not just circuit chief judges) to disclose the existence of proceedings in specific circumstances, *see* Rule 23(b)(1)) (“General Rule” on “Confidentiality in the Complaint Process”); expanding the provision regarding disclosure of information about the consideration of a complaint where a complainant or other person has publicly released information regarding the existence of a complaint proceeding, *see* Rule 23(b)(8) (“Disclosure in Special Circumstances”) & Commentary; permitting the disclosure of a subject judge’s name in additional circumstances where a complaint is concluded based on voluntary corrective action, *see* Rule 24 (“Public Availability of Decisions”) Commentary; and including language that the Judiciary will seek ways to make decisions available to the public through searchable electronic indices, *id.*

6. Authorizing Systemic Evaluations

As the Working Group notes, the Judiciary has an “institutional interest in determining, apart from any disciplinary action, what conditions enabled the misconduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its repetition.” Report at 39. The Judicial Conference added language to the JC&D Rules that the Judicial Conference and judicial council of the subject judge have ample authority to assess potential institutional issues related to the complaint as part of their respective responsibilities to promote “the expeditious conduct of court business.” 28 U.S.C. § 331. This includes making “all necessary and appropriate orders for the effective administration of justice within [each] circuit,” *id.* at § 332(d)(1), including consideration of what precautionary or curative steps could be undertaken to prevent the recurrence of misconduct. *See* Rule 11 (“Chief Judge’s Review”) Commentary.

B. Amendments to the Model Employment Dispute Resolution (“EDR”) Plan

The Working Group recommended revisions to the Model EDR Plan to provide clear, uniform definitions of “wrongful conduct,” such as harassment and discrimination; offer informal avenues for employees to report wrongful conduct; allow employees more time to file a formal claim; cover all paid and unpaid Judiciary employees; increase awareness of EDR rights and options to address workplace misconduct; and ensure the appropriate chief judge is notified of potential misconduct by a judge.

The Judicial Conference approved two of the Working Group’s recommendations in September 2018: increasing the time to file a formal EDR Complaint from 30 to 180 days and extending EDR coverage to all paid and unpaid interns and externs. As it always has, the Model EDR Plan applies to all Article III and other judicial officers of the federal courts; all current and

former Judiciary employees, including all chambers staff; federal public defenders and their staffs; and all applicants for employment who have been interviewed.

The Director of the AO established a Model EDR Plan Working Group (EDR Group), made up of federal judges and Judiciary officials with expertise in employment dispute resolution. The EDR Group drafted a revised Model EDR Plan to incorporate the Working Group's recommendations and ensure consistency with the amendments to the Codes of Conduct and the JC&D Rules. The proposed revision was circulated for Judiciary-wide comment. The Judicial Resources Committee of the Judicial Conference and its Diversity Subcommittee then considered the revised Model EDR Plan and recommended its adoption, which the Judicial Conference adopted at its September 2019 session. Some of the significant changes to the Model EDR Plan are highlighted below.

1. Providing Clear and Consistent Definitions of Wrongful Conduct

The Working Group recommended revising all of the Judiciary's guidance documents, including the Model EDR Plan, in parallel fashion with the Codes of Conduct to provide consistent standards of workplace conduct. In response, the revised Model EDR Plan now states the Judiciary's core values, including a commitment to a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment. Consistent with changes to the Codes of Conduct and the JC&D Rules, the Model EDR Plan encourages reports of wrongful conduct and makes clear that confidentiality requirements do not prohibit anyone, including law clerks, from reporting any type of workplace misconduct. Furthermore, consistent with the revised Codes of Conduct and JC&D Rules, the revised Model EDR Plan includes a clear policy statement of prohibited "wrongful conduct" in the workplace, using explanatory examples,

namely: discrimination; sexual, racial or other discriminatory harassment; abusive conduct; retaliation; and violations of specific employment laws.

The Model EDR Plan has always protected against discrimination and harassment based on race, color, national origin, sex, gender, pregnancy, religion, and age (40 years and over), but the Working Group recommended expanding the Model EDR Plan's definition of sex discrimination to match established legal definitions and the language used within the Codes of Conduct and other Judiciary policy statements. The revised Model EDR Plan includes gender identity and sexual orientation as a "protected category" consistent with similar action taken by the Judicial Conference in March 2019 in amending the Codes of Conduct and the JC&D Rules.

2. Prohibiting Abusive Conduct

The Working Group suggested that the revised Model EDR Plan state that harassment, without regard to motivation, is wrongful conduct. The revised Model EDR Plan adds "abusive conduct" as a form of wrongful conduct, defined 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 definition is consistent with language defining abusive behavior in the JC&D Rules. The definition excludes communications and actions reasonably related to performance management.

3. Providing Flexible and Informal Options for Resolution

The Working Group recommended that the Model EDR Plan provide an avenue for employees to report wrongful conduct without filing a formal EDR complaint. The revised Model EDR Plan provides new flexible and more informal ways for reporting and resolving allegations of wrongful conduct, called "Options for Resolution:" (1) informal advice; (2) assisted resolution; or (3) formal complaint. Based on the Working Group's recommendation,

the revised Model EDR Plan allows an employee, including a law clerk or other chambers employee, to request interim relief during the pendency of any Option for Resolution, including transfer or an alternative work arrangement.

Informal advice is just that: an employee can contact an EDR Coordinator, circuit director of workplace relations, or the national OJI for informal, confidential advice and guidance about workplace misconduct. Assisted resolution simply means an employee can ask for help with a workplace conduct issue. Assistance under this option includes facilitated discussions, voluntary mediation, a preliminary investigation, or any other steps that may yield an effective resolution of the issues.

The formal EDR complaint option is substantially the same: it allows an employee to use a structured claims process overseen by a presiding judicial officer assigned by the chief judge. It provides for a fair and impartial investigation, a hearing before the presiding judicial officer to resolve material factual disputes, a written decision, and a right to have that decision reviewed by the circuit judicial council. The new Model EDR Plan sets out mandatory recusal standards for those involved in the EDR process to avoid conflicts of interest.

4. Increasing Awareness of EDR Rights and Options for Resolution

The Working Group found that employees lacked awareness of the rights and options available to them under the Model EDR Plan. In response, the new Model EDR Plan is written in “plain English”; includes easy-to-follow infographics describing EDR rights and options; and requires courts to post the EDR Plans and infographics prominently on their websites, along with contact information for the court’s EDR Coordinators and the national OJI. The Model EDR Plan now also requires courts to conduct EDR and workplace conduct training annually for all judges and employees, including chambers staff.

Based on a Working Group recommendation, the revised Model EDR Plan requires that all EDR coordinators be trained and certified on the Model EDR Plan's rights, processes, and Options for Resolution. The EDR Group is currently developing materials to assist in training and to answer frequently asked questions about EDR.

5. Providing Notice of Wrongful Conduct Allegations Against Judges

The Model EDR Plan has always permitted employees, including chambers employees, to report judicial misconduct in the workplace. Implementing the Working Group recommendation, the revised Model EDR Plan now requires notice to the appropriate chief district or circuit judge when an EDR-level allegation is made against a judge in their district or circuit. In such a case, the appropriate chief district or chief circuit judge is responsible for coordinating an Assisted Resolution request or overseeing a formal EDR Complaint. As it has in the past, the Model EDR Plan states that if a judge is the subject of both a formal complaint under the Model EDR Plan and a complaint under the Judicial Conduct and Disability Act, the chief circuit judge will determine the appropriate procedure for addressing both.

C. Creation of Office of Judicial Integrity

The Working Group recommended that the Judiciary offer employees a broad range of options and methods to report harassment and seek guidance about workplace conduct concerns, with multiple points-of-contact at both the local and national level. As part of that goal, it recommended the AO establish a national OJI to provide confidential assistance regarding workplace conduct to all Judiciary employees.

1. Providing Independent, Confidential Advice on Workplace Conduct

The Director of the AO created the OJI, which began operations in January 2019. The OJI serves as an independent resource where current and former Judiciary employees can seek—by phone or confidential email—counseling, guidance, and intervention regarding sexual and other harassment, abusive conduct, discrimination, and other workplace misconduct. The OJI ensures employees are aware of all the informal and formal options available to them to report and address workplace harassment or other wrongful conduct. The OJI provides a safe and confidential avenue for employees who, for whatever reason, choose not to report misconduct to, or discuss their workplace concerns with, their local court office.

Employees can make confidential, even anonymous, reports of harassment or other wrongful conduct on an email form located on the OJI's JNet website, linked prominently on a Workplace Conduct Quick Link on the front page of the JNet. Former employees and members of the public can submit similar confidential reports on the OJI's public site on www.uscourts.gov. The OJI's JNet website provides links to other workplace resources, such as court EDR Plans and EDR Coordinators, the Codes of Conduct and JC&D Rules, the Working Group's June 2018 Report, and the FJC's workplace conduct training programs and offerings.

The OJI also provides guidance and advice to judges, unit executives, managers, and EDR Coordinators about workplace conduct matters. It provides advice on best practices for conducting a fair, thorough, and impartial workplace investigation, and, at the request of a court Chief Judge, can assist with a workplace investigation. It ensures managers are aware of other workplace conduct resources at the AO, including the AO's Court Human Resources Division,

the Office of the General Counsel, and the FJC's workplace conduct in-person and web-based training programs.

The OJI is headed by the first appointed Judicial Integrity Officer, Jill Langley, formerly the Tenth Circuit's Director of Workplace Relations. Prior to her appointment, Ms. Langley was an attorney with the Tenth Circuit for twenty-three years and spent thirteen years focusing on EDR, during which time she developed an EDR training program that she presented nation-wide. Before joining the court, Ms. Langley was in private practice with a law firm in Phoenix, Arizona. She graduated cum laude from the Sandra Day O'Connor College of Law at Arizona State University, where she was an editor of the law review, and received her undergraduate degree from the University of Arizona.

2. Outreach to Future, Current, and Former Judicial Employees and Law Clerks

The OJI provides an avenue for law schools to report any information they learn from students about judicial workplace misconduct. Law schools and law students who worked in chambers can report a judicial workplace misconduct issue directly to the OJI. If the law school or student would prefer to remain anonymous, they can submit a confidential report via the OJI's public website. After receiving any such report, the OJI will notify the appropriate Chief Judge of the reported information.

The Judicial Integrity Officer travels extensively to circuit and court conferences to increase awareness of the OJI and its workplace conduct resources and of workplace conduct issues generally. In 2019, the Judicial Integrity Officer has been invited by courts in the First, Third, Fourth, Fifth, Seventh, Ninth, Tenth, Eleventh and District of Columbia circuits to participate in, or provide, training on the role of the OJI, workplace conduct, and the Model EDR Plan. The conferences have included judge conferences, court manager conferences, new law

clerk orientations, workplace conduct workshops, and training programs for Human Resource Professionals and EDR Coordinators. As courts adopt their EDR Plans based on the new Model EDR Plan, the OJI will be available to provide training next year to educate employees about their rights and options under the Model EDR Plan and make them aware of the many ways—informal and formal—they can get help with a workplace conduct concern.

3. Analyzing Issues and Trends

The OJI maintains a confidential database of all contacts with the OJI, including the nature of the allegations, to inform the Judiciary and this Working Group about the frequency and the nature of the reported workplace conduct issues and any notable trends. In addition, the OJI works with the Court Human Resources Division, which currently administers a national exit survey of all former Judiciary employees, to identify workplace conduct issues or trends revealed in the exit surveys.

The AO is in the process of clarifying the data that courts will be required to report under the new Model EDR Plan and creating easier and more accurate ways for courts to provide that information. This data collection will include a requirement that courts annually report sexual harassment claims.

D. Circuit and Court Initiatives

Following the recommendation of the Working Group, many circuits have now hired trusted individuals, often called Directors of Workplace Relations, to provide confidential guidance and resolution of workplace conduct issues to Judiciary employees within the circuit. The Directors of Workplace Relations offer workplace conduct training; give guidance to employees and managers about conduct issues; provide informal workplace conduct advice, train and assist court EDR Coordinators; and assist with workplace conduct investigations, mediation,

and dispute resolution. It is anticipated that the OJI and Circuit Directors of Workplace Relations will meet at least annually to develop best practices, identify effective training programs, improve methods and processes for employees to report misconduct, and identify workplace conduct trends. Many circuits have also created workplace conduct committees, either in addition or as an alternative to, a circuit director of workplace relations.

Many circuits and individual courts have conducted confidential climate surveys, developed their own workplace conduct training programs, and offered workplace conduct workshops and seminars. Courts in every circuit have provided training and education to staff and employees about workplace conduct, particularly the ways that employees can report issues and how managers can address and correct issues. The Seventh Circuit and the Ninth Circuit, which amended their EDR Plans in advance of the new Model EDR Plan, provided circuit-wide training to EDR Coordinators, including training on mediation skills and conducting a workplace investigation.

III. TRAINING AND EDUCATION

The Working Group made three recommendations to the FJC regarding training. First, the FJC should ensure that all new judges and new employees receive basic workplace standards training as part of their initial orientation programs, with refresher training at regular intervals. Second, the FJC should develop an advanced training program aimed at developing a culture of workplace civility. Finally, the FJC, in coordination with the AO and individual courts, should continuously evaluate the effectiveness of workplace conduct educational programs.

The FJC has delivered “workplace standards” training at the initial orientations of new federal judges (phases I and II of the orientations for new district, bankruptcy, and magistrate judges). The FJC also regularly offers periodic refresher training consisting of sessions at

national and circuit judicial workshops. An orientation video covering workplace conduct issues for new law clerks was produced in time for summer 2018 term law clerks entering into their duties. That video is currently being updated to reflect changes recommended and implemented following the Working Group report, and to include the formation of the OJI and the amendments to the Codes of Conduct and JC&D Rules. The FJC anticipates creating EDR training programs after the Judicial Conference approves the revised Model EDR Plan.

With respect to an initial orientation for all new Judiciary employees, an FJC webcast last fall in the series “Court Web” reached roughly 2,400 participants and consisted largely of scenario-based discussions of acceptable workplace conduct. It is likely that an online approach, whether via podcast, webcast, or a similar mechanism, which allows the recipients to absorb the content at a time their choosing, offers the best chance of reaching the entirety of the target audience.

The FJC believes the most effective educational approach is to use scenarios, some of which are adapted from actual reports received, that enable candid discussions among groups of judges, court unit executives, and managers and supervisors. The formal ethics presentations at new judge orientations (typically consisting of a judge representative from the Codes Committee and a representative from the AO’s Office of the General Counsel) have been expanded to include greater focus on the ethical obligations of judges in responding to workplace misconduct allegations. The perceptions formed at orientations for new judges as to what is and is not acceptable within the Judiciary’s culture, guided by mentor judge observations, are critical. Discussions at national workshops of district, bankruptcy, and magistrate judges, circuit judicial workshops, chief district and bankruptcy judge workshops, and the new chief judge (circuit,

district, and bankruptcy) leadership seminar program have all proven useful in capturing important workplace conduct insights.

The FJC's lineup of in-person programs for unit and deputy unit executives, experienced supervisors, and new supervisors all address various issues affecting workplace conduct. The Conference for Court Unit Executives, a national-level gathering, addressed various aspects of workplace conduct both in plenary and elective sessions. At the court staff level, the primary educational method of learning more about these issues is a variety of in-district training seminars (e.g., Preventing Workplace Harassment, Dealing with Difficult Situations; Meet: Breaking New Ground – Respect and Inclusion in the Workplace) delivered by court trainers. In the year ahead, the FJC intends to add another program, Civility in the Workplace, to those seminars.

CONCLUSION

The Judicial Branch has demonstrated commitment from courts nationwide to creating and ensuring exemplary workplaces. Managers are offering workplace training and workshops, judges are actively involved in workplace concerns, and employees are coming forward, both locally and to the OJI, to discuss and resolve any concerns they may have. Our Working Group will continue to monitor and assess workplace conduct matters throughout the Judiciary, to assist with continued implementation of the workplace initiatives already in place, and to recommend additional changes whenever we see needs for improvement.