

Enhancing Efforts to Coordinate Best Workplace Practices Across the Federal Judiciary

Federal Judicial Center and National Academy of Public Administration

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About the Center

Established in 1967, the Federal Judicial Center (the Center) is the research and education agency of the judicial branch of the United States government. Its status as a separate agency within the judicial branch, its specific missions, and its specialized expertise enable it to pursue and encourage critical and careful examination of ways to improve judicial administration. The Center has no policymaking or enforcement authority; its role is to provide accurate, objective information and education and to encourage thorough and candid analysis of policies, practices, and procedures.

This Federal Judicial Center report was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. While the Center regards the content as responsible and valuable, this report does not reflect policy or recommendations of the Board of the Federal Judicial Center.

About the Academy

Established in 1967 and chartered by Congress in 1984, the National Academy of Public Administration (Academy) is a nonprofit, independent organization of top public management and organizational leaders who address the nation's most critical and complex public management challenges. With a network of more than 1,000 distinguished Fellows and an experienced professional staff, the Academy is uniquely qualified and trusted across government to provide objective advice and practical solutions based on systematic research and expert analysis.

The National Academy of Public Administration conducts all its study work consistent with its mission to produce independent research and studies that advance the field of public administration and facilitate the development, adoption, and implementation of solutions to government's most significant challenges. In this report, the findings expressed do not necessarily reflect the views of the Academy as an institution and do not expand beyond the congressional mandate of the joint study.

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Foreword

The federal judiciary, established under Article III of the Constitution, has a workforce of about 30,000 judges and other personnel. In his 2018 Year End Report on the Federal Judiciary, Chief Justice John G. Roberts, Jr., asked the Director of the Administrative Office of the U.S. Courts to assemble a working group to examine whether the judiciary’s “standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee.”

After conducting the examination directed by the Chief Justice, in 2018 the Federal Judiciary Workplace Conduct Working Group made numerous recommendations for changes in the judiciary’s Codes of Conduct, Employment Dispute Resolution Plans, and other procedures; for additional education for judges and judiciary employees; and for the creation of offices at the national and circuit level devoted to the goal of achieving an exemplary workplace. These recommendations were soon adopted in various forms by the judiciary and further refinements have been made in the ensuing years.

A House Committee Recommendation under the Consolidated Appropriations Act of 2023 directed the Federal Judicial Center (FJC or Center) to contract with the National Academy of Public Administration (the Academy) to assist the Center “in its efforts to conduct workplace surveys of the judiciary, collect and analyze organizational process and employment engagement data, and coordinate best practices across the judiciary.” This report is the result of that collaboration.

Established in 1967, the Federal Judicial Center is the research and education agency of the judicial branch of the United States government. Its status as a separate agency within the judicial branch, its specific missions, and its specialized expertise enable it to pursue and encourage critical and careful examination of ways to improve judicial administration.

Also established in 1967 and chartered by Congress in 1984, the National Academy of Public Administration is a nonprofit, independent organization of top public management and organizational leaders who address the nation’s most critical and complex public management challenges through in-depth studies and analyses, advisory services and technical assistance, and extensive stakeholder engagement.

We are grateful to the Panel of Academy Fellows and to the Center and Academy Study Teams for their extensive and thoughtful research and preparation of this report. We greatly appreciate the cooperation of judges and judiciary personnel who shared their time and experiences.

We are confident that the data, observations, and suggestions in this report will assist the judiciary in its ongoing efforts to ensure an exemplary workplace for every judge and every court employee.

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Executive Summary

This report and the study on which it is based were undertaken pursuant to a House Committee Recommendation to the Consolidated Appropriations Act of 2023. The recommendation directed the Federal Judicial Center (FJC or Center) to contract with the National Academy of Public Administration (the Academy), entering into an independent partnership to assist the FJC in its efforts to conduct workplace surveys of the judiciary, collect and analyze organizational process and employment engagement data, and coordinate best workplace practices across the judiciary. The recommendation also directed that the study explore options to institutionalize such capacity within the judiciary to ensure continued and consistent attention to matters of workplace misconduct in the future.

The contract requested the Academy’s assistance with four tasks, assessing: (1) how the Model Employment Dispute Resolution (EDR) plans have been implemented in the courts and employing units; (2) how the EDR plans’ resolution processes have been working, and how they can best be monitored and evaluated; (3) the nature and level of educational and outreach efforts; and (4) whether workplace information on judiciary websites is complete, helpful, and accessible.

The judiciary adopted the two Model EDR Plans that are the subject of this study in 2019 and 2021, on recommendation of the Federal Judiciary Workplace Conduct Working Group. The Working Group was established at the direction of Chief Justice John Roberts to examine the judiciary’s workplace conduct practices and policies and consider whether they were “adequate to ensure an exemplary workplace for every judge and every court employee.”

The findings and options for consideration presented in this report draw on these data sources: (1) a review of all court and federal public defender office (FPDO) EDR Plans; (2) interviews with the national Judicial Integrity Officer, all circuit executives and Directors of Workplace Relations, judge members of active circuit workplace conduct committees, and FJC Education Division staff; (3) focus groups with EDR Coordinators and chief district and bankruptcy judges; and (4) a review of public judiciary websites.

Chapters 4 through 7 discuss findings for each contract task and present options for judiciary consideration based on those findings. Below is a summary of the findings. [Appendix A](#) provides a compilation of the related “Options for Judiciary Consideration.”

1. Implementation of the Model EDR Plans ([Chapter 4](#))

Implementation of the Model Plans in Courts and Employing Units

- All courts and FPDOs have adopted some version of the Model EDR Plans.
- Some courts and offices have adopted their respective plans without significant modifications from the Model Plans; others have added clarifying language or made substantive modifications, such as changing deadlines or adding protected categories.

- The Model Plans provide that any modifications from them should not “diminish or curtail” any of the rights or remedies afforded to employees under the Model Plans. However, neither the Model Plans nor any other judiciary document provides guidance, for judicial councils or others, for determining whether a given modification to the plan diminishes or curtails any rights or remedies.

Benefits of the Model Plans

- The Model Plans provide three avenues for resolution of EDR matters: Informal Advice (confidential advice and guidance); Assisted Resolution (discussion between those involved, mediation); and Formal Complaint (a formal process in which evidence may be presented and assessed by a judicial officer).
- There is broad consensus among interviewees that the addition of Informal Advice as an option for resolution has significantly improved the EDR process by encouraging employees to seek support or explore options before problems escalate.
- The explicit prohibition of “abusive conduct” is a very significant provision in the Model Plans, as it sends a clear message about expectations for appropriate behavior and has helped to improve court culture.
- The Model EDR Plans’ emphasis on training and outreach has helped increase awareness of employee rights and address underlying issues.
- Clearer language makes the Model EDR Plans easier for employees to understand and navigate, though some we spoke with think there is room for further improvement.

Challenges in Implementation of the Model Plans

- Presiding judicial officers (PJOs) do not have sufficient guidance on case management or substantive law relating to resolution of Formal Complaints, and this can lead to inconsistencies.
- Involvement in an EDR matter can be a significant time commitment for EDR Coordinators and PJOs, both of whom have other job obligations.

Limitations of the Model Plans

Issues that are not or cannot be completely addressed by the EDR Plans, so other avenues for addressing them might be necessary, include:

- The Model EDR Plan includes several provisions to encourage law clerks to raise concerns. Some of those we interviewed believe law clerks will still not want to do this beyond Informal Advice, and therefore additional ways to improve judge-law clerk relationships and interactions might be needed.
- Several of those we spoke with believe that the Plan should include a provision for allowing monetary damages in the event a Formal Complaint is found to be meritorious.

- The bystander provisions in the Model Plan and other judiciary guidance might not be enough to encourage judges to report on behavior of other judges.

Other Observations and Suggestions

- Having strong judicial leadership on workplace conduct issues and emphasizing the importance of a healthy workplace is extremely important in setting expectations about behavior and the fact that matters will be taken seriously.
- EDR Coordinators said they could use more guidance about maintaining records about their contacts under the Plan processes.
- There are differences of opinion about whether Human Resource employees or supervisors should be EDR Coordinators.
- Opinions also differ about whether PJOs should be required to be appointed outside of the court in which a claim arose.
- Publication of redacted final decisions in EDR cases can support judicial accountability and bolster confidence in the judiciary's workplace effort. However, publication poses a risk of discouraging employees from using the process. Guidance is needed about balancing these competing concerns and benefits, while considering confidentiality issues.

2. Monitoring and Assessing How the Resolution Processes Are Working ([Chapter 5](#))

The Model EDR Plans for courts and FPDOs set forth three specific options, varying in levels of formality, for resolution of matters relating to workplace misconduct: Informal Advice, Assisted Resolution, and Formal Complaint. All courts and offices make these options available under their plans for resolving workplace issues. The Model Plans and recommendations of the Working Group also specify data to be collected about EDR processes. These include nationwide reporting of certain information about the use of Assisted Resolution and Formal Complaint processes to the Office of Judicial Integrity (OJI) and a national employee survey conducted by the FJC at the request of the Working Group.

- According to our interviews, all courts and offices submit the required information to the OJI even if they have not had any Assisted Resolutions or Formal Complaints.
- Interviewees generally believe the three processes for dealing with possible misconduct are working well. Nonetheless, there is not a single, comprehensive system for collecting and analyzing information about the frequency, nature, and outcomes of the uses of all three processes, in part due to confidentiality commitments.
- A number of those we interviewed said being able to see survey data specific to their courts would be extremely helpful in identifying any issues they might not be aware of and targeting training and other solutions to address those issues.
- DWRs and EDR Coordinators consistently reported that the great majority of contacts they had under the EDR Plans, if any, were Informal Advice contacts. Given this, many believed

that gathering more information about this process could be beneficial, but there are confidentiality and interpretability issues that need to be considered.

- Based on our interviews and review of similar programs, elements of a comprehensive and effective approach for monitoring and evaluating the EDR processes might include: 1) collection of data about usage of EDR processes, including limited and nonidentifying information about Informal Advice contacts; 2) periodic national workplace surveys, similar to the one recently conducted by the FJC; 3) greater and more consistent use of surveys focused on particular courts, court units, and offices, with the resulting data to be viewed and acted upon only by them; and 4) regular review of plans, particularly when changes are made, to ensure implementation of minimum Model Plan provisions.

3. Educational and Outreach Efforts Related to Workplace Issues ([Chapter 6](#))

- There are three main sources of workplace and EDR-related training for employees. They include the Office of Judicial Integrity (OJI), circuit Directors of Workplace Relations (DWRs), and the FJC. Some EDR Coordinators also provide training for employees in their courts or offices, often in consultation with their circuit DWRs.
- Although the Model Plans require that annual training be made available to employees, there is no requirement that employees complete it.
- Courts and employing offices are also required to make employees aware of their rights and obligations under the Plans in other specific ways, including posting specified information about employee rights on internal and external main homepages and prominently displaying in the workplace posters with EDR Plan information. DWRs and EDR Coordinators said they also make efforts to ensure that they are known, by face and name, to employees. OJI and individual circuits have also undertaken outreach efforts to prospective and current employees, particularly law clerks.

4. Evaluation of Public-Facing Judiciary Websites ([Chapter 7](#))

We reviewed over 200 public-facing court of appeals, district court, bankruptcy court, and FPDO websites, as well as uscourts.gov, the national website for the judiciary. For the court and office websites, we determined whether they satisfied all requirements in the *Guide to Judiciary Policy* for inclusion of EDR and workplace conduct information:

Every court and FPDO must post the following prominently on the homepage of both its internal and external websites under a link labeled “Your Employee Rights and How to Report Wrongful Conduct”: A. the entire EDR Plan, with all appendices and relevant contact information; B. Judicial Conduct and Disability Act; C. Rules for Judicial-Conduct and Judicial-Disability Proceedings; D. Judicial Conduct and Disability Complaint form; and E. contact information for all EDR Coordinators, the circuit Director of Workplace Relations, and the national Office of Judicial Integrity.

- Overall, 26% of public judiciary websites fulfill all the requirements set forth in the *Guide* (include all required information and include the required homepage link, properly labeled). Seventy-seven percent of court of appeals websites satisfy all requirements, as do 32% of district/specialized trial court websites, 27% of bankruptcy court websites, and 5% of FPDO websites.
- Fifty-seven percent of public judiciary websites have a link on the homepage labeled “Your Employee Rights and How to Report Wrongful Conduct,” as required by the *Guide*, or a slight variation on that wording.
- Eighty-two percent of public judiciary websites post the EDR Plan with all appendices;
- Seventy-four percent of public judiciary websites post or link to the Judicial Conduct and Disability Act. Seventy-five percent post or link to the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Sixty percent post or link to the Judicial Conduct and Disability Complaint form.
- Sixty percent of public judiciary websites provide contact information on the website (not counting contact information in the EDR Plan document) for at least one EDR Coordinator (name, email address, and/or phone number). Fifty-one percent provide contact information for the DWR. Fifty-five percent provide contact information for OJI. Not all information provided is current.
- Half of all public judiciary websites are missing at least one required piece of information, and 11% of websites have no workplace conduct information at all. The percentages of court of appeals, district court, and bankruptcy court public websites with no workplace conduct information are low (0%, 1%, and 3%, respectively), but 38% of FPDO public websites have none of the required information.
- uscourts.gov contains national information about workplace and judicial conduct, posted on two separate pages. One contains information about reporting misconduct, workplace harassment, and other wrongful conduct and links to relevant workplace conduct documents and reports. There is a separate page for Judicial Conduct & Disability information.

[Appendix A](#) provides a compilation of Options for Judiciary Consideration based on the findings related to the four contract tasks.

Chapter 1: Introduction

This report and the study on which it is based were undertaken pursuant to a House Committee Recommendation to the Consolidated Appropriations Act of 2023.¹ The recommendation directed the Federal Judicial Center (FJC or Center) to contract with the National Academy of Public Administration (the Academy), entering into an independent partnership to assist the FJC in its efforts to conduct workplace surveys of the judiciary, collect and analyze organizational process and employment engagement data, and coordinate best workplace practices across the judiciary. The recommendation also directed that the study explore options to institutionalize such capacity within the judiciary to ensure continued and consistent attention to matters of workplace misconduct in the future. The FJC and the Academy entered into a contract that delineated the parameters of the study on May 15, 2023, and work on the project began on June 1, 2023.

The contract requested the Academy's assistance with four tasks: assessing (1) how the Model Employment Dispute Resolution (EDR) Plans have been implemented in the courts and employing units; (2) how the Plans' resolution processes have been working, and how they can best be monitored and evaluated; (3) education and outreach the judiciary has been offering about the EDR Plan and workplace issues in general; and (4) the accessibility and content of information about workplace conduct and EDR issues on judiciary websites.²

In this introduction we discuss some of the federal judiciary's recent efforts related to workplace conduct, to provide context for the specific tasks we undertook for this study. [Chapter 2](#) provides background information about the organization and governance of the federal courts that has implications for the adoption and implementation of workplace initiatives. [Chapter 3](#) describes in more detail each of the tasks undertaken in this study and the research methods used to obtain information for the study. The remaining chapters discuss the information we gathered for each study task, key findings based on that information, discussion of workplace practices of some courts and offices that might be useful to others, and ideas about how the federal judiciary might be able to monitor and advance its efforts moving forward.

This report is intended to both inform Congress about the current state of efforts relating to employment dispute resolution plans in the judiciary and be of use to federal judiciary policymakers as well as individual courts and offices looking to further enhance the integrity of their workplaces and their ongoing attention to employment dispute resolution issues. Its aim is to provide analysis and actionable suggestions for deliberation and consideration by the judiciary in strengthening the health of its workplace environment.

1. H.R. Rep. No. 117-393 (2022), Financial Services and General Government Appropriations Act, 2023, <https://www.congress.gov/congressional-report/117th-congress/house-report/393/1>.

2. See [Chapter 3](#) for a detailed description of the study tasks.

Workplace Conduct Efforts in the Judiciary Since 2017

In his December 2017 Year-End Report on the Judiciary,³ Chief Justice of the United States John Roberts acknowledged that the federal judiciary was not “immune” from the problems of sexual harassment and other workplace issues that were a topic of intense national interest at the time. In response, the Chief Justice called for the creation of a national working group to examine the judiciary’s workplace conduct practices and policies and consider whether they were “adequate to ensure an exemplary workplace for every judge and every court employee.” Specifically, the working group was charged with considering “whether changes are needed in [the judiciary’s] codes of conduct, our guidance to employees—including law clerks—on issues of confidentiality and reporting of instances of misconduct, our educational programs, and our rules for investigating and processing misconduct complaints.”⁴

The national Workplace Conduct Working Group (Working Group), consisting of eight federal judges and court administrators, began its work in January 2018. The Working Group reviewed studies of workplace conduct in the public and private sectors and gathered information from a wide range of people both inside and outside the courts, including the authors of a 2016 EEOC study on which the group relied heavily;⁵ other industry experts; current and former law clerks; other court employees; judicial branch advisory councils; and circuit workplace conduct working groups.⁶

Based on the information it gathered, in its 2018 report the Working Group made a number of recommendations for implementation by the Judicial Conference of the United States, the Administrative Office of United States Courts, the Federal Judicial Center, and others within the federal court system.⁷ Actions undertaken by the judiciary based on these recommendations include:

- Issuing a substantially revised Model Employment Dispute Resolution Plan⁸ for courts (Model EDR Plan), which has now been adopted (sometimes with variations) by each circuit, district, and bankruptcy court in the country. Revisions in the Model EDR Plan include:
 - Adding “abusive conduct” to the provisions about wrongful conduct covered by the Plan. This allows an employee to pursue an allegation under the Plan related to behavior that is threatening, oppressive, or intimidating but that is *not* based on a Protected Category;

3. 2017 Chief Justice’s Year-End Report on the Federal Judiciary, <https://www.supremecourt.gov/publicinfo/year-end/2017year-endreport.pdf>.

4. *Id.* at 11.

5. U.S. Equal Emp. Opportunity Comm’n, Select Task Force on the Study of Harassment in the Workplace, Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic (2016), <https://www.eeoc.gov/select-task-force-study-harassment-workplace>.

6. Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States, June 1, 2018, at 4 [hereinafter 2018 Working Group Report], https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf.

7. See [Appendix B](#) for a full list of recommendations from the 2018 Working Group report.

8. See [Appendix C](#) for the Model EDR Plan for courts, Guide to Judiciary Policy vol. 12, ch. 2, app. 2a, which can also be found at: <https://www.uscourts.gov/sites/default/files/guide-vol12-ch02-appx2a-model-eeo-plan.pdf>.

- Providing three different points of contact (local, circuit-based, and national) that an employee can raise concerns with or seek advice from under the Plan;
 - Providing three processes for addressing alleged wrongful conduct, with varying levels of formality;
 - Requiring courts to conduct training annually for all judges and employees, to ensure that they are aware of their rights and obligations under the EDR Plan and the options available for reporting wrongful conduct and seeking relief;
 - Requiring courts to provide annual data to the Administrative Office of the U.S. Courts (AO) on the number and types of alleged violations for which Assisted Resolution was requested and/or a Complaint was filed as well as any information that would help identify the conditions that may have enabled wrongful conduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its recurrence; and
 - Requiring courts to prominently post on their internal and external websites specified information about the EDR Plan and related processes for raising workplace conduct issues.⁹
- Creation of a Model EDR Plan for federal public defender offices¹⁰ (Model FPDO EDR Plan). This includes all of the provisions of the Model EDR Plan for courts, with an additional provision relating to protection of attorney-client and work-product privileged information.
 - Creation of the national Office of Judicial Integrity (OJI). This office, headed by a Judicial Integrity Officer, serves as an independent resource, outside the courts' chain of command, for employees, managers, and judges. It provides confidential help, information, and referral, answering questions and providing guidance on informal and formal complaint options for addressing workplace harassment, abusive conduct, or other wrongful conduct.¹¹ It also provides staff support to the Workplace Conduct Working Group. OJI staffing includes a judicial integrity officer, a deputy judicial integrity officer, and an administrative analyst.
 - Creation of the position and hiring of a Director of Workplace Relations (DWR) in each circuit. These professionals offer another point of contact, outside an employee's local court or office, for confidential advice and information about potential options for addressing workplace concerns. DWRs also often provide EDR and workplace-related training to courts and offices within their circuits, provide guidance to managers and judges as well as employees, and can facilitate Assisted Resolutions under the Plan.
 - Updating the Judicial Codes of Conduct and Judicial Conduct and Disability Rules, to, among other things, make clear that provisions governing confidentiality within a judge's chambers do not preclude the raising of an EDR matter by chambers staff, and to provide that judges and judiciary employees have a responsibility to "take appropriate action" upon learning of potential workplace misconduct (bystander provision).

9. See [Chapter 7](#) for more detail.

10. Guide to Judiciary Policy vol. 12, ch. 2, app. 2B, Model Federal Public Defender Organization EDR Plan, <https://www.uscourts.gov/sites/default/files/guide-vol12-ch02-appx2b.pdf>. References throughout this report to the "Model EDR Plan" include reference to parallel provisions in the Model FPDO EDR Plan, unless otherwise specified.

11. <https://www.uscourts.gov/about-federal-courts/workplace-conduct-federal-judiciary>.

The Model Employment Dispute Resolution Plan for courts was adopted as policy by the Judicial Conference of the United States (JCUS) on September 17, 2019. Per the provisions of the plan, each court was then responsible for adopting an EDR Plan based on the Model EDR Plan, subject to requirements that any modification of the Model EDR Plan could expand, but not diminish or curtail, any of the rights or remedies afforded employees under the Model EDR Plan, and that the plan be approved by the judicial council of its circuit.¹² Most of the circuits either established workplace conduct committees to help carry out this task or charged an existing workplace-related committee, such as an EEO committee, to consider and recommend to the council whether the circuit should make any modifications to the Model EDR Plan in adopting their respective circuit plans.

Once each circuit judicial council had adopted its EDR Plan, individual district and bankruptcy courts within the circuit considered whether to adopt the circuit plan or make modifications, with any modifications requiring approval from the judicial council. Through this process, each court adopted its EDR Plan (with district and bankruptcy courts within a district sometimes adopting a consolidated plan) within two to three years of adoption of the Model EDR Plan.¹³

The Model FPDO EDR Plan was adopted by the Judicial Conference on September 28, 2021,¹⁴ and went through a similar process, with most federal defender offices adopting an EDR plan by September 2022.¹⁵

In January 2020, the Working Group and the Office of Judicial Integrity published an EDR *Interpretive Guide and Handbook*¹⁶ to provide more detail to unit executives, employees, EDR Coordinators,¹⁷ Directors of Workplace Relations, and judges about the Plan and the processes within the Plan. The *Guide* includes chapters on the basics of the Model EDR Plan; procedural protections under the Plan; EDR Coordinators (including who should and should not be an EDR Coordinator, and their training and certification); a step-by-step description of each of the EDR processes under the Plan (Informal Advice; Assisted Resolution; and Formal Complaint); Requests for Review of Decision; administrative responsibilities of the EDR Coordinator; and the employment laws and policies applied to the judiciary by the Model EDR Plan. It also includes sample documents for those administering the plan.

12. Model EDR Plan, § V.A. See [Chapter 2](#) for a discussion of the role of circuit judicial councils generally.

13. See spreadsheet of plan adoption dates provided by the Office of Judicial Integrity (on file with the FJC).

14. Report of the Proceedings of the Judicial Conference of the United States, Sept. 28, 2021, at 24, https://www.uscourts.gov/sites/default/files/jcus_sep_21_proceedings_-_final.pdf.

15. Spreadsheet, *supra* note 13. According to this spreadsheet, federal defender offices that did not adopt the FPDO Plan are covered by their court of appeals plan.

16. EDR Working Group and the Office of Judicial Integrity, *Employment Dispute Resolution Interpretive Guide & Handbook: A Guide to the 2019 Model EDR Plan* (Jan. 1, 2020) (EDR Interpretive Guide and Handbook), https://www.tnwb.uscourts.gov/PDFs/conduct/EDR_HANDBOOK_2020.pdf. See also Hon. M. Margaret McKeown, *The Judiciary Steps Up to the Workplace Challenge*, 116 Nw. U. L. Rev. Online 275, 296–97 (2021) (discussing the Model EDR Plan).

17. EDR Coordinators are court employees who have primary job duties in another area but are selected by their courts to perform certain functions under the EDR plan, including providing confidential advice and guidance if an employee seeks Informal Advice; coordinating the Assisted Resolution process; and assisting the presiding judicial officer (PJO) if a Formal Complaint is filed. See Model EDR Plan, *supra* note 8, app. 1.

The Working Group has met, and continues to meet, periodically to consider additional information and discuss further recommendations. In March 2022 it issued a second report,¹⁸ describing progress to date as well as recommending that the judiciary “adopt more tools and policies” to build on this progress. The specific recommendations made by the Working Group in this report were:

- Conduct a nationwide climate survey (discussed in more detail below), sent 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 of improvements the judiciary has made to its policies and processes”;
- Augment annual EDR-related data collection to include data related to Informal Advice contacts, while preserving confidentiality;
- Revise the Model EDR Plan to specify that an employee complaint must be overseen by a presiding judicial officer from outside the court where the complaint originated;
- Develop an express policy about romantic relationships between employees when there is a supervisory or evaluative relationship;
- Assess incorporation of additional monetary remedies into the EDR framework;
- Direct the Office of Judicial Integrity to issue an annual workplace conduct report (discussed below), with the assistance of DWRs;
- Encourage circuits to continue, institute, or expand outreach and engagement through interactive listening efforts such as focus groups and advisory bodies to ensure they fully understand employee concerns;
- Strengthen annual EDR training by revising the Model EDR Plan to ensure that courts and employing offices not only offer training and make it accessible, but “take affirmative steps to ensure completion” of training; and
- Develop a system for regular review of the judiciary’s workplace conduct policies, through OJI and the Directors of Workplace Relations, to ensure comprehensive implementation across courts and circuits.¹⁹

The recommendations that would require changes to judiciary policy to implement have been referred to the Judicial Conference Committee on Judicial Resources, which has established a workplace conduct subcommittee,²⁰ for consideration. Others were able to be implemented more quickly, including two data collection efforts, discussed below, the results of which were not available for this study (see below for more explanation), but should complement the information we have collected.

Other Judiciary Data Collection Efforts Relating to Workplace Conduct

As recognized in the contract pursuant to which this study was undertaken, the FJC has other efforts on this topic already underway, including educational programming on workplace issues

18. Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States, Mar. 16, 2022 (2022 Working Group Report) https://www.uscourts.gov/sites/default/files/report_of_the_workplace_conduct_working_group_-_march_2022_0.pdf.

19. *Id.* at 21–26.

20. Report of the Proceedings of the Judicial Conference of the United States, Sept. 20, 2022, at 19.

(discussed in more detail in [Chapter 6](#)) and administration of the first national workplace survey. The Office of Judicial Integrity also collects data on EDR matters reported under the Plan.

National Workplace Surveys

In September 2022, the Judicial Conference of the United States approved the Working Group’s recommendation that the judiciary conduct periodic national workplace surveys, administered by the FJC.²¹ At that time, the FJC had already begun working at the request of the Working Group to develop a draft survey that would accomplish the following:

- Provide a general picture of the federal judiciary workplace environment;
- Help the judiciary understand the nature and extent of any wrongful conduct experienced by employees;
- Explore the extent to which wrongful conduct is disclosed and 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 OJI and DWRs; and
- Gather feedback that will help improve the judiciary’s policies, procedures, and education and training initiatives.²²

A small team of FJC researchers, distinct from the team working on this study, developed the survey, reviewing the applicable literature and related surveys, obtaining input from the Working Group, the OJI, and circuit DWRs, and pretesting it with a group of judiciary employees. In January 2023, the researchers sent a link to the online survey to current federal judiciary employees, excluding judges. To facilitate their providing candid feedback, respondents were promised that only a small number of FJC researchers would have access to the raw data and that the Center would provide results *only* to the Working Group and only in aggregated form (e.g., statistical tables and summaries of comments). Consistent with these promises to the survey respondents, results of the survey were unavailable to the Academy panel and staff and to the FJC researchers working on this study.

The results of the survey provide information to the Working Group on workplace matters both within the Model EDR Plan (e.g., employee perceptions of how processes are working) and outside of it (e.g., real or perceived barriers that might discourage an employee from seeking redress under the Plan or other mechanisms). The Working Group will report publicly with any recommendations it makes based on the results.

21. *Id.*

22. 2022 Working Group report, *supra* note 18, at 21–26.

Annual Report from the Office of Judicial Integrity

As noted, the Working Group also recommended that the Office of Judicial Integrity produce an annual workplace conduct report. This report will include information about the data collected and reported to OJI by each court and employing office, as required by judiciary policy, that is:

- (1) the number and types of alleged violations for which Assisted Resolution was requested, and for each matter, whether it was resolved or was also the subject of a Complaint under this Plan or other complaint;
- (2) the number and type of alleged violations for which Complaints under this Plan were filed;
- (3) the resolution of each Complaint under this Plan (dismissed or settled prior to a decision, or decided with or without a hearing); and
- (4) the rights under this Plan that were found by decision to have been violated.

Publication of the inaugural OJI report is expected to roughly coincide with the issuance of this report. The Judicial Integrity Officer has shared with the study team that all courts and offices have reported the required annual data to OJI.

Before describing the specific tasks undertaken for this study in [Chapter 3](#), in [Chapter 2](#) we briefly explain aspects of federal court structure, organization, and governance that are most pertinent to this study.

Chapter 2: Federal Court Organization and Governance

This chapter describes the organization of the federal courts, their overall governance structure, and the ways in which different courts vary in size and organizational complexity. We have focused on the information we think is most important for the purposes of this specific study report.²³

Overview

Article III of the U.S. Constitution establishes the judicial branch as a separate branch of the federal government, specifically creating the U.S. Supreme Court and giving Congress the authority to create inferior federal courts.²⁴ These lower courts include the thirteen courts of appeals (including twelve regional courts of appeals and the Federal Circuit Court of Appeals), ninety-four district courts within the twelve regional circuits, ninety bankruptcy courts within the districts, and the Court of International Trade and Court of Federal Claims, both of which hear only specific types of cases. District courts handle civil and criminal cases at the trial level, as well as bankruptcy appeals. Regional courts of appeals hear appeals from the districts within their circuit, while the Federal Circuit Court of Appeals has specialized appellate jurisdiction. The Model EDR Plan covers all of these courts, except the Supreme Court.²⁵

Federal judicial administration occurs at the national level, the regional (circuit) level, and the local (district) level.²⁶ At a national level the Chief Justice, the Judicial Conference of the United States and its committees, and the Administrative Office of the Courts are responsible for administration and governance. The Judicial Conference, presided over by the Chief Justice and comprised of the chief judges of the thirteen courts of appeals, a district judge from a district court in each circuit, the chief judge of the Court of International Trade, is “the principal policy-making body for the federal judiciary.”²⁷ At its twice-yearly meetings, the Judicial Conference considers proposals forwarded to it by twenty standing committees, which have jurisdiction over policy matters such as the judiciary’s budget, court administration and case management, administration

23. Much of what follows is condensed from a guide published by the FJC. See A New Judge’s Introduction to Federal Judicial Administration (Federal Judicial Center, 2d ed. 2020), <https://www.fjc.gov/content/346988/new-judge-introduction-second-edition>.

24. Congress can also create inferior federal courts exercising its authority in Article I, Section 8, Clause 9 of the Constitution and has done so to create the U.S. Court of Appeals for Veterans Claims, the U.S. Court of Appeals for the Armed Forces, and the U.S. Tax Court. Although this report does not cover these courts, they, perhaps through discussions with the Administrative Office of U.S. Courts, might consider the pertinence of the principles and practices addressed in this report to them.

25. The judiciary’s Model EDR Plans also cover the territorial courts created by Congress under Article IV of the Constitution; judges for these courts exercise the same powers as Article III judges. See the definition of “court” in the Model EDR Plan.

26. See A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 1.

27. *Id.* at 10. For more information on the Judicial Conference, see Admin. Office of the U.S. Courts, *About the Judicial Conference*, <https://www.uscourts.gov/about-federal-courts/governance-judicial-conference/about-judicial-conference>.

of the bankruptcy system, and the Federal Rules of Practice and Procedure.²⁸ Policies adopted by the Judicial Conference are compiled and promulgated in the *Guide to Judiciary Policy*. Workplace conduct is among the areas within the general jurisdiction of the Judicial Conference.

At the regional (circuit) level, the primary policy-making bodies are the circuit judicial councils, presided over by the chief judge of the circuit and comprised of active and senior judges from the court of appeals and the districts within each circuit. Their “duties and responsibilities . . . generally relate to ensuring that all of the individual courts within their circuits are operating efficiently and complying with statutes and Judicial Conference policy.”²⁹ Circuit judicial councils vary in size; the size of each council is set by a vote of the circuit’s judges, not nationally.³⁰

At the local (district) level, “the authority for conducting the basic day-to-day tasks of judicial administration . . . is vested in the court as a whole,” although the chief judge of the district is, by analogy, the “chair of the board” of directors for the district court.³¹ Chief judges are an administrative necessity for multi-judge courts: “Each court of appeals, and each district and bankruptcy court with more than one judge, has a chief judge who has administrative responsibilities relating to the operation of the court.”³² The term “chief judge” is often confusing to persons familiar with the distinct office of chief justice; unlike the chief justice, who is appointed specifically to that office by the president, a district or court of appeals judge becomes “chief” of his or her court through a combination of seniority and age. The chief judge on a district court or court of appeals “is normally the judge under age sixty-five who has served on the court the longest.”³³ Chief judges serve a seven-year term but may not serve beyond the age of seventy. A chief bankruptcy judge is selected by the judges of the district court and serves a term determined by those judges.³⁴

Considering policymaking among these three levels together, the picture that emerges is one of “substantial local autonomy” within policies set at the national and regional levels:

Although the Judicial Conference establishes national policies and approves the budget for the judiciary, each court has substantial local autonomy to appoint its own support staff, purchase supplies, equipment and services, and manage its own affairs. This autonomy over local judicial

28. A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 13. These committees “address and advise on a variety of subjects, including the annual appropriations request, automation and technology policies, amendments to procedural rules, judges’ and top officials’ financial disclosure statements, changes in the personnel system, the special needs of the bankruptcy courts and magistrate judges, the federal defender system, the federal courts’ codes of conduct, and other areas ranging from docket management to the judiciaries of other countries.” *Id.*

29. *Id.* at 21.

30. *See id.* at 20: “Currently, circuit judicial councils range in size from nine to twenty-nine judges, and there is no direct relationship between the number of judges in a circuit and the size of its judicial council.”

31. *Id.* at 28. *See also* Administrative Office of the U.S. Courts, *Judicial Administration*, <https://www.uscourts.gov/about-federal-courts/judicial-administration> (“The chief judge of each court oversees day-to-day court administration, while important policy decisions are made by judges of a court working together.”).

32. A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 29.

33. *Id.*

34. *See id.*: “Unlike the chief circuit or chief district judge, the chief bankruptcy judge has a specific statutory charge to ensure that the business of the court is handled effectively and expeditiously.” (citing 28 U.S.C. § 154(b)).

administration is reinforced by the delegation of substantial responsibilities to individual courts under the federal judiciary’s budget decentralization program.³⁵

In sum, federal court governance has a three-level structure, with policy making at the national, regional, and local levels. Responsibilities are shared among these three levels, and there is a hierarchy from national to regional to local authority, but within that hierarchy, “substantial local autonomy” is the norm.³⁶ This is true at both the circuit and district level: “Each federal court is given responsibility by statute and administrative practice to regulate the conduct of its own business.”³⁷

Judicial Independence and Accountability

The ability of courts to fulfill their mission and perform their functions is based on the public’s trust and confidence in the judiciary.³⁸ That trust and confidence depends on the judiciary faithfully performing its duties and responsibilities, with judges rendering independent decisions grounded in the Constitution and statutes in an impartial manner, with protection of their tenure, compensation, and security. It also depends on the judiciary effectively carrying out internal oversight, review, and governance responsibilities, with independent administration at the national and local levels, but also with transparency and accountability to the public. Both independence and accountability are essential to public trust, particularly with respect to workplace conduct.

Variation Among Court Units

In addition to the governance hierarchy discussed above, there is substantial variation among units at the same level of the hierarchy—especially at the local (district) level. Variation in local administration, in many respects, follows upon variation among court units at the same level of the judicial hierarchy. For example, federal district courts vary greatly in terms of size, as measured by caseload, complexity of caseload, and by number of staff.³⁹ Since the first Judiciary Act in 1789, federal court boundaries have followed state lines, and the number of districts in a state and the size of individual districts varies. Some states have as many as four districts and others have only one.

The number of judgeships allocated to each district is based, at least in part, on their relative caseloads. The largest federal districts—the Southern District of New York (which includes Manhattan) and the Central District of California (which includes Los Angeles)—are each

35. *Id.* at 27.

36. *See, e.g., Judicial Administration, supra* note 31 (“Day-to-day responsibility for judicial administration rests with each individual court. By statute and administrative practice, each court appoints support staff, supervises spending, and manages court records.”).

37. A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 28 (citing, among other statutes, 28 U.S.C. §§ 43 (courts of appeals), 132 (district courts)).

38. *See generally* Strategic Plan for the Federal Judiciary, <https://www.uscourts.gov/statistics-reports/strategic-plan-federal-judiciary>.

39. The federal circuits also vary greatly in size, with the Ninth Circuit encompassing nine states, including California, and two territories, and the District of Columbia Circuit only the District of Columbia. Other than the D.C. Circuit, all regional circuits encompass more than one state.

authorized at twenty-eight judgeships (this does not include senior judges, discussed below). But several districts are authorized at only two judgeships, and the median district has five authorized judgeships.⁴⁰ In terms of how formalized local policy making is, it likely matters how many judges there are in a district.

Another way in which districts may differ that is relevant for court administration is geographical size (i.e., land area). Some very busy districts are geographically concentrated, like the Southern District of New York, but others cover large swaths of territory. The Northern District of Texas includes the Dallas-Fort Worth Metroplex, but in total encompasses one hundred counties, stretching from the Metroplex to the Texas Panhandle.⁴¹ But it is not only “large” courts that may be geographically dispersed; the most obvious example is the District of Alaska, which, with its three authorized judgeships, encompasses the most expansive U.S. state. A district that is widely dispersed geographically will have multiple places of holding court (called divisions) spread throughout the district, for the convenience of those who have business with the court, regardless of the number of cases it hears or the size of its staff. Texas Northern, for example, has seven divisions; Alaska, three. In just the state of Texas alone (which encompasses four district courts), there are twenty-seven divisions. In some districts, there are additional locations in which the bankruptcy court may sit. Multiple locations require additional personnel.

The variations in caseload and divisions can translate into different staff functions in courts of different sizes. A court that is small in terms of staff size might have the same employee perform multiple functions that are each performed by different staff members in a larger court. In addition, variations in the caseload of different courts may lead to development of special programs or local procedures for addressing kinds of cases common in that district (but less common elsewhere). For example, a court that sits on a border might have specialized procedures for handling immigration cases that are not necessary in a court in the Midwest. District courts retain a high degree of local autonomy to address local concerns.

In addition to these kinds of observable differences, there are many differences across courts that cannot be explained by a particular metric but are attributed to the court’s “culture.” Court culture stems from local bar and judicial procedural preferences, judicial philosophy, and other factors. This can lead to differences in everything from the court’s processing of cases to how much the court embraces a new technological development. Some of these differences are embodied in local rules, general orders, and written chambers policies.

40. These figures are taken from Emery G. Lee III & Kristin A. Garri, Federal Judicial Center, *Jurisdictions with a High Number of Civil Jury Trials*, at 8 (2023), <https://www.fjc.gov/content/376750/jurisdictions-high-number-civil-jury-trials>.

41. U.S. Attorney’s Office, Northern District of Texas, *Divisions*, <https://www.justice.gov/usao-ndtx/locations>.

Federal Judiciary Personnel

Judges

The federal judicial system employs roughly 30,000 people, of whom about 2,000 are judicial officers. Many of these judicial officers—including Supreme Court justices, circuit judges, district judges, and judges on the Court of International Trade—are Article III judges. Article III judges are nominated by the President of the United States and confirmed by the Senate. They serve during good behavior and can only be removed from office under limited circumstances through the impeachment procedures specified in Article I of the Constitution. The system also includes magistrate judges, bankruptcy judges, and territorial court judges,⁴² all of whom are appointed for limited terms that are renewable.

Stating the precise number of Article III federal judges at any one time is complicated by two factors. First is the kind of flux in numbers that is attributable to new members of an organization joining and existing members leaving. Second, however, is the provision in federal law that permits federal judges who meet certain age and service requirements to take “senior status,” in which they continue to serve but may carry a reduced caseload.⁴³ In most, if not all, courts, senior federal judges enable the court to more efficiently manage its caseload.⁴⁴ In terms of counting, however, they create some difficulties because they add to the number of judges authorized by federal law. So, for example, when it was stated earlier in the report that the median district court has five authorized judgeships, that figure did not include senior judges; but it can be difficult, again, at any one time, to say how many senior judges in any particular court are handling cases.

In fiscal year 2023, 179 courts of appeals judgeships were authorized by statute, and 172 of those positions were filled by an active-status judge at some point in the fiscal year.⁴⁵ In addition, 110 senior judges participated in appeals dispositions at some point in the year. In fiscal year 2023, there were 667 authorized district judgeships, and 617 of these were filled at some point in the

42. In addition to the ninety-one district courts, there are territorial courts for Guam, *see* 48 U.S.C. §§ 1424–1424c, Northern Mariana Islands, *see id.* §§ 1821–1826, and the Virgin Islands, *see id.* §§ 1611–1617, created by Congress under Article IV of the Constitution. The judges who serve on these courts exercise the same powers as Article III judges in their courts. Active bankruptcy judges in each judicial district “constitute a unit of the district court” and are “judicial officer[s] of the district court,” and are appointed by the circuit court of appeals in numbers and locations determined by Congress. 28 U.S.C. § 151. Also judicial officers of the district courts, magistrate judges are appointed by the district judges of a court in numbers and locations determined by the Judicial Conference of the United States. 28 U.S.C. § 631.

43. *See* 28 U.S.C. § 371(c) (specifying age and service requirements for senior status, the so-called “rule of eighty”).

44. *See* Admin. Office of the U.S. Courts, *About Federal Judges*, <https://www.uscourts.gov/judges-judgeships/about-federal-judges> (“Senior judges handle about 20 percent of the total district and appellate caseload.”). *See also* Federal Judicial Center, *Demography of Article III Judges, 1789–2020*, <https://www.fjc.gov/history/exhibits/graphs-and-maps/age-and-experience-judges> (“Though ostensibly retired from ‘active’ service, senior judges continue to do considerable work for the judiciary as a group. From 1997 to 2015, for example, figures from caseload reports of the Administrative Office of the United States Courts indicate that senior-status judges presided over between approximately 15 and 25 percent of all completed district court trials.”).

45. All figures in this and the following paragraph are taken from Admin. Office of the U.S. Courts, *Judicial Facts and Figures*, Table 1.1., <https://www.uscourts.gov/statistics/table/11/judicial-facts-and-figures/2023/09/30>.

year. In addition, there were 404 senior judges with staff allowances in the same year.⁴⁶ That sums to 1,585 Article III judges.

Magistrate judges are judicial officers of the district court authorized “to handle a variety of judicial proceedings,” including issuing warrants and hearing petty offenses committed on federal lands.⁴⁷ By statute the Judicial Conference allocates magistrate judge positions to the districts; the judges of each district court then appoint magistrate judges to eight-year terms to fill those positions.⁴⁸ In fiscal year 2023, there were 562 authorized, full-time magistrate judge positions, as well as 121 part-time or recalled⁴⁹ magistrate judges.⁵⁰ Bankruptcy judges preside in the bankruptcy courts created by Congress in every district, except the territorial districts.⁵¹ Bankruptcy judges are appointed to fourteen-year terms by the court of appeals for the district in which they sit.⁵² In fiscal year 2023, there were 345 authorized bankruptcy judge positions, 298 active bankruptcy judges, and 26 recalled bankruptcy judges. Unlike with magistrate judges, the number of bankruptcy judges is set by statute.⁵³

Court Employees

At the regional level, each circuit appoints a circuit executive “to carry out such duties as the circuit court may delegate.”⁵⁴ Circuit executives work closely with the chief judge and circuit judicial council; they are tasked with administering the personnel system and the circuit’s budget as well as overseeing “automation, property control records, space management, and local education programs.”⁵⁵ Circuit executives may “have staffs of twenty to thirty employees.”⁵⁶ Each court of appeals also appoints a circuit librarian, a senior staff attorney, and a chief circuit mediator.⁵⁷

46. Senior judges performing “substantial judicial duties” (to be determined by the circuit judicial council in which the judge sits) are allocated staffing resources. *See* Report of the Proceedings of the Judicial Conference of the United States, Sept. 22–23, 1982, at 81, <https://www.uscourts.gov/file/1657/download>.

47. *About Federal Judges*, *supra* note 44. *See also* A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 32 (“Duties of magistrate judges have expanded significantly over the years. Congress allows district courts to assign virtually any matter or proceeding to magistrate judges, with the exception of trial and sentencing in felony cases.”).

48. *See* 28 U.S.C. § 631(a).

49. *About Federal Judges*, *supra* note 44: “Similar to senior status Article III judges, bankruptcy and magistrate judges may continue to provide judicial assistance after they have retired. Generally, recalled judges exercise all the powers and duties that they had as an active judge.”

50. *See Judicial Facts and Figures*, Table 1.1, *supra* note 45. The latter figure includes two clerks of court who also serve as part-time magistrate judges. *See* 28 U.S.C. § 631(c) (“with the approval of the conference, a part-time referee in bankruptcy or a clerk or deputy clerk of a court of the United States may be appointed and serve as a part-time United States magistrate judge”).

51. *See* 28 U.S.C. § 151 (“In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district.”).

52. *See* 28 U.S.C. § 152(a)(1) (“Each bankruptcy judge . . . shall be appointed by the court of appeals of the United States for the circuit in which such district is located . . . for a term of fourteen years”).

53. *See id.* § 152(a)(2).

54. A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 24.

55. *Id.*

56. *Id.*

57. *See id.* at 32.

Given the business of the federal courts—which depends on accurate and voluminous record-keeping—the bulk of court employees work in the offices of the clerks of court. The district court clerk is also charged with financial management of the court.⁵⁸ By statute, the judges of a court of appeals “may appoint a clerk who shall be subject to removal by the court.”⁵⁹ The clerk may then “appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office.”⁶⁰ Similarly, the judges of each district “may appoint a clerk who shall be subject to removal by the court.”⁶¹ In turn, the clerk of court is authorized to appoint “necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office.”⁶² Note that the formula for clerk’s office staffing is assigned (by statute) to the Administrative Office, an example of shared responsibilities between the national level and regional or local level. The national policymakers set the staffing allocation for each court, but the court itself hires (and fires) employees. “Court employees are supervised by, and responsible to, judges of their courts, not the AO.”⁶³

In most districts, bankruptcy courts (a unit of the district court) have a separate clerk’s office, depending on caseload and approval of the circuit judicial council and director of the Administrative Office.⁶⁴ In six districts, the bankruptcy clerk’s office is consolidated with the district court clerk’s office.⁶⁵

Clerk’s office employees handle day-to-day administration in the courts. Among other things, they manage the courts’ dockets, liaise between judges’ chambers and the clerk’s office, maintain the information technology systems, and provide administrative, financial, and procurement support. Some are specialized to help a court handle specific types of cases (e.g., death penalty law clerk), and the types of positions needed will vary across courts: “Individual courts have substantial discretion to hire and set pay for their employees, enabling each court to structure its own support operations to suit local conditions.”⁶⁶

Two functions within the courts merit special coverage, in terms of the kinds of court employees, both of which are important on the criminal side of the district court’s docket. First, the courts must provide pretrial services for investigating criminal defendants,⁶⁷ preparing

58. *See id.* at 31–32 (“The judges of each court appoint a clerk of court, the court’s primary administrative officer, who oversees the court’s administrative and financial operations in accordance with the powers and duties assigned by the court, to which the court reports directly through its chief judge.”).

59. 28 U.S.C. § 711(a).

60. *Id.* § 711(b).

61. *Id.* § 751(a).

62. *Id.* § 751(b).

63. A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 31. *See also id.* (“Within the national standards and funding allotments established by the judiciary’s personnel system, the court and its court unit executives have considerable discretion to organize and compensate their staff.”).

64. *See* 28 U.S.C. § 156(b).

65. *See id.* § 156(d).

66. A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 31.

67. *See* 18 U.S.C. § 3152(a) (“[T]he Director of the Administrative Office . . . under the supervision and direction of the Judicial Conference . . . [shall] provide . . . for the establishment of pretrial services in each district (other than

presentence reports,⁶⁸ and supervising defendants and offenders in the community (generally, probation).⁶⁹ Probation and pretrial services offices may be combined in some districts, but statute authorizes appointment of both a chief pretrial services officer and a chief probation officer.⁷⁰ Each district court appoints pretrial services officers and probation officers who perform these tasks.⁷¹ The number of officers in each district is based on its caseload.⁷² Employees in these roles have specialized qualifications and receive specialized training, such as in using firearms.⁷³ The chief probation officer and the chief pretrial officer usually work closely with the chief judge of the district rather than the clerk of court.

Second, the provision of legal counsel to indigent defendants is an important function of the federal courts.⁷⁴ The Criminal Justice Act of 1964 (CJA) established the authority to appoint and compensate defense attorneys to represent the indigent in federal criminal prosecutions; the act was amended in 1970 to authorize district courts to create federal public defender organizations (FPDOs) as counterparts to federal prosecutors (who are based in the executive branch).⁷⁵ Today, seventy-three districts are served by sixty-five FPDOs based in the judicial branch. Nineteen districts are served by Community Defender Organizations (CDOs), which are nonprofit groups which receive federal funds,⁷⁶ and two districts rely solely on CJA “panel attorneys.”⁷⁷ “The Judicial Conference . . . promulgates policies and guidelines for the administration of the CJA”

the District of Columbia).” *See generally* Admin. Office of the U.S. Courts, *Probation and Pretrial Officers and Officer Assistants*, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-officers-and-officer>.

68. One of the most important functions of probation officers is the preparation of a presentence investigation report. *See* 18 U.S.C. § 3552(a).

69. *See id.* § 3602(a) (“A district court of the United States shall appoint qualified persons to serve . . . as probation officers . . .”).

70. *See id.* § 3152(a) (“pretrial services established under this section shall be supervised by a chief probation officer . . . or by a chief pretrial services officer . . .”). “The choice [whether to consolidate] is up to the individual districts.” Admin. Office of the U.S. Courts, *Probation and Pretrial Services – Mission*, <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/probation-and-pretrial-services-mission>.

71. *See* A New Judge’s Introduction to Federal Judicial Administration, *supra* note 23, at 32 (“Each district court appoints . . . probation officers . . . in the number determined by the Judicial Conference.”).

72. *See Probation and Pretrial Services – Mission*, *supra* note 70.

73. *See Probation and Pretrial Officers and Officer Assistants*, *supra* note 67.

74. *See* Strategic Plan for the Federal Judiciary, Goal 1.1c, <https://www.uscourts.gov/statistics-reports/issue-1-providing-justice> (“Ensure that all persons represented by panel attorneys and federal defender organizations are afforded well qualified representation consistent with best practices for the representation of all criminal defendants.”).

75. *See* Admin. Office of the U.S. Courts, *Defender Services*, <https://www.uscourts.gov/services-forms/defender-services> (detailing the history of FPDOs).

76. *See id.* (“Community defender organizations are non-profit defense counsel organizations incorporated under state laws [They] receive initial and sustaining grants from the federal judiciary to fund their operations.”). Community defender organization employees are not federal employees and therefore cannot seek relief under any federal court or FPDO EDR Plan.

77. Panel attorneys “are highly qualified, private attorneys who are appointed by the federal court to represent indigent defendants.” *See Defender Services*, *supra* note 74. They are paid, by the courts, a statutory rate for their time and provided with court funds for investigation, interpretation, and experts. *See id.* Panel attorneys are not federal employees and therefore cannot seek relief under any federal court or FPDO EDR Plan.

and “approves funding requests and spending plans for the program as a whole and . . . budgets and grants for each defender organization.”⁷⁸

Each FPDO is headed by a chief federal public defender, who is selected and appointed by the court of appeals of the district’s circuit in order to insulate the office from the influence of the district court before which its attorneys will normally practice. This insulation from the court provides the federal public defenders with independence “to exercise professional judgment in pursuing the best interests of the client.”⁷⁹ The chief public defender is appointed to a renewable four-year term. FPDOs are staffed by employees of the courts, unlike CDOs.⁸⁰ Executive directors of CDOs are selected by (and serve at the pleasure of) their respective boards.

Finally, all federal judges are allocated, and hire their own, chambers staff to assist with the performance of their duties. Most chambers staff are either designated as judicial assistants/secretaries (who provide administrative and clerical support) or law clerks (legal research and writing). Law clerks are further divided between career clerks, who serve open-ended periods of service, and term clerks (terms cannot exceed four years but are usually shorter). In some cases, judges may also hire chambers paralegals to fill allocated positions. The number of positions allocated depends on a judge’s position. Chief court of appeals judges may hire up to six positions; court of appeals judges five; chief district judges four (in a court with five or more authorized judgeships) or three (in a court with fewer than five authorized judgeships); district judges three; bankruptcy judges two; and full-time magistrate judges two. There is some degree of choice in how judges choose to fill their allocated positions for chambers staff. For example, in some settings a judge may choose to hire an additional judicial assistant/secretary instead of a law clerk to fill one of these positions.

Most judicial branch employees, including judicial law clerks, are “at will” employees, who serve at the pleasure of the court and can be terminated with or without cause.

Workplace Conduct Infrastructure in the Judiciary: Offices, Groups, and Positions

National Workplace Conduct Working Group

As discussed in [Chapter 1](#), the Workplace Conduct Working Group was convened in 2018 at the direction of the Chief Justice of the United States to “examine the sufficiency of safeguards currently in place within the Judiciary to protect all court employees from inappropriate conduct in the workplace.”⁸¹ The Working Group submits recommendations to relevant Judicial Conference committees.

78. *Id.*

79. Comm. to Review the CJA Prog., 2017 Report of the Ad Hoc Committee to Review the Criminal Justice Act, at 159, https://cjastudy.fd.org/sites/default/files/report_flipbook/index.html.

80. *See Defender Services*, *supra* note 75.

81. 2018 Working Group Report, *supra* note 6, at 1.

Office of Judicial Integrity

The Office of Judicial Integrity (OJI), housed within the Administrative Office of the U.S. Courts, “serves as an independent resource outside of the courts’ chain of command, providing confidential help, information, and referral, answering questions, and providing guidance on informal and formal options for addressing concerns of workplace harassment, abusive conduct, or other wrongful conduct.”⁸² OJI is available to all employees, judges, and managers.

The OJI also facilitates national policymaking efforts on workplace conduct issues. The OJI provides staff support to the national Workplace Conduct Working Group and the Directors of Workplace Relations Advisory Group.

The OJI provides training and education to courts and federal public defender officers on workplace conduct and a range of related topics, including facilitating annual EDR training.

As required by the Model EDR Plan for Courts and the Model EDR Plan for FPDOs, all courts and FPDOs report data on EDR Assisted Resolutions and Formal Complaints to OJI on an annual basis.

Circuit Directors of Workplace Relations

Directors of Workplace Relations (DWRs) are circuit employees who coordinate “workplace conduct issues and the implementation of all Court EDR Plans within the circuit. The scope of duties may vary by circuit, but generally, a Circuit Director of Workplace Relations may: provide Informal Advice and Assisted Resolution under any EDR Plan within the circuit; assist in training the EDR Coordinators within the circuit; provide or arrange for training throughout the circuit on workplace conduct, discrimination, and sexual harassment; and collect and analyze statistical data and other information relevant to workplace conduct matters.”⁸³

The responsibilities of DWRs vary by circuit. Most circuits have full-time DWRs. Two circuits have DWRs who divide time between the DWR position and another position. One DWR serves two circuits. One circuit’s DWR is a part-time employee. All are involved in EDR processes; some are also involved in advising on or separately handling Judicial Conduct and Disability complaints.⁸⁴ DWRs generally report to circuit executives. DWR responsibilities include staffing active circuit workplace conduct/relations committees.⁸⁵ Some DWRs assist with investigations and mediations for the courts/offices within their circuit or facilitate local EDR Coordinators’ use of circuit resources for investigation or mediation.

82. Admin. Office of the U.S. Courts, *Workplace Conduct in the Federal Judiciary*, <https://www.uscourts.gov/about-federal-courts/workplace-conduct-federal-judiciary>.

83. Model EDR Plan, *supra* note 8, app. 1.

84. Judicial Conduct and Disability (referred to as “JC&D”) is a process established in 28 U.S.C. §§ 351–364 which allows any person (judiciary employees as well as attorneys and the public) to file a complaint alleging a federal judge has committed misconduct or is no longer able to discharge judicial duties due to disability. See <https://www.uscourts.gov/judges-judgeships/judicial-conduct-disability>.

85. The information in this and the following paragraphs is drawn from interviews with DWRs. See [Chapter 3](#) for more details on data collection methods for this study.

Most DWRs are attorneys with experience working in the federal and/or state courts. Some have been attorneys in private practice; a number worked in employment law. Some have specific expertise and experience in mediation.

All DWRs serve on the judiciary's DWR Advisory Group, which provides advice to the Administrative Office on workplace conduct practices, concerns, trends, and training needs, including EDR plans and processes. DWRs also collaborate informally with one another to share ideas, practices, and suggestions.

Circuit Workplace Committees

Circuit workplace committees are committees convened by the circuit judicial council to advise on and develop suggestions for workplace conduct, workplace relations, EEO, and/or other related issues at the circuit level. Some circuits have currently active workplace committees, while others convened a committee to decide whether to adopt the current Model EDR plan and then sunset the committee after the circuit judicial council adopted its plan. The membership of these committees varies by circuit and can include judges from courts throughout the circuit as well as circuit executives and court employees.

EDR Coordinators

EDR Coordinators are court or FPDO employees appointed by their courts' chief judges or their FPDOs to provide Informal Advice about potential EDR matters and coordinate the Assisted Resolution and Formal Complaint processes under the court/office's EDR plan. The EDR Coordinator serves as a resource for nonsupervisory employees, supervisors, judges, and presiding judicial officers in EDR Formal Complaints. Courts/offices have at least one EDR Coordinator designated as "primary" and one alternate EDR Coordinator, though certain courts/offices have more. In districts where the district court and bankruptcy court have a consolidated EDR plan, EDR Coordinators are often appointed from different units (district court, bankruptcy court, and/or probation and pretrial services), and employees can consult with the EDR Coordinator of their choice.

The EDR Coordinator is also responsible for maintaining files on EDR matters, reporting data about EDR matters on an annual basis to the Administrative Office, helping coordinate EDR and workplace relations training, and assisting the court/office meet its obligations under the EDR plan to advise employees of their rights under the EDR plan.

EDR Coordinators are court/office employees who are already employed by the court/office and have full-time job responsibilities in positions like career law clerks, attorney advisors, paralegals, investigators, deputy clerks, human resources administrators, and probation office specialists (among others). An employee designated as EDR Coordinator receives training to become an EDR Coordinator and then assumes the EDR Coordinator duties in addition to the responsibilities of the employee's full-time position.

Chief Judges

Chief judges have specific responsibilities in facilitating the Options for Resolution under the EDR Plan. Chief circuit judges are involved in EDR processes for court of appeals employees, Formal Complaints arising from FPDOs, and allegations against any type of judge. Chief district or bankruptcy judges are involved in Assisted Resolution and Formal Complaint processes of their courts, with responsibilities including deciding whether to grant extensions to deadlines, assessing allegations against a unit executive or judge during Assisted Resolution, appointing a presiding judicial officer for the Formal Complaint process, carrying out ordered remedies in collaboration with the employing office, among others. Chief judges are also responsible for designating their court's EDR Coordinators.

Presiding Judicial Officers (PJOs)

Presiding judicial officers are judges designated to oversee a Formal Complaint proceeding. According to the Model EDR Plan for courts, “[t]he Presiding Judicial Officer will provide for appropriate investigation and discovery, allow for settlement discussions, determine any written submissions to be provided by the Parties, determine if a hearing is needed, determine the time, date, and place of the hearing, issue a written decision, and, if warranted, order remedies,” among other duties.⁸⁶

Conclusion

All federal courts are bound by most federal statutes⁸⁷ and Federal Rules of Practice and Procedure. Beyond those, subject to national policy promulgated by the Judicial Conference, which is largely set forth in a document called the *Guide to Judiciary Policy*, the autonomy of individual courts, and the differences between them, leads to variations with respect to how they are organized, the kinds of policies and procedures they adopt, and the types of positions they need for day-to-day administration, and other characteristics. This autonomy has been reflected in the adoption by each individual court and FPDO of either their respective Model EDR Plan or an EDR plan that varies in some ways from the Model.

86. Model EDR Plan, *supra* note 8, § IV.C.3.e.ii.

87. Some statutes, by their terms, do not apply to federal courts. Of relevance to this report, statutes governing the competitive civil service that prohibit discrimination based on race, color, sex, religion, national origin, age, or physical or mental disability do not apply to the courts. *See* Title VII, Civil Rights Act of 1964, as amended and codified in 42 U.S.C. §§ 2000e–2, 2000e-3, 2000e-16(a); Age Discrimination in Employment Act of 1967 (ADEA), as codified in 29 U.S.C. §§ 623 and 633a; Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12102, 12111–12114, as amended by the Americans with Disabilities Act Amendments Act of 2008 (ADAA); Rehabilitation Act of 1973, codified as amended at 29 U.S.C. §§ 701 et seq.

Chapter 3: Contract Tasks and Data Collection Methods

As stated above, the House Report directed the Federal Judicial Center to contract with the National Academy of Public Administration, entering into an independent partnership to assist the FJC in its efforts related to workplace environment. In contracting, both organizations recognized the importance of working in partnership while maintaining their respective independence. To implement this working arrangement, both parties agreed to work collaboratively on tasks in accordance with standard research practices, and at the end of the engagement, to submit a joint report to Congress outlining key findings and suggestions for improvement in the areas enumerated above. The FJC also committed to transmitting the report to judicial branch entities responsible for addressing workplace conduct.

Established in 1967, the Federal Judicial Center is the research and education agency of the judicial branch of the United States government. Its status as a separate agency within the judicial branch, its specific missions, and its specialized expertise enable it to pursue and encourage critical and careful examination of ways to improve judicial administration. The Center has no policy-making or enforcement authority; its role is to provide accurate, objective information and education and to encourage thorough and candid analysis of policies, practices, and procedures.

Established in 1967 and chartered by Congress in 1984, the National Academy of Public Administration is a nonprofit, independent organization of top public management and organizational leaders who address the nation's most critical and complex public management challenges. With a network of more than 1,000 distinguished fellows and an experienced professional staff, the Academy is uniquely qualified and trusted across government to provide objective advice and practical solutions based on systematic research and expert analysis.

The joint study team included research staff from the FJC and the Academy. The Academy, with concurrence from the FJC, established a five-member panel of Academy fellows to oversee and provide guidance to the Academy's work on the joint project (short biographical information on the Academy Panel members and study team is provided in [Appendix E](#)). Members of the panel have extensive work experience in either the federal or state judiciary or with issues connected with workplace practices.

The scope of this study, as specified by the contract, encompassed four tasks, each with several specified sub-tasks:

Task 1: Assess how the Model Employment Dispute Resolution Plans have been implemented in the courts and employing units.

- Develop and implement a framework for cataloguing how courts/employing units have implemented the Model EDR Plans, noting significant variations that might affect the success of the local plans
- Conduct individual and group interviews of employees (judge/nonjudge; management/nonmanagement; administrative/operations; HR) to assess successes and limitations of the EDR plans

- Conduct interviews of the Judicial Integrity Officer and circuit Directors of Workplace Relations

Task 2: Assess how the informal advice, assisted resolution, and formal complaint processes are working, and consider what type of information about their use ought to be collected and reported, balancing concerns about program effectiveness, confidentiality, and assessment.

- Review standard operating procedures of the Office of Judicial Integrity and circuit Directors of Workplace Relations
- Conduct interviews with the Judicial Integrity Officer and circuit Directors of Workplace Relations

Task 3: Assess the nature and level of educational and outreach efforts.

- Obtain information about programming on workplace issues being offered to judges and court employees (e.g., target audience, delivery mode, topics, voluntary/mandatory, frequency)
- Develop suggestions for improving national and local educational and outreach efforts

Task 4: Assess use of uscourts.gov and local court of appeals, district, and bankruptcy court websites to provide workplace information to the public and to employees; is the provided information complete, helpful, and accessible?

- Develop and implement a framework for reviewing websites, noting significant variations among courts
- Develop suggestions for better using national and local court websites

The joint team developed a research plan with data collection approaches based on these tasks and subtasks. Some of our data collection approaches were specific to a certain task or subtask, such as cataloguing how each court or office had implemented the Model EDR Plan. Other data collection methods, including interviews and focus groups with various stakeholders, gathered information for multiple tasks and subtasks.

Data Collection Methods

The following sections describe the methods we used to collect data from different individuals and groups (interviews and focus groups); to review the court and FPDO EDR Plans; and to review court and FPDO websites for workplace conduct content. There are limitations regarding the data we collected and conclusions that can be drawn from it. First, the information we collected through interviews and focus groups is based on the self-reporting of those responding to our questions; it was not independently verified. Second, court and office EDR plans, and websites, change over time. Any information we provide about either of these should be seen as a snapshot of one point in time.

To preserve the anonymity of those we interviewed, as well as those who participated in focus groups, unless otherwise noted we have incorporated information from interviews and focus groups into our overall analysis, rather than discussing the findings from them separately.

Review of Court and FPDO EDR Plans

We downloaded electronic copies of circuit, district, and bankruptcy court EDR plans and FPDO EDR plans from their respective court and office websites. The Office of Judicial Integrity, to which courts and offices are required to submit their plans, also provided us with the plans they had received, so that we could confirm we had the most recent versions of each. We then reviewed all circuit court and circuit FPDO EDR Plans for differences between the circuit plan and the relevant national Model EDR Plan. We collected both quantitative information and qualitative observations about the plans, with an emphasis on variations between the plans and the relevant Models. After using this process to understand which circuit courts and offices generally followed their respective Model EDR Plans, and which contained modifications of the Model EDR Plans, we then reviewed all district court, bankruptcy court, and FPDO EDR plans for differences between the local court/office plan and both the relevant Model and circuit plans (if applicable for FPDOs, as some circuits do not have separate FPDO plans).

In conducting this review, we created a database to catalog information about each court and office plan, focusing on instances in which each plan differed from the relevant Model EDR plan or circuit plan. The database notes each difference (beyond necessary differences, such as specifying the name of the circuit or district to which the plan applied), including the specific language used in a particular section in the Model EDR Plan and in the corresponding section of the plan being coded. In addition to using this review to determine the extent to which and in what ways courts and office plans varied from their respective Model Plans, we used the information from this coding process throughout the project, to tailor interview questions for stakeholders within a particular court or office. We also plan to share this database with the Office of Judicial Integrity.

Interviews

Federal Judicial Center Education Division Staff

As discussed in more detail in [Chapter 6](#), the FJC Education Division is one source of education for those in the courts about workplace issues. For Task 3 of the contract, which is focused on educational and outreach efforts, we interviewed staff from the FJC who serve various audiences within the courts, including the FJC Education Division Director and staff members from each of the following subgroups within the division: Judicial and Legal Education; Probation and Pretrial Services Education; Executive Education; and Management and Professional Development. Questions we asked the FJC Education Division representatives are in [Appendix G](#).

Judicial Integrity Officer and Circuit DWRs

We held introductory meetings in late summer/fall 2023 with the Judicial Integrity Officer and with each circuit Director of Workplace Relations, to learn general information about their positions and responsibilities. In early 2024, we held more in-depth interviews with each of these

people,⁸⁸ including asking about their observations on how the EDR plans and processes were working, the general types of inquiries they have been getting from employees, and their ongoing training efforts. Interviewer questions for the introductory meetings and follow-up interviews can be found in [Appendix H](#).

Circuit Executives

Most of the current DWRs were hired after their circuits had adopted their EDR Plans. Therefore, while DWRs were able to provide us with a great deal of information about their roles and how things were working in practice under their respective circuit plans, we were interested in obtaining additional information about the history of each circuit judicial council's decision about whether to adopt the Model EDR Plan or adopt a plan that differed from the Model in some ways. To that end, we interviewed circuit executives⁸⁹—the highest-ranking nonjudicial officers in each circuit, who work closely with the judicial council—about the history of their circuit plans and other EDR-related issues. The questions we asked of circuit executives can be found in [Appendix I](#).

Judge Members of Active Circuit Workplace Conduct Committees

To gain the perspective of judges on the adoption and implementation of their circuit EDR plans and how the plans were working in practice, we asked circuit executives to provide us with names and contact information for judges from any workplace conduct or related committee in their circuit that was still active at the time of our inquiry, focusing on those judge members who had also be involved on the committee at the time the circuit's plan was adopted. Based on information provided by the circuit executives, in April 2024 we reached out to and interviewed one to three judges from each of seven circuit workplace committees, for a total of twelve judges. The questions we asked of these judges can be found in [Appendix J](#).

Focus Groups

A focus group is a structured group interview in which a moderator asks questions of participants, and they can also respond to comments made by others. During March and April 2024 we held focus groups for this study with two different types of stakeholders who have specific roles under the EDR Plans: EDR Coordinators and chief district and bankruptcy judges.

Between March and April 2024 we held thirteen focus groups, to gain in-depth information about each group's experience with the current EDR Plan, processes, and practices. The basic questions for these focus groups, which were tailored for each group, can be found in [Appendix K](#). Each focus group session lasted between forty and ninety minutes and included between two and ten participants.

88. In the fall interviews, we spoke with an Acting DWR in one circuit; for that same circuit, in the spring we conducted a full interview (i.e., questions from both interview protocols) with the newly appointed DWR. For another circuit, our spring interview was with an Acting DWR because the DWR was on leave at that time.

89. One circuit executive responded to our questions in writing because of conflicts that prevented scheduling an interview.

EDR Coordinators

Under the Model EDR Plan, the chief judge of each court designates a primary and alternate EDR Coordinator for the court. To ensure we had EDR Coordinators from a range of courts and offices, we took a random sample of about one-third of Primary EDR Coordinators from the courts and the same percentage from FPDOs and recruited them to participate.

We held seven EDR Coordinator focus groups with a total of fifty EDR Coordinators. Five of these groups were held with court EDR Coordinators, from district courts, bankruptcy courts, and probation offices (these included thirty-six EDR Coordinators, which was 61% of those recruited). At least one court EDR Coordinator from ten of the twelve regional circuits participated in a focus group.

And we held two focus groups with fourteen EDR Coordinators from FPDOs (64% participation rate). At least one FPDO EDR Coordinator from eight of the twelve regional circuits participated in a focus group.

Chief District and Bankruptcy Judges

Chief district and bankruptcy judges also have a number of specified responsibilities under the Model EDR Plan, including coordinating Assisted Resolution processes and appointing a presiding judicial officer if an EDR matter proceeds to a Formal Complaint. For focus groups with chief judges, we took a random sample of about one-third each of active chief judges of district courts and chief judges of bankruptcy courts and recruited them to participate. We held six focus groups with a total of twenty-six chief judges (twelve district and fourteen bankruptcy; 44% participation rate). At least one chief judge participated from 10 of the 12 regional circuits. In these groups we discussed the judges' various responsibilities under the Plan, their experiences with the plan processes, qualities they look for in selecting EDR Coordinators, and other topics related specifically to their role as chief judges under the Plan.

Review of Court/FPDO Websites

The Model EDR Plans, adopted as policy by the Judicial Conference of the United States, require all court and FPDO public websites to include specified information about the EDR Plans and how employees can report allegations of wrongful conduct. Specifically, the the Model Plans⁹⁰ state that:

Every court and FPDO must:

post the following prominently on the homepage of both its internal and external websites under a link labeled "Your Employee Rights and How to Report Wrongful Conduct":

A. the entire EDR Plan, with all appendices and relevant contact information,

90. Model EDR Plan, *supra* note 8; Model FPDO EDR Plan, *supra* note 10, § V.D.

- B. Judicial Conduct and Disability Act,
- C. Rules for Judicial-Conduct and Judicial-Disability Proceedings,
- D. Judicial Conduct and Disability Complaint form; and
- E. contact information for all EDR Coordinators, the circuit Director of Workplace Relations, and the national Office of Judicial Integrity

We reviewed all court and FPDO public websites to determine if they included the information required by the *Guide*. In reviewing the sites, we created a database to code both quantitative information and qualitative observations about the presence and presentation of the information. For example, we coded whether the site had a link titled “Your Employee Rights and How to Report Wrongful Conduct” on its home page or somewhere else on the website; whether the title was exactly as required; and whether all of the information listed above was provided. We also had a field in which we noted websites that were (subjectively) particularly accessible and well-organized, and those that were less so.

This review proceeded in two rounds: an initial review conducted between September 2023 and November 2023, and a second round conducted between February and May 2024. Because the Academy team did not have access to the courts’ and FPDOs’ internal websites, and because some of these sites had security restrictions even for those within the judiciary, we limited our review to public websites. The website review also included a qualitative assessment of workplace conduct information available on uscourts.gov, the national website of the federal judiciary.

Chapter 4: Implementation of the Model EDR Plan

Pursuant to Task 1 of the FJC-Academy contract, this chapter summarizes how courts and employing units have implemented the 2019 Model EDR Plan for courts and the 2021 Model Federal Public Defender Organization EDR Plan, noting local plan variations that appear to be substantive. We also gathered input from interviews and focus groups with chief district and bankruptcy judges, circuit executives, Directors of Workplace Relations, the OJI Director, Employment Dispute Resolution Coordinators, and judge members of existing circuit workplace conduct committees on what they perceive as benefits, challenges, and limitations of the Model EDR Plans.

Variations in EDR Plans Adopted by Circuits, Local Courts, and FPDOs

As discussed in [Chapter 1](#), there are two Model EDR Plans used in the federal judiciary: the Model EDR Plan for courts, and the Model EDR Plan for federal public defender offices. The Model EDR Plan for courts was adopted as policy by the Judicial Conference of the United States in September 2019. Each circuit judicial council then considered whether to adopt the Model EDR Plan with or without modification, with the limitation that any modification of the Model EDR Plan could expand, but not diminish or curtail, any of the rights or remedies afforded employees under the Model EDR Plan. Individual district and bankruptcy courts considered whether to (i) adopt a plan separately or participate in a “consolidated” plan (one plan for the district and bankruptcy court in the same judicial district), and (ii) make modifications to the circuit plan. District and bankruptcy plans were submitted to and approved by their circuit judicial councils. The Model EDR Plan for FPDOs was adopted in September 2021 and went through a similar process. This section provides a summary of how courts and FPDOs have implemented their respective Model EDR Plans, noting significant variations that might affect the success of the plans.⁹¹

This analysis is based on a review of all circuit and local court and FPDO plans (see [Data Collection Methods](#) section of Chapter 3). The text of each circuit plan was compared to the text of the Model EDR Plan. The text of each local plan (district court, bankruptcy court, consolidated district/bankruptcy court, or FPDO) was compared to the text of both the Model EDR Plan and the relevant circuit plan (if applicable for FPDOs).⁹² Because the default plan within each circuit is the circuit plan, the primary frame of reference in this analysis for local plans is the circuit plan.

Variations between the Model EDR Plan and the plans implemented by individual circuits, local courts, and FPDOs range from changes most aptly considered copy edits, to clarifications that provide more details about how a process should work in practice, to substantive modifications of key aspects of the EDR plan like definitions or deadlines. This section summarizes substantive variations in the adopted plans, focusing on any modifications that appear to have the potential to affect the ability to exercise rights under the plan, or make changes to the process for addressing an EDR matter. Neither the Model EDR Plan nor any other judiciary document provides guidance,

91. See the list of contract tasks in [Chapter 3](#).

92. We used the Adobe Acrobat Compare Documents tool to guide our manual review to help ensure any significant change was identified.

for judicial councils or others, for determining whether a given modification to the plan diminishes or curtails any rights or remedies, so we did not have a reference point for identifying potentially substantive changes, and our judgment on this was inherently subjective.

We do not consider clarifications, such as adding more details to a step in a process or to a responsibility under the plan but not changing the process/responsibility/other provision, to be substantive changes, though we do discuss common clarifications because they may be helpful in determining provisions of the Model EDR Plans that require more detail to be better understood. We also do not consider the “tailoring” of the Model or a circuit plan to an individual district, court, or office to be making substantive modifications.⁹³

At this juncture, a catalog of plan differences provides important information as subject matter experts continue to use and review court/office EDR plans⁹⁴ and as judicial councils, local courts and offices, and judicial policy makers consider changes to improve the effectiveness of plans and might find different approaches of courts and offices of interest. Understanding why certain circuits, courts, and offices have varied their plans can help judicial policy makers determine whether similar changes ought to be made to the Model EDR Plans, and circuits, courts, and offices determine whether the changes may be relevant to their situation and culture. During our interviews we explored and obtained some insight into the reasons for differences, and the reasons for some changes seem self-evident. Because decisions are made at the level of the circuit council, however, our understanding is limited, and more systematically collected information is needed.⁹⁵ Generally, according to our interviews, certain changes were adopted to address specific concerns identified by circuit subject matter experts (e.g., DWRs, circuit mediators) or committees convened by judicial councils to review the Model EDR Plan, who received input from a range of employees and judges. Some other plan provisions that appeared to be intentional changes from the Model EDR Plan were carry-overs from a prior version of the circuit’s EDR Plan.

Identifying these differences can also aid in any additional evaluation that is done to determine the extent to which individual modifications potentially diminish or curtail rights or remedies under the plan. Evaluating whether any of these changes affect the success of a plan in practice is a difficult proposition, especially from the perspective of quantitative research design. As discussed in more detail in [Chapter 5](#), those we interviewed generally indicated that their court or office had limited or no experience to date with EDR matters that involved one of their plan’s changes from the Model, given the recency of its adoption. In order to make inferences about the effects of plan

93. Tailoring includes, for example, removing categories of employees that a court does not have, like probation employees for bankruptcy courts, or adjusting the title of “Chief Judge” to “Chief Circuit Judge” in courts of appeals’ plans. Other types of nonsubstantive edits are copy edits, such as adding or removing punctuation or changing capitalization; removing or substituting words in a way that does not change meaning (e.g., “Unit Executive” to “Court Unit Executive (CUE)”); editing language to remove repetition in a way that does not change meaning; adding brief language to emphasize a particular point that is made elsewhere; editing to use, or remove the use of, gender-inclusive language; and formatting changes.

94. This catalog of all plan variations will be provided to the Office of Judicial Integrity.

95. Interviewees could offer some thoughts on the variations but they couldn’t speak for the council and didn’t always have insight into why decisions were made.

changes on measures of “success,” however defined, there needs to be a sufficient number of EDR matters to analyze (the sample size needs to be large enough so that the analysis has sufficient statistical power). If the dependent variable in the analysis would be counts of different types of resolutions, there would need to be enough observations of each type of resolution.

In terms of the specific research design used, comparing a court or office to itself before and after adoption of the plan (time series research design) is not possible because data on the success of the plan does not exist before the Model EDR Plans were adopted and implemented (for either variables like number of Assisted Resolutions or Formal Complaints, how those matters were resolved, or other potential measures like employee satisfaction). Comparing across different courts/offices (a cross-sectional research design) is complicated by the fact that the plans differ in a number of ways, as do the circumstances of individual courts/offices outside of the plan, so it would be difficult to identify the effect of specific plan variations on measures of success. Inferring causation depends on being able to isolate the effect of a specific cause; when multiple factors change at the same time, it is difficult to attribute an effect to a single cause.

Plan Adoption Summary: Courts

Circuit Courts

Six circuit courts⁹⁶ adopted the Model EDR Plan without substantive modification. Some of these courts made nonsubstantive clarifications; changes we identified as nonsubstantive are:

- The First and Third Circuits added language to clarify who must be notified when the allegations concern the conduct of a judge, and who is responsible for coordinating Assisted Resolution, depending on the type of judge. The First Circuit also added language to clarify who must be given a copy of the written decision in a Formal Complaint process, depending on the type of judge whose conduct is at issue.
- The Federal Circuit edited language throughout the plan to adapt it to the unique structure of the Federal Circuit, which is a single court unit where all the active judges of the court serve as the Judicial Council.

The Tenth Circuit made one substantive modification to the Model EDR Plan in specifying a different confidentiality standard for mediation discussions and records, but otherwise adopted the Model EDR Plan without substantive modification. The D.C. Circuit changed one example of discriminatory harassment to be more expansive and removed references to the DWR in several sections, including as a person who can coordinate Assisted Resolution or serve as an alternate EDR Coordinator, but otherwise adopted the Model EDR Plan without substantive modification.

Five circuit courts⁹⁷ adopted the Model EDR Plan with a number of substantive modifications. These changes include adding protected categories, modifying the definitions or examples of the types of wrongful conduct, changing deadlines, adding the ability of a unit executive to request a

96. First, Second, Third, Sixth, Eighth, and Federal Circuits.

97. Fourth, Fifth, Seventh, Ninth, and Eleventh Circuits.

stay of Formal Complaint proceedings to address wrongful conduct, changing how EDR complaints are handled when there is also a complaint of Judicial Misconduct or Disability,⁹⁸ and modifying the extent of the involvement of the person alleged to have committed wrongful conduct in proceedings, among other changes. These plans also added clarifying language on a number of points or added language to highlight particular points or values of the individual circuit. These changes are elaborated below.

The Model EDR Plan left it to circuit judicial councils⁹⁹ to establish procedures to add details in two areas: 1) how final decisions under the plan will be made available to the public, and 2) how decisions can be appealed/reviewed. Because the Model EDR Plan required the circuits to make these changes, they are not counted as substantive for the purposes of this analysis. At the time of our plan review and interviews, all circuits had in place appeal/review procedures, some of which were carried over from their prior plans. Seven had procedures for making final decisions public; some of these were in the body of the plan and some were in a separate document. Several circuit executives said they were reviewing what other courts had done, or were awaiting national guidance for these procedures. In the meantime, they were using interim procedures, making decisions on a case-by-case basis, or using procedures from their prior plan.

District and Bankruptcy Courts

Of the ninety-one judicial districts with both district and bankruptcy courts,¹⁰⁰ fifty-one adopted consolidated plans for both courts (56%), while forty adopted separate plans for the district and bankruptcy courts (44%). Including the Court of Federal Claims (CFC) and Court of International Trade (CIT), there are 136 district and bankruptcy court EDR plans.

Many courts adopted their circuit's plan without modification (including a number that adopted the circuit's exact document). Several courts adopted the Model EDR Plan instead of their circuit's plan. A small number of district/bankruptcy plans changed large portions of their circuit's plan; the majority of these were generally clarifications or stylistic changes. Most district/bankruptcy plans that made changes appearing to be substantive only did so to one particular point, or to a few specific details. The majority of changes made in district/bankruptcy plans were clarifications and/or edits to tailor the plan to the specific court or district. See [Appendix M](#) for details.

Significant Variations: Court Plans

This section highlights variations from the Model EDR Plan for courts that appeared to be substantive¹⁰¹ and that might affect the success of circuit and district, bankruptcy, or consolidated

98. Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§361–364.

99. The Court of International Trade and Court of Federal Claims are responsible for their own procedures.

100. Excludes Guam, the Northern Mariana Islands, and the U.S. Virgin Islands, where the district court has jurisdiction over bankruptcy cases.

101. While we attempted to identify all changes that were substantive, the absence of a standard of comparison means that we cannot say for certain that we have identified all such changes.

plans.¹⁰² Consolidated district and bankruptcy plans are referred to without reference to court type (i.e., ILS rather than ILS-D and ILS-B). See [Appendix M](#) for more details on circuit, district, and bankruptcy court plan adoption, organized by circuit. The full text of the Model EDR Plan is available in [Appendix C](#).

Coverage of the Plan

- Two plans apply to volunteers who have signed a gratuitous services agreement instead of simply volunteers (Fifth Circuit, CIT).
- The Eleventh Circuit plan defines former employees who can bring claims under the plan as “former employees who were terminated or removed from employment, but who did not have a reasonable opportunity to raise their claim during the period of employment... Absent extraordinary circumstances, an employee will be considered to have been provided a reasonable opportunity to raise a claim if the employee was provided notice of the termination/removal and the reasons for it, was given at least two-weeks to respond, and was notified that any claim under this Plan must be made prior to termination.”
- Two plans state that they cover conduct “on and off work premises” (Ninth Circuit, ILS).
- The Seventh Circuit plan specifies what to do when a nonemployee has allegedly committed wrongful conduct.

Definitions

Discrimination

The Model EDR Plan defines discrimination as “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” eleven protected categories.¹⁰³

Two circuit plans add protected categories:

- Gender expression (Seventh and Ninth Circuits)
- Genetic information (Seventh and Ninth Circuits)
- Veteran status (Seventh Circuit) or service in the uniformed forces (Ninth Circuit)
- Marital status, parenthood, creed, ancestry, citizenship (Ninth Circuit)

Additionally, the plan for the U.S. District Court for the Northern District of Illinois specifies that a disability can be “mental or physical.” It also added a separate appendix to detail its policy for seeking accommodations due to disability (Employment Dispute Resolution Plan for the

102. Although quantifying how prevalent certain changes from the Model EDR Plan are in the circuit/district/bankruptcy plans is beyond the scope of this analysis, readers are reminded that changes noted for a circuit plan are generally also in effect in the district and bankruptcy courts throughout the circuit.

103. Model EDR Plan, *supra* note 8, § 2.B. The categories are race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (forty years and over), and disability. The age discrimination provision does not apply to hiring, retirement, or separation of probation and pretrial services officers under 5 U.S.C. chapters 83 and 84.

United States District Court for the Northern District of Illinois, Appendix 6, Reasonable Accommodations) and added a definition of “disability” to Appendix 1 (Definitions).¹⁰⁴ The court’s “Reasonable Accommodations” policy provides for an “interactive process” and “individualized assessment” of the request. The accommodation will be provided if it “would not directly threaten someone’s health or safety or create an undue hardship. An undue hardship is an action requiring significant difficulty or expense.”

The Eleventh Circuit also adds the definition of “disability” from the Americans with Disabilities Act to Appendix 1: Definitions.

The Eleventh Circuit does not specifically define discrimination, instead incorporating “discriminatory employment action” in the definition of wrongful conduct. The Eleventh Circuit adds several paragraphs which relate to discrimination and states that:

- The Plan does not modify or reduce qualifications for employment and that any listed protected category is not an “occupational qualification.”
- Plan provisions should not be construed as providing preferential treatment based on enumerated protected classes.
- “Special Provisions Relating to Disabilities.” “[A] person’s physical or mental impairments” may be considered in determining whether an accommodation requested by an employee is reasonable. The unit executive may include as a factor whether the AO will fund the costs of the accommodation; if not, the unit executive may consider “budgetary constraints” in determining whether to provide the accommodation. Also states that requiring compliance with Probation and Pretrial Service Officer fitness standards is not discrimination.
- “Special Provisions Relating to Age.” Characteristics related to age can be considered, including training, experience, and education, as well as physical and mental impairment.
- “Special Provisions Relating to Pregnancy and Leave.” Leave requested due to pregnancy is subject to the “particular leave policy” applicable to the requesting employee. The FMLA applies only to employees covered by the FMLA who have been employed by the federal government for at least one year.
- “Family and Medical Leave Rights.” Enumerating which employees are covered by FMLA.
- “Employment and Reemployment Rights of Members of the Uniformed Services.” An employee cannot be discriminated against, denied reemployment rights, or denied benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.

104. “Disability is defined as: a) physical or mental impairment that substantially limits one or more of the major life activities of an employee, b) a record of such an impairment, or c) being regarded as having such an impairment.”). *See* 42 U.S.C. § 12102(1) (ADA definition of disability).

Discriminatory Harassment

The Model EDR Plan defines discriminatory harassment as occurring “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.”¹⁰⁵

Changes to the Definition of Discriminatory Harassment

- The Seventh Circuit rewrites the definition to be “unwelcome conduct that is based on a Protected Category that is subjectively and objectively offensive and has the purpose or effect of unreasonably interfering with or disrupting an individual’s work performance or creating an abusive, hostile, or intimidating work environment. Discriminatory harassment can be physical, verbal, and/or nonverbal, and need not rise to the level of severe or pervasive conduct. Discriminatory harassment includes sexual harassment.”
- The Ninth Circuit changes “when a workplace is permeated with [listed conditions/ behaviors]” to “when a person covered by this Policy is subject to [listed conditions/ behaviors]” and adds the sentence “Sexual harassment is a form of harassment based on sex or gender.”
- The Northern District of Illinois adds language to this section stating that gender-based harassment does not have to be sexual in nature and does not depend on the gender of the individuals involved).
- The Eleventh Circuit does not specifically define discriminatory harassment in the body of the plan, instead incorporating “harassment” in the definition of wrongful conduct. The Eleventh Circuit provides separate definitions of “harassment” and “sexual harassment” in Appendix 1: Definitions.
- The U.S. Bankruptcy Court for the District of Utah changes “and” to “or” in the definition (“workplace must be permeated with discriminatory intimidation, ridicule, or insult” instead of “and” insult).

The Model EDR Plan provides examples of conduct that may give rise to both discriminatory harassment and sexual harassment:¹⁰⁶

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

105. Model EDR Plan, *supra* note 8, § 2.C.

106. *Id.*

about physical appearance; or employment action affected by submission to, or rejection of, sexual advances.

Changes to Examples of Discriminatory Harassment

- The Fifth Circuit adds the qualification that these examples are of “repeated and persistent” conduct.
- The Seventh Circuit adds to the examples of conduct that may give rise to discriminatory harassment “epithets,” “threats,” “drawings, cartoons, or other behavior that is insulting or derogatory of persons based on their protected status;” removes the qualifier of “racial” before slurs; and adds to the list of topics of derogatory comments “race” and “gender identity.”
- The Seventh Circuit adds to the examples of conduct that may give rise to sexual harassment “comments,” “gestures,” “repeated sexual jokes,” “flirtations, advances, or propositions,” “discussions of sexual activity (whether in conversation or through electronic or other means);” and changes “employment action affected by submission to, or rejection of, sexual advances” to “promotion, retention or other employment actions (positive or negative) affected by an individual’s submission to, or rejection of, sexual advances; or favoritism based on submission (consensual or nonconsensual) to sexual advances.”
- The D.C. Circuit changes “foreign accent” to “accent” in the list of examples of conduct that may give rise to discriminatory harassment.
- The Northern District of Illinois adds “citizenship” to the list of topics of jokes that could give rise to discriminatory harassment.
- The U.S. Bankruptcy Court of the District of Colorado adds inappropriate remarks about “apparel” to the list of examples of conduct that may give rise to sexual harassment.

Abusive Conduct

The Model EDR Plan defines abusive conduct as “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.”¹⁰⁷

Changes to the Definition of Abusive Conduct

- The Seventh Circuit adds bullying to the definition and states that “abusive conduct includes” the behaviors listed, implying the definition is not limited to those behaviors.
- The Ninth Circuit adds that abusive conduct is “ordinarily” a pattern of the described conduct.

107. *Id.* § 2.D.

- The Eleventh Circuit does not include a definition of Abusive Conduct in the body of the plan, but does include it in Appendix 1. The Eleventh Circuit adds language about the judiciary expecting outstanding performance and adds the requirement that conduct must be “so severe or pervasive as to alter the terms and conditions of employment.”
- The U.S. Bankruptcy Court for the District of Colorado adds examples of abusive conduct (“persistent or egregious use of abusive, insulting, or offensive language directed at an employee; deliberately withholding information necessary to complete work duties or activities; purposefully inappropriately excluding, isolating, or marginalizing a person from normal work activities; regularly inappropriately teasing or making someone the brunt of pranks or practical jokes; circulating inappropriate or embarrassing photos or videos; or spreading misinformation or malicious rumors.”).
- The District of Idaho states that abusive conduct includes bullying, defines bullying, and gives examples of conduct that may give rise to bullying.
- The plans of Washington Western (District) and Washington Western (Bankruptcy) retitle the Abusive Conduct subsection as “Bullying/Abusive Conduct;” add to the definition of bullying/abusive conduct; and provide examples of four categories of potential bullying (“Verbal/Written bullying”; “Psychological manipulation”; “Physical bullying”; and “Cyberbullying”).
- Two consolidated plans add material from the *EDR Interpretive Guide & Handbook* which outlines factors to be considered when determining whether conduct is “abusive” (ILS and WIE).

The Model EDR Plan further specifies what is not abusive conduct: “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.”

Changes to What is Not Abusive Conduct

- The Fourth Circuit adds the clarification that “Performance management discussions should be handled in a professional and respectful manner.”
- The Ninth adds communications and actions “conveyed in a respectful manner” are not abusive conduct.
- The U.S. Bankruptcy Court for the District of Colorado adds: “Differences of opinion, interpersonal conflicts, and occasional problems in working relations are an inevitable part of working life and do not necessarily constitute abusive conduct. Further, a single act does not constitute abusive conduct, unless it is especially severe or egregious.”

Retaliation

The Model EDR Plan defines retaliation as “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.”¹⁰⁸

Changes to the Definition of Retaliation

- The Eleventh Circuit changes the definition of retaliation to a “Prohibition Against Retaliation” and adds that “a Court and its designees are not precluded from taking appropriate responsive action when an employee, in bad faith, makes a vexatious or knowingly false claim”
- The U.S. District Court for the Northern District of Illinois adds language to this section to clarify that those reporting or opposing “allegedly” wrongful conduct should not be retaliated against¹⁰⁹ and provides additional examples of actions that cannot be the basis for retaliation or adverse treatment, such as assisting someone else in reporting allegedly wrongful conduct or cooperating in an investigation into allegedly wrongful conduct.
- The District of Arizona adds examples of retaliatory behavior to this section (“Retaliatory behavior can include, but is not limited to, unwarranted reprimands; unfair downgrading of personnel evaluations; transfers to less desirable positions; verbal, physical, or psychological abuse; and altered or less convenient work schedules.”)

Added Definition

The U.S. District Court of the Eastern District of Michigan adds a definition for “frivolous,” which is a criterion for the denial of a Request for Assisted Resolution or the dismissal of a Formal Complaint.

Rights Under the Plan

Confidentiality

The Model EDR Plan states the individuals involved in EDR matters “must protect the confidentiality of the allegations of wrongful conduct,” “information will be shared only to the extent necessary,” and that confidentiality “must yield” if a person’s safety or security are threatened, or if the integrity of the judiciary is threatened.¹¹⁰ Further, confidentiality obligations in the Code of Conduct for Judicial Employees do not prevent reporting wrongful conduct. Supervisors, unit executives, and judges must take action when learning of alleged wrongful conduct, which “may include informing the appropriate Chief Judge.”¹¹¹

Six plans change language in the imperative to protect confidentiality.

108. Model EDR Plan, *supra* note 8 § 2.E.

109. The Model and Seventh Circuit Plans in Section II.E (“Retaliation”) refer to “wrongful conduct,” whereas the district court’s plan refers to “allegedly wrongful conduct.”

110. Model EDR Plan, *supra* note 8, § IV.B.1.

111. *Id.*

- The Eleventh Circuit changes “must protect” confidentiality to “should;” specifies that information should be shared only to the extent necessary “to assess the credibility of assertions...or to otherwise determine the appropriate resolution of the claim;” and adds “the effective operation of the court system” to the list of what, if threatened, would lead to confidentiality not being “honored.”
- Two plans say individuals involved in EDR matters must “aim” to protect confidentiality instead of “must protect;” adds sentence warning that not all Options for Resolution can guarantee confidentiality and advising an employee to choose the Option that best fits their needs and comfort level (WAW-B, WAW-D).
- The U.S. District Court for the District of Oregon changes “An assurance of confidentiality must yield” to “Confidentiality may not be guaranteed” when safety/security/the integrity of the judiciary is threatened.
- The U.S. District Court for the Northern District of Illinois changes that the action supervisors/unit executives/judges must take when they learn of wrongful conduct, “includes” informing the chief judge instead of “may include.”
- The Fourth Circuit adds that assurances of confidentiality must yield “only in accord with the provisions of this Plan or with the express authorization of the Chief Judge.”

The Fourth, Ninth, and Tenth Circuit plans add language about the disclosure of information obtained through mediation. The Fourth and Tenth circuits define a different confidentiality standard for mediation records, namely that information or records obtained through mediation cannot be disclosed except “as necessary to consult with the parties or their representatives, and then only with notice to all parties; or . . . as the information or records are otherwise discoverable in a Formal Complaint proceeding.” The Fourth Circuit requires participants in mediation to sign an Agreement to Mediate form, which explains the confidentiality requirements and highlights the importance of confidentiality to mediation. The Circuit includes this form as an appendix to its plan. The Ninth Circuit similarly states that information obtained through mediation or settlement discussions cannot be disclosed “except as necessary to consult with the Party or Parties involved.”

Two plans add language about the level of confidentiality an employee can expect when using different Options for Resolution, including mediation (Fifth Circuit, NH). The Ninth Circuit specifies that EDR Coordinators, OWR staff, or OJI staff cannot be compelled to disclose information obtained through Informal Advice, except as described in the Model EDR Plan.

The Fourth Circuit also adds a sentence about protecting confidential client information or other information protected by privilege and specifies that the Office of the Circuit Mediator and DWR can share information with each other and with the chief judge.

Right to Representation

The Model EDR Plan states that “Both the Employee and the Employing Office responsible for providing any remedy have the right to be represented by an attorney or other person of their choice at their own expense. Another Employee may assist the Employee or Employing Office if doing

so will not constitute a conflict of interest or unduly interfere with his or her duties, as determined by the assisting Employee's appointing officer."¹¹²

- The Fourth Circuit adds to the Model EDR Plan's language that anyone else (other than the employee and employing office) involved in an EDR matter may consult or obtain representation by an attorney, but that attorney cannot participate in EDR proceedings.
- The Eleventh Circuit states that "an individual who has allegedly acted in violation of this Plan (such as a court unit executive or an employee who has allegedly sexually harassed the complaining employee)" has the right to be represented. This seems to include both the employing office and the person who allegedly committed wrongful conduct. The Eleventh Circuit also omits that another employee can assist either side.
- The U.S. District Court for the Middle District of Florida adds to the Eleventh Circuit's language that a respondent also has the right to be represented by an attorney, and that a "fellow employee cannot represent an individual invoking the dispute resolution procedures under this plan or an individual who allegedly has acted in violation of this plan."
- The Northern District of West Virginia specifies that an attorney representing the employee or employing office cannot be an employee of the district court and removes "or other person" as an option for representation.

Interim Relief

The Model EDR Plan states that an employee using any Option for Resolution may request interim relief (transfer, an alternative work arrangement, or administrative leave) if alleging egregious conduct by a supervisor that makes it untenable to continue working for that person. The Eleventh Circuit gives the unit executive or PJO discretion to consider whether interim relief is necessary, rather than stating that the employee can request such relief.

Specific Options for Resolution

The Model EDR Plan details three specific options for the resolution of EDR matters: Informal Advice, Assisted Resolution, and Formal Complaint.

Informal Advice

The Model EDR Plan provides a list of topics employees can seek confidential advice and guidance on (rights and protections under EDR, Judicial Conduct & Disability (JC&D), and other processes; ways to respond to wrongful conduct; and options for addressing the conduct).¹¹³ The Ninth Circuit adds an item to this list: "providing perspective on conduct described, including whether it violates the Policy."

112. *Id.* § IV.B.3.

113. *Id.* § IV.C.1.

Assisted Resolution

The Model EDR Plan defines Assisted Resolution as “an interactive, flexible process that may include discussing the matter with the person whose behavior is of concern; conducting a preliminary investigation . . . engaging in voluntary mediation . . . and/or resolving the matter by agreement.”¹¹⁴ Section IV.C.2 of the Model EDR Plan describes how an employee can request Assisted Resolution and grounds for denial; the deadline for filing a Request for Assisted Resolution; how the process proceeds if the allegations concern the conduct of a judge, employee, or unit executive; how to conclude the process; and how to proceed if Assisted Resolution is not successful in resolving the matter.

Changes to Aspects of the Assisted Resolution Process

- The Ninth Circuit strongly encourages, but does not require, use of Assisted Resolution before filing a Formal Complaint of abusive conduct.
- The District of Delaware requires use of Assisted Resolution before filing a Formal Complaint for any wrongful conduct, instead of just abusive conduct.
- The Fourth Circuit encourages the person responsible for coordinating Assisted Resolution (chief judge or unit executive) to afford the person who allegedly committed wrongful conduct an opportunity to be heard.
- The Fifth Circuit states that the parties decide when to conclude Assisted Resolution (and removes that they should do so by mutual assent), instead of the EDR Coordinator/DWR.
- The Eleventh Circuit states that if allegations concern the conduct of a unit executive, the EDR Coordinator is responsible for assessing the allegations instead of the chief judge.
- The Eleventh Circuit adds that “If the resolution of the matter will require the expenditure of any funds from the court’s budget (decentralized funds) or from the Administrative Office’s budget (centralized funds), approval of the Chief Judge shall also be required.”
- The District of New Hampshire requires a judge from another court to decide whether to grant a request for extension.
- The Southern District of Illinois and the Eastern District of Wisconsin add a provision stating that the unit executive or chief judge will determine if it is appropriate to provide the parties with a copy of any investigative report produced during Assisted Resolution.

Formal Complaint

The Formal Complaint process is an administrative proceeding in which a judge determines whether an employee’s rights under the EDR Plan were violated and if so, the appropriate remedy.¹¹⁵ The employee alleging a violation of rights is the complainant. Because the issue in a Formal Complaint is whether the employing office is responsible for the alleged conduct, the

114. *Id.* § IV.C.2.

115. EDR Interpretive Guide and Handbook, *supra* note 16, at 61.

employee's employing office is the Respondent¹¹⁶. For example, the Respondent in a Formal Complaint filed by a Clerk's Office employee would be the Clerk's Office; the Respondent to a Formal Complaint filed by a Probation Office employee would be the Probation Office. The employing office is responsible for providing any appropriate remedy. An EDR complaint is not filed against an individual, and the person who allegedly committed wrongful conduct is not a party to a Formal Complaint.¹¹⁷

Section IV.C.3 of the Model EDR Plan describes how to submit a Formal Complaint and the deadline for doing so; whether Assisted Resolution is required before filing a Formal Complaint (only for claims of abusive conduct); how the process will proceed if the Formal Complaint concerns the conduct of a judge; how a presiding judicial officer (the judge reviewing the Formal Complaint) will be appointed and the responsibilities of the PJO; deadlines for steps like a response, hearing, and written decision; allowable and unavailable remedies; how the PJO's decision can be appealed; and other details of the process.

Changes to Deadlines

- The Seventh Circuit changes that requesting Assisted Resolution does not toll (extend) the deadline for filing a Formal Complaint to requesting Assisted Resolution does toll (extend) the deadline for filing a Formal Complaint, but the deadline shall not exceed 300 days.
- The Fourth Circuit changes the deadline for a hearing to be held from sixty to ninety days.
- The Eleventh Circuit changes the deadline for holding a hearing from sixty days after the Complaint is filed to sixty days after a response is filed.
- The Eleventh Circuit changes the deadline for issuing a written decision from "no later than 60 days after the conclusion of the hearing" to "no later than 60 days after the conclusion of the hearing or within 60 days after the preparation of a transcript of the proceeding, if a transcript is needed to prepare the written decision."

Added Provisions for Stays

- The Fourth Circuit allows a unit executive to apply to the PJO for a stay of Formal Complaint proceedings of up to thirty days so the unit executive can address the wrongful conduct. Such a complaint cannot involve the unit executive or a judge, and the unit executive cannot have previously known about the alleged wrongful conduct.
- The Ninth Circuit allows the employing office to request, or the PJO to initiate, a stay of Formal Complaint proceedings up to sixty days if the employing office "asserts that there has been no prior opportunity to address the conduct alleged." The complainant is given an opportunity to respond to the request before the PJO decides whether to grant the stay.

116. Model EDR Plan, *supra* note 8, § IV.B.3.

117. The Model EDR Plan states: "When there has been a finding of wrongful conduct in an EDR proceeding, an appointing official, or official with delegated authority, should separately assess whether further action, in accordance with any applicable policies and procedures, is necessary to correct and prevent wrongful conduct and promote appropriate workplace behavior..." *Id.* § IV.C.3.h. n.3.

- The Bankruptcy Court and the District Court for the District of Washington modify the circuit’s provision such that either party can request a stay.

Remedies and Corrective Actions

- The Fourth Circuit changes “back pay” in the list of available remedies to “an order recommending back pay.”
- The Fourth and Seventh Circuits add to the list of available remedies “equitable relief, such as temporary stays of adverse actions.”
- The Eleventh Circuit specifies that “any remedy that will require the expenditure of any funds from the court’s budget (decentralized funds) or from the Administrative Office’s budget (centralized funds), requires the written approval of the chief judge.”
- In the list of possible corrective/preventative actions in footnote 3, the Seventh Circuit adds “apology” and edits the reprimand bullet to specify the reprimand could be oral or written.
- The Fifth Circuit removes the statement that when there has been a finding of wrongful conduct, there should be a separate assessment of whether further action is needed to address the conduct.

Other Changes

- Four district/bankruptcy plans add that PJO should be from another division, if possible (MD, SC-B, SC-D) or require that the PJO be from outside the district (NH).
 - The District of New Hampshire also makes a related change specifying that the PJO will recommend remedies to the court’s chief judge instead of ordering remedies. The chief judge and judges of the court then decide on the appropriate remedy and direct employing office to provide it. New Hampshire further adds language about recusal of judges from this decision.
- The Fourth Circuit expands the authority of the PJO to discuss the possibility of mediation, identify written submissions by the parties, direct production of those submissions, and solicit evidence from the subject of the complaint if the evidence is necessary to secure a just result.
- The Fourth Circuit deletes examples of further action that may be necessary to correct and prevent wrongful conduct and promote appropriate workplace behavior; adds that the official separately assessing whether further action is necessary “may not utilize or rely upon the Presiding Judicial Officer’s findings in making that assessment.”
- WA-B removes the provision stating that the PJO may issue a written decision after investigation and discovery if the PJO determines that no facts are disputed.
- The Eleventh Circuit:
 - States that employees involved in an EDR process should limit official duty time spent on case preparation, instead using “breaks, lunch periods, or [time] after-hours.” Employees must apply in writing to use official time.

- Adds a paragraph stating the Judicial Council (or its designees, which may include the chief circuit judge) will oversee a Complaint filed against a judge instead of the chief circuit judge overseeing the Complaint. Also states that the chief circuit judge will determine who will act as the PJO when a Complaint involves a judge, choosing from the members of the Judicial Council, or another judicial officer.
- Requires the PJO to provide the person alleged to have committed wrongful conduct with a copy of the Complaint, rather than “nature and substance” of Complaint allegations, as the Model EDR Plan specifies.
- Adds that any party other than the complainant (rather than just Respondent) may file a response to the Complaint.
- Defines a standard of proof: “preponderance of the evidence (more likely than not)”.
- Changes “will immediately” to “shall” in the section about the PJO or EDR Coordinator’s obligation to provide notice of written decision to the parties, the chief judge of the court, and to any individual alleged to have violated rights protected by this Plan.

Relationship Between EDR Formal Complaints and Other Processes

Grievance/Adverse Action

- The Eleventh Circuit states that an employee must choose between pursuing a claim under the EDR Plan or the Adverse Action Plan.
- The U.S. District Court for the Middle District of Florida specifies that use of the applicable Grievance Plan does not toll (extend) the deadline for filing a Formal Complaint under the EDR plan.
- The Southern District of Florida states that an employee may not use the Adverse Action Plan and the EDR Plan to address “the same event/circumstances.”
- The U.S. District Court of the Eastern District of Michigan states that an employee may file either a grievance under the applicable Court Grievance Procedure or an EDR Formal Complaint, but not both.

Judicial Conduct & Disability

- The Eleventh Circuit specifies that the Judicial Council or designees, rather than the chief circuit judge, will determine the procedure if a judge is the subject of both an EDR Formal Complaint and JC&D complaint.
- The Fourth Circuit states that, when a judge is the subject of both an EDR Complaint and JC&D complaint, the chief circuit judge can hold either in abeyance (the Model EDR Plan says the chief circuit judge can hold the EDR claim in abeyance).
- NCW-B and NCW-D specify that, when determining common issues of fact when a judge is the subject of both an EDR Complaint and a JC&D complaint, common issues cannot

be addressed and disposed of in the EDR Complaint prior to their being addressed and disposed of in the JC&D proceeding, unless otherwise ordered by the chief circuit judge.

- The Fourth Circuit adds guidance about the role of the PJO in an EDR Formal Complaint when there is a parallel JC&D Complaint.

Other

- The Fourth Circuit adds language to allow for consolidation of multiple reports of wrongful conduct.

Court and Employing Office Obligations

The Model EDR Plan outlines several obligations of courts and employing offices, including properly maintaining records relating to EDR matters, appointing EDR Coordinators, and advising employees of their rights through training and specific types of outreach. This section notes plan variations from the Model EDR Plan in these three areas.

Records

- The Fourth, Ninth, and Tenth Circuits add specific language stating that records produced during, or in preparation for/applicable to mediation are strictly confidential and will not be filed with the EDR Coordinator (or OWR/OJI, in the case of the Ninth Circuit).
- The Fourth Circuit specifies that final settlement agreements are not subject to public disclosure.

EDR Coordinators

- The U.S. District Court for the District of Colorado allows a judge to be an EDR Coordinator (and specifies that at least one of the court's EDR Coordinators must be an employee).¹¹⁸
- The Eleventh Circuit requires EDR Coordinators to be trained and certified "as deemed appropriate by the court" rather than according to the provisions of the *EDR Interpretive Guide and Handbook*.
- Several courts designate EDR Coordinators by job title in their plans.

Advising Employees of their Rights

- The U.S. District Court for the Northern District of Illinois adds that new employees must read the plan within the first week of employment and requires that each employee annually receive an electronic copy of the plan.
- The U.S. District Court for the District of Colorado specifies that the court must both conduct "and document" training annually.

118. This was a provision in the court's previous EDR plan.

- The Ninth Circuit adds that contact information for EDR Coordinators, the Office of Workplace Relations, and OJI should be posted on “internal homepages only.”
- The Eleventh Circuit requires that the circuit executive be copied on data reports to OJI to aid in circuitwide tracking of data.
- The Eastern District of Arkansas removes the specific requirement that EDR and JC&D information be posted on both the “internal and external” homepages of court and employing office websites. The Eastern District of Arkansas also removes the requirement to prominently display in the workplace the Appendix 5 posters, which summarize the EDR process and provide contact information for reporting wrongful conduct.

Actors Involved in EDR

A few courts or circuits have created offices, groups, positions which augment the required workplace conduct infrastructure and have modified their plans to incorporate the involvement of these offices, individuals, or groups.

- The Ninth Circuit has created an Office of Workplace Relations to serve the sixty-three court units in the circuit. OWR is staffed by the Director of Workplace Relations, a deputy DWR, a Workplace Relations Specialist, and a DEI officer.¹¹⁹ The Office of Workplace Relations takes an active role in assisting employees and court/offices with EDR matters, including performing some administrative functions and serving as alternate EDR Coordinators. OWR also monitors EDR processes throughout the circuit. The circuit’s EDR Plan is modified to incorporate OWR throughout the plan.
- The District of Idaho has created additional groups and positions to advise on EDR matters and serve as additional options for employees to consult. The “EDR Team” consists of three people, in addition to the EDR Coordinator, who provide additional options for employees seeking Informal Advice. The “EDR Judge Advisor” is a judge from the district who can provide guidance and assist with the resolution of EDR matters. The “EDR Working Group” is an advisory group composed of employees from all court units who provide input on workplace policies, practices, procedures, and related matters. The “EDR Committee” consists of the EDR Coordinator, EDR Team, EDR Judge Advisor, and EDR Working Group. Idaho has modified its EDR Plan to incorporate and define these positions and groups.
- The U.S. District Court for the Northern District of Illinois includes the position of External EDR Counselor, who is an EDR trained and certified counselor not employed by the court. The External EDR Counselor is another option for employees seeking Informal Advice. This position existed under the previous version of the court’s EDR plan, and the court has maintained this resource because they believe it to be helpful. Illinois Northern has modified its EDR Plan to incorporate and define this position.

119. The DEI (Diversity, Equity, and Inclusion) officer is not involved in EDR matters. OWR’s remit covers workplace relations generally, including EDR and DEI.

Notable Clarifications

- For deadlines, a number of plans specify calendar days.
- Several plans specify who the “Chief Judge” is for the purposes of the plan.
 - Court of appeals plans often changed references to the “Chief Judge” to the “Chief Circuit Judge,” which district/bankruptcy plans change back to “Chief Judge” or specify “Chief District Judge.” Because the chief circuit judge is involved in the process under a district/bankruptcy plan if the allegations concern the conduct of a judge, this may have introduced errors into a small number of plans.
 - Consolidated district and bankruptcy court plans vary in whether they specify which chief judge is the “Chief Judge” for the purposes of the plan under various circumstances, and whether the chief bankruptcy judge, specifically, is involved.
- Some plans clarify who is responsible for coordinating Assisted Resolution when the allegations concern different types of judges.
- A number of plans specify who must be notified at different stages of Assisted Resolution and the Formal Complaint process, as well as what type of notice they must receive (unspecified; written notice; copies of specific documents).
- The Fourth Circuit clarifies who acts on behalf of the employing office when both the complainant and subject of the complaint are chambers staff.

FPDO EDR Plans

Distinct Elements of the Model EDR Plan for FPDOs

The text of the Model EDR Plan for FPDOs is largely the same as the Model EDR Plan for courts. The main differences are:

- The Plan is tailored to FPDOs, including listing the FPDO as the employing office, incorporating terms for employees and supervisors who work at FPDOs, and referring to FPDO-specific policies like the Code of Conduct for Federal Public Defender Employees.
- Reflecting the structure of FPDOs and their position within the judiciary, the chief circuit judge and the federal public defender of a given office are the key decisionmakers in the Model EDR Plan for FPDOs, depending on the circumstances. (In the Model EDR Plan for courts, the analogous decisionmakers can be the chief circuit judge, the chief judge of a given court/district, or a unit executive.)
- FPDO employees can use an EDR Coordinator from their office or from the court of appeals, and the Plan is adjusted accordingly.
- Attorney-client and work-product obligations are incorporated into the Plan, including requirements to redact privileged information from Requests for Assisted Resolution, Formal Complaints, responses to Formal Complaints, and data reported to monitor EDR processes.

- Formal Complaints must be filed with the court of appeals, not the FPDO. (Therefore, FPDO employees may contact FPDO EDR Coordinators for Informal Advice and Assisted Resolution, but must file Formal Complaints with a court of appeals EDR Coordinator.)
- Because the employing office, which is the FPDO, is the respondent to a Formal Complaint, a Formal Complaint alleging abusive conduct or harassment by a judge can be filed against an FPDO “only if the FPDO failed to reasonably try to prevent and promptly correct the abusive conduct or harassment. Otherwise, there is no recognized remedy against the FPDO...for wrongful conduct by a Judge” under the EDR plan for FPDOs.¹²⁰
- The presiding judicial officer will be a court of appeals judge or a judge from a court “other than the district court where the FPDO is located.”¹²¹
- Conforming to the involvement of court of appeals EDR Coordinators in EDR processes arising from FPDOs, FPDO websites must post the contact information of the court of appeals EDR Coordinators in addition to the contact information of the FPDO’s EDR Coordinators.
- The EDR plan of an FPDO must be filed with both the court of appeals and the Administrative Office. Data reported annually to the Administrative Office must also be provided to the chief circuit judge.
- A provision for “case assignment due to potential conflict” is added, which states that if an FPDO employee who filed, or was the subject of, a Request for Assisted Resolution or Formal Complaint, is assigned to appear before a judge who was involved in assessing the allegations, as a PJO, or whose conduct was at issue, the employee can request that the federal public defender reassign the case to another lawyer.¹²²

FPDO Plan Adoption Summary

- Three circuits (Fifth, Sixth, and Ninth) modified the Model EDR Plan for FPDOs. All FPDOs within these circuits adopted their circuit’s respective modified FPDO plan.
- The Eleventh Circuit added an appendix to its court of appeals plan with special procedures for FPDO employees. All FPDOs within the Eleventh Circuit use the Eleventh Circuit Court of Appeals plan with this appendix as their EDR plan.
- All FPDO plans in the Tenth Circuit use the Model FPDO Plan, but add the language from the Tenth Circuit Court of Appeals EDR Plan regarding a different confidentiality standard for mediation.
- The plan for the FPDO of the District of Columbia makes the same change as the D.C. Court of Appeals (court) plan in removing “foreign” before accent in the examples of discriminatory harassment. The D.C. FPDO plan also clarifies who handles Assisted Resolution when allegations involve the conduct of the chief circuit judge, inserting applicable language from the Model EDR Plan for courts.

120. Model FPDO EDR Plan, *supra* note 10, § IV.C.3.d

121. *Id.* § IV.C.3.f.

122. *Id.* § V.f.

- Three FPDOs in the Eighth Circuit are covered by the Eighth Circuit Court of Appeals plan instead of adopting their own EDR plans based on the Model EDR Plan for FPDOs.
- One FPDO uses the Model EDR Plan for courts instead of the Model EDR Plan for FPDOs.
- Otherwise, all FPDOs adopt the Model EDR Plan for FPDOs without substantive modification.

Significant Plan Variations: FPDO Plans

Changes to the Fifth and Ninth Circuit FPDO plans mirror the changes made in these circuits' court of appeals plans noted above. The Sixth Circuit adopted the Model EDR Plan for courts without modification but modified the Model EDR Plan for FPDOs. The provisions of the Eleventh Circuit's FPDO appendix to its court of appeals EDR plan outline many, but not all, of the distinct elements of the Model EDR Plan for FPDOs listed above.

The Fifth Circuit made no additional changes to the FPDO Model EDR Plan beyond those which mirror the changes the circuit made to the Model EDR Plan for courts.

The Sixth Circuit FPDO EDR Plan:

- Specifies that it covers conduct on and off work premises.
- Adds marital status as a protected category in the definition of discrimination.
- Specifies that "sexual harassment is a form of harassment based on sex or gender" in the definition of discriminatory harassment.
- Adds that communications and actions "conveyed in a respectful manner" are not abusive conduct.
- Specifies that the circuit DWR may provide all Options for Resolution under the Plan, including Formal Complaint.
- Adds language regarding the disclosure of information obtained through Informal Advice or mediation, as well as the confidentiality of mediation records.
- Adds language concerning when the FPDO EDR Coordinator or DWR will be notified if an employee elects to use one or the other in a Request for Assisted Resolution.
- Allows a Formal Complaint to be filed with a court of appeals EDR Coordinator, an FPDO EDR Coordinator, or the circuit DWR (the Model EDR Plan for FPDO allows Formal Complaints to be filed only with court of appeals EDR Coordinators) and specifies the circumstances in which an EDR Coordinator or DWR will be notified if an employee elects to file a Formal Complaint with someone else.
- Adds language allowing for a request to extend the deadline for filing a Formal Complaint. If the federal public defender and the employee alleging a violation of rights have been working together to resolve the issue, they may jointly petition the chief circuit judge or PJO in writing for additional time, specifying the length of extension needed to informally resolve the matter.

- For Formal Complaints involving the conduct of a judge, the Sixth Circuit states that the chief circuit judge “or their designee” will oversee the Formal Complaint process, and allows for the notification of chief bankruptcy judges, if applicable.
- Allows the FPDO to request, or the PJO to initiate, a stay of Formal Complaint proceedings up to sixty days if the FPDO “asserts that there has been no prior opportunity to address the conduct alleged.” The complainant is given an opportunity to respond to the request before the PJO decides whether to grant the stay.
- Allows the official record of a hearing in a Formal Complaint proceeding to be “a digital recording, a transcript, or both” instead of one or the other.
- Specifies that the circuit DWR is responsible for notifying parties of the procedures for seeking review of a Formal Complaint, and that “[a]ny decision and implementation of remedies remains inchoate pending expiration of the period to provide notice of appeal, or resolution of any appeal, whichever occurs first.”
- Deletes the provision stating that final decisions will be made public, subject to procedures established by the circuit judicial council.
- Removes federal public defenders from a list of those whom the FPDO has an obligation to train annually.

The Ninth Circuit made the same substantive changes noted above in the section about court plans, in addition to several modifications specific to the FPDO plan:

- In many of the provisions where the Model FPDO EDR Plan requires the chief circuit judge to perform a specific duty, the Ninth Circuit’s policy gives this responsibility instead to the Chair of the Ninth Circuit Standing Committee on Federal Public Defenders.¹²³ The responsibilities given to the Chair of the Standing Committee are: deciding whether to grant interim relief; assessing and addressing the allegations when a Request for Assisted Resolution concerns the conduct of a federal public defender; appointing the PJO; deciding questions of disqualification and replacement in a Formal Complaint process; and approving a settlement agreement in a Formal Complaint process (with the PJO). The Chair of the Standing Committee is added to the list of those who may grant extensions to deadlines for filing a Formal Complaint.
- Because the Ninth Circuit has an Office of Workplace Relations, references to court of appeals EDR Coordinators are changed to references to the OWR.
- The Ninth Circuit FPDO EDR Policy allows a Formal Complaint to be filed with the FPDO EDR Coordinator or with the OWR. (The Model EDR Plan for FPDOs allows Formal Complaints to be filed only with court of appeals EDR Coordinators.)
- The Ninth Circuit FPDO Policy adds language stating the deadline for filing a Formal Complaint may be extended if the federal public defender and employee alleging a

123. The Standing Committee is composed of five court of appeals judges, one district judge who sits as an ex-officio member, and two consultants: one CJA panel attorney and one federal public defender.

violation of rights have been working together to resolve the issue, agree in writing that additional time may help, and specify the length of extension needed.

- The Policy changes the provision in the Model EDR Plan for FPDOs regarding who can be appointed as a PJO to exclude any district or magistrate judges.

The Eleventh Circuit’s “Special Procedures for Federal Public Defender Organization Staff Members” appendix to its court of appeals EDR Plan (Appendix 7) includes six provisions. One explains the “special role” of FPDOs within the judiciary; the second addresses FPDO employees’ attorney-client and work-product obligations to protect privileged information; the third specifies who FPDO employees should report wrongful conduct to; the fourth explains who can serve as an EDR Coordinator for the FPDO and in matters involving FPDO employees; the fifth specifies who can serve as a PJO in a Formal Complaint filed by a federal public defender or an FPDO employee (it cannot be “a judicial officer in the district where the FPDO practices”); and the sixth provides procedures for records retention in FPDO EDR matters. These provisions largely track the corresponding provisions in the Model EDR Plan for FPDOs, though the Model EDR Plan states that all records will be filed with the FPDO EDR Coordinator, whereas the Eleventh Circuit appendix states that any Formal Complaint records will be retained by the court of appeals EDR Coordinator. The Model EDR Plan for FPDOs is also a longer document with additional provisions and more detail.

Plan Variations Conclusion

Our study found variations from the Model EDR Plans in those adopted by the courts and FPDOs, which may enhance or diminish the substantive and procedural rights of current and former employees. The mechanism for determining whether these variations are consistent with judiciary policy and rectifying inconsistencies is unclear.

Reported Benefits/Successes of Model EDR Plans

We asked those we spoke with in interviews and focus groups about what they identified as the benefits of the Model EDR Plans and their local plans. Conclusions from these conversations generally echo issues reported on by the Workplace Conduct Working Group in its 2022 report. As discussed in more detail in [Chapter 4](#), this kind of information can be considered along with results from the national employee survey and other data collection efforts to gain a more comprehensive perspective on workplace issues in the federal courts.

- 1. Addition of an option to seek “informal advice,” and choices about people they can consult, encourages employees to discuss potential problems and learn about their options at an early stage.*

There is broad consensus among interviewees that the addition of Informal Advice as an option for resolution has significantly improved the EDR process by encouraging employees to seek support or explore options before problems escalate. Several observed that often a workplace issue

that an employee is experiencing is based on a misunderstanding or miscommunication, and these are much easier to work out informally than through a formal process. Prior to the inclusion of an Informal Advice option, the Working Group concluded in its 2018 report that workplace misconduct was likely being underreported and observed that employees were often reluctant to use the EDR process because they were not sure if behavior warranted a formal complaint.

In our interviews, DWRs reported that employees are increasingly aware of their ability to seek informal, confidential advice, and that both supervisory and nonsupervisory employees frequently reach out to DWRs for advice before problems have escalated. According to DWRs and EDR Coordinators, sometimes employees just need a sounding board outside of their immediate office setting to talk through an issue that might or might not be covered by the EDR Plan. When employees seek Informal Advice about issues that could lead to an EDR matter, those we spoke with further report that problems tend to be resolved more quickly, and infrequently progress to the Assisted Resolution or Formal Complaint stage. Very few of the EDR Coordinators who participated in our focus groups had been involved in EDR matters that went beyond Informal Advice, and DWRs also indicated that Informal Advice constitutes the majority of the contacts they receive. In addition to being able to pursue different resolution processes, under the Model EDR Plan employees also have choice about whom they can consult in determining how to resolve an EDR matter. They can seek Informal Advice outside of their chain of command, from an EDR Coordinator, circuit DWR, or the national OJI. In many courts, employees can choose to speak with an EDR Coordinator in a different court unit from the one they are employed in. At the same time, they are not precluded from seeking advice and help from others, including their HR office, supervisors, unit executive, judges, or peers. Interviewees noted that having these various options can also help promote early identification and resolution of situations.

Overall, those we interviewed are optimistic that the addition of an informal advice option increased employee willingness to engage in the EDR process. Some DWRs said they have limited insight into the use of informal advice at the local level in their circuits.

2. Prohibition of “abusive conduct” is helping to improve court and office culture.

A number of those with whom we spoke cited the explicit prohibition of abusive conduct as a very significant provision in the Model EDR Plan. They report that including this provision, and providing examples in the plan, sends a clear message to judiciary employees about expectations for appropriate behavior, and has helped to improve court culture, particularly as training around this topic has increased. Two DWRs mentioned this as the most significant change to the plan, with one indicating that 80–90% of the calls she receives are about behaviors that fall under abusive conduct. An EDR Coordinator in one of our focus groups said that the addition of abusive conduct addresses a lot of employees’ concerns that had not been previously addressed. And a participant in one of our chief judge focus groups commented that addition of abusive conduct prompted a major change in how judges think about their and their colleagues’ interactions with employees, and said this provision goes well beyond the letter of the law and instead requires judges and other court employees to treat each other civilly.

- 3. The Model EDR Plan's emphasis on training and outreach has helped increase awareness of employee rights and address underlying issues.*

The Model EDR Plans require courts and offices to provide annual training to their employees about their rights and responsibilities under the Plans, and other training related to workplace conduct and EDR is offered from various sources (DWRs, OJI, FJC) throughout the year as well. Several of those we interviewed praised the Model EDR Plan's emphasis on training and outreach as helping to prevent workplace conduct issues from happening in the first place, and to improve the culture of a court or office. These interviewees reported that training not only helps employees understand their rights, but also helps both supervisory and nonsupervisory employees understand the nuances of acceptable behavior in real-world scenarios. They also indicated that, while employees and others who attend training might not retain all of the details, when a potential EDR matter arises they are aware of available resources and know where to go to get more information. [Chapter 6](#) discusses in more detail the kinds of training available and provides suggestions for further training.

- 4. Clearer language makes the EDR plan easier for employees to understand and navigate.*

A number of those we interviewed observed that the 2019 Model EDR Plan was written in language that is easier to understand than prior judiciary EDR plans. In addition, they noted that the Plan's inclusion of examples of misconduct, particularly related to abusive conduct, has helped employees better understand their rights. At the same time, others thought more could be done to make the plan easier to understand for nonlawyers. EDR Coordinators and DWRs said that guiding employees through the plan provisions is an important part of their responsibilities.

Reported Challenges with and Limitations of the Model EDR Plans

In addition to asking those we spoke with about benefits or successes of the Model EDR Plan and their local plans, we asked about challenges with and limitations of the plans. Below we discuss each of these categories. For purposes of this list, challenges are difficulties in implementing existing plan provisions. Limitations are issues that are not or cannot be completely addressed by the EDR Plan, so other avenues for addressing them might be necessary.

Challenges in Implementation of the Model EDR Plans

- 1. Presiding judicial officers (PJOs) do not have sufficient guidance on case management or substantive law relating to resolution of Formal Complaints, and this can lead to inconsistencies.*

In our interviews and focus groups, we spoke with some people who had served as presiding judicial officers (PJOs) and others who were involved in this PJO process in some other way, e.g., by appointing or assisting a PJO. A common theme that emerged from discussing the PJO process

is that the Plans do not provide enough guidance for PJOs on case management and substantive law issues, which can lead to inconsistencies in process and outcomes.

One judge, for example, said that he had observed PJOs using a wide range of formality in handling EDR complaints, ranging from quite informal to essentially full litigation procedures. A magistrate judge who had served as a PJO noted that this responsibility was normally assigned to non-Article III judges (magistrate and bankruptcy judges) in her circuit, while a chief judge in one of our focus groups said he had exhausted using Article III judges in his district to serve as PJOs but was not sure if he could assign this responsibility to a magistrate or bankruptcy judge. Logistical questions were also identified—e.g., what kind of docketing system to use, how and in what form to keep a record, and how to hire and pay court interpreters or reporters if needed. At least one circuit has developed a guide for PJOs that discusses topics such as the role of the EDR Coordinator in a Formal Complaint, who conducts an investigation, and where and how a hearing takes place. Others indicated that a national version of such guidance would be very helpful. In addition to these case-management topics, other interviewees mentioned that seeing redacted orders from other cases would be very helpful to PJOs, both in terms of applicable law and how the orders were written, since these proceedings are outside the traditional law context.

The EDR Interpretive Guide and Handbook provides some additional information for PJOs beyond what is stated in the Plan, but comments from interviews suggest that further guidance is needed. It would also be useful for PJOs to have access to a database of redacted decisions from other complaints brought under the EDR plan.

Relatedly, several of those we spoke with noted that the time period within which a PJO must hold a hearing if there is to be one (sixty days from the filing of the Complaint, unless extended for good cause) was too short, given how long it can take for a PJO to be appointed and how the PJO must figure out on his or her own many of the case management issues mentioned above. Providing more guidance on these matters could make that timeframe more manageable.

Finally, some of those we interviewed suggested establishing a panel of PJOs within a circuit, who would be trained in and familiar with the procedures involved and could take cases on a rotating basis.

2. *Involvement in an EDR matter can be a significant time commitment for EDR Coordinators and PJOs, both of whom have other job obligations.*

Most EDR Coordinators in our focus groups said that generally they spend very little time on matters related to their EDR Coordinator responsibilities and can easily handle those duties along with their primary job obligations. However, those who had been involved in an Assisted Resolution or Formal Complaint said that those processes took a great deal of their time and made it difficult to keep up with their job-related duties during that time period. Those who had been involved in a matter in which a PJO was appointed said that Formal Complaints also took a lot of time for the PJOs involved as well as those assisting them (e.g., a law clerk). A chief judge in one of our focus groups expressed concern that, when a magistrate judge in his court spent an

“incredible” amount of time and resources serving as a PJO in a case, there was no way to give that person credit in the magistrate judge system. Another noted that senior judges also do not get credit for this time commitment.

Limitations of the Model EDR Plans

- 1. The EDR Plan includes several provisions to encourage law clerks to raise concerns. Some of those we interviewed believe law clerks will still not want to do this beyond informal advice, and therefore additional ways to improve judge-law clerk relationships and interactions might be needed.*

According to the 2018 Working Group report, several Model EDR Plan provisions—including the multiple levels of resolution processes, multiple avenues for seeking advice, explicit prohibition of retaliation, and clarification that court and chambers’ confidentiality requirements do not prevent any employee, including law clerks, from reporting wrongful conduct—were intended at least in part to address law clerks’ concerns about making such reports. Nevertheless, some participants in our interviews and focus groups acknowledged that, because of the unique nature of and power imbalance inherent in the judge-law clerk relationship (e.g., the need for a law clerk to rely on the judge’s recommendation for future employment), along with fears about retaliation from within or outside the court, law clerks will likely continue to have reservations about addressing specific workplace matters through the EDR Plan.

According to our interviews and focus groups, some circuits have taken specific steps to try to account for law clerk concerns outside of the Plan process. For example, several circuits have law clerk advisory committees through which aggregated information and concerns can be shared with the judicial council. Career law clerks normally serve on these committees in addition to term clerks, to provide some continuity. One circuit’s advisory committee holds twice-yearly “town halls” with law clerks, without judges present; the same circuit holds law clerk exit interviews as well. Some have created “best practices”-type documents or checklists that suggest issues judges should discuss upfront with their law clerks (e.g., expectations about hours worked and responsibilities) and sometimes additional topics relating to the judge-law clerk relationship, such as providing feedback in a respectful manner and avoiding favoritism. At least one circuit also has an option for anonymous reporting of concerns, and a district judge we spoke with said that her court conducts exit interviews with all employees, including law clerks, to learn about any problems they experienced.

- 2. Several of those we spoke with believe that the Plan should include a provision for allowing monetary damages in the event a Formal Complaint is found to be meritorious.*

Judicial employees, unlike employees of the executive and legislative branches, are not covered by federal anti-discrimination laws such as Title VII of the Civil Rights Act or the Americans with Disability Act and as such, are precluded from seeking damages in federal court for adverse employment actions. While the judiciary’s EDR policy specifically includes prohibitions against

any behavior that would violate these two federal anti-discrimination laws, the Plan’s allowable remedies do not include monetary compensation, beyond back pay in some circumstances. Under the Model EDR Plan, employees who choose to hire representation have to pay for these services out of their own pocket; in contrast, in federal discrimination lawsuits, employees are often able to hire lawyers on contingency. In its 2022 report, the Working Group recommended that the judiciary “assess incorporation of additional monetary remedies as part of the Employment Dispute Resolution complaint process.”¹²⁴

This issue was raised in our interviews and focus groups with DWRs, circuit executives, and judges, in response to our asking if they thought existing remedies under the Plan were adequate. Most thought they were, but some of them mentioned the lack of compensatory damages as a limitation of the plan, and some observed that the lack of this remedy may have affected some employees’ decision to pursue complaints. One DWR said that many things that come up in an EDR matter can’t be solved without money damages, such as a judge giving a negative reference to a law clerk’s prospective future employers. And a judge noted that Title 7 is an extension of tort compensatory principles, and said that a tort victim should not have to bear all costs. Some of those who cited the lack of compensatory damages as a limitation of the plan also said they recognized the inherent challenges in providing these, particularly with respect to where the money would come from and whether government lawyers would need to get involved to represent the government’s interests. Others said that for most employment matters it is best to have a quick resolution, and that is harder to do if money damages must be assessed. The 2022 recommendation of the Working Group related to this has been referred for consideration by committees of the Judicial Conference of the United States.

3. *The bystander provision in the Model EDR Plan might not be enough to encourage judges to report on behavior of other judges.*

The Model EDR Plan for courts, referencing the Code of Conduct for United States Judges, states that “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.”¹²⁵ This is referred to as the “bystander provision.” The Rules for Judicial Conduct and Judicial Disability Proceedings further provide that failure to report or disclose misconduct is in itself misconduct.¹²⁶ However, some judges we spoke with acknowledged that there is a continuing reluctance among some judges to report on or sit in judgment of their colleagues on the bench.

124. 2022 Working Group Report, *supra* note 18, at 24.

125. Model EDR Plan, *supra* note 8, § I.

126. Guide to Judiciary Policy vol. 2E, ch. 3, art. II, § (a)(6) (“Failure to Report or Disclose. Cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability.”), https://www.uscourts.gov/sites/default/files/judicial_conduct_and_disability_rules_effective_march_12_2019.pdf.

While the bystander provisions in the Plan and Judicial Conduct and Disability Rules might not be enough to encourage reluctant judges to report on the behavior of their colleagues, judges we spoke with pointed out that sometimes such matters are handled more informally, as with a chief judge talking with a judge whose behavior is not appropriate, and conveying that the behavior must stop, or having training for a court or office that is designed to address a judge's behavior without requiring a formal complaint or even singling out the offending judge.

Other Observations and Suggestions

Not all of the information we discussed in interviews and focus groups could be labeled a success, challenge, or limitation of the Plan. The following topics were discussed by several participants.

- 1. Having strong judicial leadership on workplace conduct issues and emphasizing the importance of a healthy workplace is extremely important in setting expectations about behavior and the fact that matters will be taken seriously.*

A number of judges we spoke with noted that it is important to make clear to employees that judges and other court leaders support the principles of a healthy workplace. This puts those who might be inclined to behave inappropriately on notice of behaviors that will not be tolerated. Several judges talked about generational differences often being at the root of offensive behavior, with some not understanding that behaviors they used to engage in without consequence are in fact offensive and should be eliminated. In addition, strong judicial leadership in this area sends a message to employees who might be experiencing such behavior that their concerns will be taken seriously and addressed, either within the EDR process or outside of it. One way judges suggested they could reinforce this message is by making introductory remarks at, or attending, employee EDR trainings or other related gatherings to show that these issues are important to those throughout the court.

- 2. EDR Coordinators said they could use more guidance about maintaining records about their contacts under the Plan processes.*

EDR Coordinators in our focus groups were eager for more guidance about how to keep notes or other records of contacts under the EDR plan without violating confidentiality. Some said they don't take notes at all during Informal Advice sessions, to preserve confidentiality and encourage the person who has brought a matter to them to feel comfortable discussing their situation. Others said they take brief notes so that they can remind themselves of the situation if the person comes back another time. They also discussed security precautions they take when they do have notes, including locking notes in a file cabinet to which only they have access. Some said they could use more guidance in that respect, with regard to both hard copy and electronic notes.

Relatedly, as EDR Coordinators listened to each other's practices with respect to this and other matters, they indicated that opportunities to be in contact with other EDRCs when questions came up, or just to discuss mutual concerns, could be very useful. As will be discussed in more detail

later in this report, some circuit DWRs already hold regular meetings in which EDRCs can discuss issues with each other.

3. There are differences of opinion about whether HR employees or people in supervisory positions should be EDR Coordinators.

The Model EDR Plan states that unit executives and judges should not serve as EDR Coordinators. And the *EDR Interpretive Guide and Handbook* for the Plan discusses potential problems with HR professionals serving as EDR Coordinators in the courts they serve, mostly related to real or perceived conflicts of interest. Our focus groups of randomly selected EDR Coordinators included quite a few HR professionals and supervisors, including deputy unit executives, and they pointed out both pros and cons of people in positions like theirs serving in this role. For example, some HR employees in this role said they felt uncomfortable with the potential conflicts of interest when an employee came to talk to them in their EDR Coordinator role, and that they had to be very careful from the outset of the conversation to clarify which “hat” they were wearing in talking to the employee. Others said they thought supervisors and HR staff are most suited to this role, since they are more familiar with employment issues in general and with keeping information confidential. Several EDR Coordinators who hold an HR or supervisory position said that, where possible, they think it would be best if people in those roles serve as an EDR Coordinator for other court units, but not for their own.

4. There are also different opinions about whether PJOs should be required to be appointed outside of the court in which a claim arose.

In its 2022 report, the Working Group recommended that the Model EDR Plan be revised to specify that an employee complaint must be overseen by a PJO from outside the court from which the claim originated. One district already requires this in its EDR Plan, and some others do it in practice. In our focus groups with chief district and bankruptcy judges we asked about their views on this recommendation. Most said they agreed with the idea of appointing a PJO from another district or division, particularly in situations where the court in which the claim arose is very small or the claim involves alleged misconduct by a judge. As previously discussed, some judges are reportedly reluctant to take action against a judicial colleague, and that can partially be addressed by moving a matter involving a judge outside of his or her court.

Others thought that referring a matter to a PJO from outside the court in which it arose should not be an “ironclad” rule, but that some flexibility should be left to the appointing chief judge depending on the circumstances. As one judge noted, some matters may need outside input, while for others it’s more beneficial to have someone who is familiar with both of the parties and has their trust.

Judges who expressed an opinion agreed that they would not want EDR matters to go outside of their circuit—e.g., to PJOs from a national panel—for this purpose. One judge explained that

someone within the circuit is likely to have a better understanding of how courts within that circuit operate, and what their “culture” is.

5. *Publication of redacted final decisions in EDR cases can support judicial accountability and bolster confidence in the judiciary’s workplace effort. However, publication poses a risk of discouraging employees from using the process. More guidance is needed about balancing these competing concerns and benefits, with considerations of confidentiality and related issues.*

As mentioned previously, the Model EDR Plan provides that final decisions under the plan be made available to the public, appropriately redacted, “in accordance with procedures established by the judicial council of the circuit.”¹²⁷ Most circuit judicial councils have adopted such procedures, but some we spoke with said their circuits are waiting for national guidance in this area.

Publishing a decision made pursuant to the EDR Plan or other judiciary mechanism for addressing misconduct can help to send a message that workplace concerns are taken seriously by the court or office issuing the decision. One judge we spoke with mentioned a decision in his court regarding a judicial officer that had been published and said “when people see a published decision about abusive conduct, that builds trust.” Similarly, some of those we spoke with noted the usefulness of a public decision in explaining the court’s process and reasoning, which can be important when a party to the matter is speaking publicly about it.

While publication of decisions can demonstrate that a court or office holds people accountable for their misconduct, and therefore bolster public confidence in the EDR processes, these advantages must be balanced against concerns about the confidentiality of the process. Even with redacted decisions, in which the names and other identifying information are removed, details about the situation at issue could potentially lead to the person bringing the matter being identified. Because of these concerns, and the reluctance, discussed previously, of some judges to hold their colleagues accountable, national guidance on the redaction and publication of decisions under the EDR Plan could be useful, and would help to make these processes more consistent.

Options for Judiciary Consideration

- 4.1 Add language to the next iteration of the Model EDR Plan that provides guidance about how and by whom variations from the Model EDR Plan should be evaluated in terms of whether they potentially diminish or curtail rights or remedies.
- 4.2 Review plans to ensure that errors were not introduced when largely adopting the Model EDR Plan (e.g., about which chief judge is referenced) and that any tailoring did not make changes to the EDR process.
- 4.3 When considering updates to the Model EDR Plans, solicit feedback from DWRs, EDR Coordinators, and nonattorney employees about ways to make the Model EDR Plan more understandable to nonattorneys.

127. Model EDR Plan, *supra* note 8, § V.B.

- 4.4 Expand the section of the *EDR Interpretive Guide and Handbook* about procedures to be followed by PJOs, or develop a separate guide on this topic, which could then be adapted at the circuit level if necessary to meet local needs. Create a confidential repository for redacted EDR decisions, either nationally or at the circuit level, that is accessible to PJOs.
- 4.5 Have certain judges trained for the PJO role within a circuit, who could also have Complaints referred to them from district and bankruptcy courts and offices, enabling consistency and development of expertise in this area.
- 4.6 Develop ways for magistrate judges, senior judges, and EDR Coordinators to get workload credit for time spent on EDR matters.
- 4.7 Create law clerk advisory groups, listening opportunities, exit interviews, and documents with suggested practices for judge-law clerk interactions in those circuits that do not have them, to help address underlying structural issues that create power imbalances in the judge-law clerk relationship.
- 4.8 Add monetary compensation to available remedies (consideration of this already recommended by Working Group).
- 4.9 In addition to existing reporting requirements in the Model EDR Plan, the Code of Conduct for U.S. Judges, and the Rules for Judicial Conduct and Disability Proceedings, consider other ways, including targeted educational programming, to address the reluctance among some judges to report on or sit in judgment of their judicial colleagues.
- 4.10 Encourage courts/offices to appoint EDR Coordinators from different court units, when possible, particularly when one EDR Coordinator is an HR employee or supervisor, so that employees have an option to go outside their employing unit.
- 4.11 Adopt strategies to increase transparency to build public confidence in the courts' administration of workplace conduct, including making the review of Formal Complaints more consistent (see above suggestions regarding PJOs) and establishing national guidance on redaction and publication of EDR decisions.

Chapter 5: Monitoring and Assessing How the Resolution Processes Are Working

This chapter addresses Task 2, assessing how the three options for resolution of workplace misconduct issues are working and what type of information about their use should be collected and reported, balancing concerns regarding program effectiveness, confidentiality, and assessment.

Resolution Processes Available Under the Model EDR Plans

The Model EDR Plans for courts and FPDOs set forth three specific options, varying in levels of formality, for resolution of matters relating to workplace misconduct: Informal Advice, Assisted Resolution, and Formal Complaint. All courts and offices make these options available under their plans for resolving workplace issues. The Model EDR Plan describes the processes as follows:

1. Informal Advice. An employee may contact an EDR Coordinator, circuit Director of Workplace Relations, or the national Office of Judicial Integrity for confidential advice and guidance (see § IV.B.1) about a range of topics including:
 - The rights and protections afforded under this Plan, the Judicial Conduct and Disability Act, and any other processes;
 - Ways to respond to wrongful conduct as it is happening; and/or
 - Options for addressing the conduct, such as informal resolution, participating in Assisted Resolution, or pursuing a Formal Complaint under this Plan.
2. 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.
3. Filing a Formal Complaint. An employee may file a Formal Complaint (“Complaint”) with any of the court’s EDR Coordinators to address a claim of wrongful conduct.

As discussed in [Chapter 4](#), many of those we interviewed identified the provision of these three different options as an important feature of the revised Model EDR Plans. They explained that sometimes an employee or manager just wants to talk through a problem they are having with someone and get suggestions for how to handle it on their own. Or they might want to find out about what their options are, under the EDR Plan or other available processes, for addressing the issue. Informal advice from a local EDR Coordinator, circuit DWR, or the national OJI is designed to address these kinds of queries. If someone wants more immediate action to be taken, such as a facilitated conversation, preliminary investigation, or mediation, they can use the Assisted Resolution option. And if the person wants to file a Formal Complaint, they can seek that in the first instance without having to use the other processes, except that use of assisted resolution is

required when alleging abusive conduct as opposed to discrimination or discriminatory harassment.¹²⁸ These multiple avenues allow employees to contact whomever they feel most comfortable, and do not preclude them seeking help from others outside the EDR process (e.g., peers, supervisors, unit executives, judges, Human Resources Office).

Related to the different levels of formality across the processes is the extent of confidentiality that can be assured to the person alleging misconduct. Informal advice is intended to be highly confidential, as those seeking advice might ultimately decide not to pursue any action. Conversely, the filing of a Request for Assisted Resolution or a Formal Complaint puts the employing office on notice about the claim, so more people of necessity become aware of it.

Current Methods for Assessing How the Resolution Processes Are Working

As mentioned in [Chapter 1](#), the Model EDR Plans and recommendations of the Working Group specify data to be collected about EDR processes. These include nationwide reporting of certain information about the use of Assisted Resolution and Formal Advice processes to the OJI and a national employee survey conducted by the FJC at the request of the Working Group.

Information About Use of Resolution Processes

The Model EDR Plans require courts and employing offices to collect specific data and report this information to the national OJI. The data required to be reported include:

- the number and types of alleged violations for which Assisted Resolution was requested, and for each matter, whether it was resolved or was also the subject of a Complaint under this Plan or other complaint;
- the number and type of alleged violations for which Complaints under this Plan were filed;
- the resolution of each Complaint under this Plan (dismissed or settled prior to a decision, or decided with or without a hearing); and
- the rights under this Plan that were found by decision to have been violated. Courts and employing offices should also provide any information that may be helpful in identifying the conditions that may have enabled wrongful conduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its recurrence.

According to our interviews, courts and offices submit this information to the OJI even if they have not had any Assisted Resolutions or Formal Complaints, referred to as a “negative report.” The Working Group has recommended that OJI produce an annual report summarizing the information collected, and we understand that publication of the first of these reports should roughly coincide with publication of the present report.

Most DWRs, circuit executives, and workplace conduct committee members said that they do not systematically collect information on use of the processes within their circuit, although all DWRs have access to the information provided by courts and offices within their circuits to OJI.

128. Model EDR Plan, *supra* note 8, § IV.C.3.b.

Several DWRs said they believe they are “looped in” on most or all resolution process activities in their circuits, either by being involved in the process themselves or being told about them by EDR Coordinators. A number of interviewees also commented that there is not enough activity under the Plan processes at this point to enable systematic evaluation of their use. Similarly, the OJI Director indicated that, based on the reports submitted to that office, the “vast majority” of courts and offices don’t have any EDR matters in a given year.

We learned from our interviews that at least one circuit DWR asks courts and offices within the circuit to report information similar to that reported annually to OJI to her on a monthly basis. She explained that this information is helpful for her to be able to confirm, for example, that there really are not many Formal Complaints filed, as opposed to her just not hearing about them. In addition, the information allows her to discern emerging patterns, such as multiple issues arising from the same court or office. That information could, among other things, guide the training she would provide to that court or office. In another circuit, the papers, files, and reports from informal or formal proceedings are kept on file at the circuit level as well as with the EDR Coordinator involved.

We asked DWRs if they thought the information required to be reported to OJI was adequate, or if they thought additional data should be collected. Most thought the information was adequate, but others suggested potentially collecting additional information, either at the national or circuit level. One suggested that information about the number of matters that resolve informally would be useful to collect, along with information about times to disposition of EDR matters. Another was developing, for her own use, a database in which she could keep track of, for each Informal Advice matter, the type (broadly defined) of employee involved and the type of behavior the contact was related to (e.g., FMLA, harassment). Her belief is that this will help document the proportion of Informal Advice contacts that are actually related to issues outside the EDR Plan. Finally, one DWR said that she thinks a periodic qualitative report, in which DWRs could explain more about the nature of contacts, could be more useful than simply reporting numbers, although she and other DWRs emphasized that more extensive reporting could substantially increase their workload and might not be manageable without additional resources.

National Employee Workplace Survey

As discussed in [Chapter 1](#), the Working Group in 2022 recommended that the judiciary “conduct a nationwide climate survey,” sent 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 of improvements the judiciary has made to its policies and processes.” And in September 2022, the Judicial Conference of the United States approved the Working Group’s recommendation, on recommendation from the JCUS Judicial Resources Committee, that the judiciary conduct periodic national workplace surveys, administered by the FJC.¹²⁹ The FJC, in

129. September 2022 JCUS Report, *supra* note 20, at 19.

consultation with the Working Group, developed the first national survey and sent it to all nonjudge employees in January 2023, and recently delivered its report to the Working Group.

The first national survey asked about the respondent’s familiarity with, and confidence in, workplace conduct policies, procedures, and resources in their court or employing office. It also solicited suggestions for improving those policies and procedures. In addition, it asked whether respondents had experienced discriminatory harassment, discriminatory employment actions, and abusive behavior, and if so, asked follow-up questions about its nature and resolution. If such surveys are conducted regularly and contain questions specifically related to each of the plan processes (Informal Advice, Assisted Resolution, and Formal Complaint), this information can be of value to judicial policy makers as they determine whether to recommend changes to the Model EDR Plan processes or other mechanisms that could enhance EDR and related processes.

FJC Surveys for Individual Court Units and Circuits

The Center has two on-going survey programs related to workplace environment and misconduct. One program was developed in response to individual court units wanting to obtain input from their employees about their court operations and workplace environment. The other was program developed largely for circuits wanting to obtain input from employees of courts within the circuit about possible workplace misconduct. In actuality, surveys administered under both programs have addressed both general workplace issues, as well as misconduct, with varying emphasis. Center researchers work with the requesting court/unit to adapt standard sets of questions to meet particular needs and to develop protocols related to confidentiality and distribution of results.¹³⁰ These surveys are voluntarily undertaken, and their results are available only to the court/unit making the request, for self-improvement purposes. Center researchers and (if the court wants) Center educators are available to discuss with participating courts what modification to their operations and working environment the survey results suggest.

Some of those we interviewed had used an FJC survey for their court unit or office and said that it was very helpful in identifying employee concerns and issues that needed to be addressed. Similarly, the courts of others we spoke with had developed their own surveys¹³¹ or used employee surveys from other sources (e.g., the National Center for State Courts).

While a number of interviewees said that they thought the national employee survey would yield very useful information, some expressed concern that data from the survey would be reported at the national level, and the responses from their own circuits, courts, or offices would not be

130. The standard sets of questions were developed and refined with reference to the applicable literature, related surveys by other public and private sector groups, and through experience with court surveys.

131. For example, in the process of developing its current EDR Policy, the Ninth Circuit Workplace Environment Committee surveyed the circuit’s approximately 6,000 current and former employees and law clerks (from appellate, district, and bankruptcy courts) as well as former law clerks from the federal courts outside the Ninth Circuit, on workplace policies and procedures, trainings, and programs and how the circuit could best provide a “healthy and productive” workplace. Ninth Circuit Ad Hoc Committee on Workplace Environment Report at 6–7 (June 18, 2019), <https://cdn.ca9.uscourts.gov/assets/workplace/committee-report/Ninth-Circuit-Workplace-Environment-Committee-Report.pdf>.

available to them. They indicated that this information would be of great use for them to be able to identify any local problems and develop local ways to address them.

Developing a Comprehensive Approach for Assessing How the Resolution Processes are Working

As discussed in [Chapter 4](#), interviewees generally believe the three levels for dealing with possible misconduct are working well. Nonetheless, there is not a single, comprehensive system for collecting and analyzing information about the frequency, nature, and outcomes of the uses of the three levels, in part due to confidentiality commitments. The judiciary would benefit from a more comprehensive system of gathering information, which could include national-level, circuit-level, and local components serving different purposes.

In its March 2022 report, the Working Group issued three recommendations related to assessment of the EDR plan and processes, including the recommendation to conduct periodic national workplace surveys. Another recommendation was to “Augment annual EDR-related data collection to include data related to Informal Advice contacts, while ensuring that confidentiality is protected.” The third was to “Develop a system for regular review of the Judiciary’s workplace conduct policies to ensure comprehensive implementation across courts and circuits.”

Within any comprehensive approach for assessing the judiciary’s resolution processes, one question that must be addressed is, How should the assessment be organized to address the national level as well as individual circuits or courts/offices? Decisions about this, which will presumably be based on considerations such as exactly what information is needed, who needs to have it, and how confidentiality will be preserved, will also suggest where any additional resources related to assessment should be allocated.

As it developed its initial recommendations, the Working Group significantly relied on a June 2016 study by a Select Task Force of the United States Equal Employment Opportunity Commission (EEOC).¹³² In developing an overarching assessment plan, the Working Group might find an EEOC Management Directive for federal agencies a useful roadmap.¹³³ Specifically, that directive requires:

1. A system in place to accurately collect, monitor, and analyze complaint data, employee demographic data, applicant flow data, recruitment activities, reasonable accommodation requests, and allegations of harassment. These systems can provide the data required.
2. A system to re-survey its workforce regularly and identify and disseminate significant trends and best practices.
3. A process to monitor trends to determine whether the organization is meeting its obligations.

132. 2018 Working Group Report, *supra* note 6, at 2.

133. EEOC’s Management Directive, *Instructions for Federal Agencies for MD-715 Section I*; <https://www.eeoc.gov/federal-sector/management-directive/instructions-federal-agencies-eeo-md-715>.

4. A process to review other organizations' best practices to improve the effectiveness of its program.
5. A process to compare its performance in EEO to other organizations of similar size.

Pulling together the existing evaluation efforts, the recommendations of the Working Group, our review of plan implementation, information gathered from our interviews, and consideration of reasons for national vs. local assessment, it appears the judiciary can develop a comprehensive and effective approach for monitoring and evaluating the EDR processes, with national and some local elements. Below we discuss the elements that might be included in such a process, including: 1) collection of data about usage of EDR processes, including limited and nonidentifying information about Informal Advice contacts; 2) periodic national workplace surveys, similar to the one recently conducted by the FJC; 3) greater and more consistent use of surveys focused on particular courts, court units, and offices, with the resulting data to be viewed and acted upon only by them; and 4) regular review of plans, particularly when changes are made, to ensure comprehensive implementation of minimum Model EDR Plan provisions.

Information About Use of Resolution Processes

The information already required to be reported to OJI will provide an understanding of the frequency with which the Assisted Resolution and Formal Advice processes are used, along with the types of alleged violations, how the matters were resolved, and the rights under the Plan, if any, that were found to have been violated.

Implementation of the Working Group's recommendation that the number of Informal Advice contacts be reported would also give a sense of the frequency with which OJI and DWRs are involved with matters pursuant to that process. Those we interviewed said that this frequency information could help document the work done by DWRs and OJI on matters, but also pointed out difficulties they see in interpreting this information because of the nature of Informal Advice contacts. We also solicited views about the idea of reporting information about the number of Informal Advice contacts received by EDR Coordinators.

Frequency information about Informal Advice contacts

DWRs and EDR Coordinators we spoke with consistently reported that the great majority of contacts they had under the EDR Plans, if any, were Informal Advice contacts. Many of the EDR Coordinators had never dealt with Assisted Resolutions or Formal Complaints (some had also never had Informal Advice contacts). Because so much of the activity under the Plans relates to Informal Advice, many of those we spoke with understood why it would be useful to document the use of that process. They did, however, point out difficulties in determining how to count the number of Informal Advice contacts and draw inferences based on those numbers.

For example, if the same employee contacts an EDR Coordinator five times about the same issue, reporting each of these would overestimate the number of employees using the process. Similarly, if the employee contacts both an EDR Coordinator and the DWR about the same issue,

each will likely not know the other has been contacted because of confidentiality considerations, again resulting in potential overcounting. In addition, simple counts, without more detail, provide little information about the nature of the problems being dealt with, and might be misinterpreted as indicative of the number and severity of workplace issues. A high number of Informal Advice contacts could indicate that employees have a higher awareness of available resources and feel comfortable coming to someone to chat informally, or it could reflect a workplace with extensive misconduct problems, or that employees for some reason are hesitant to use more formal processes. If the counting is intended simply to measure the workload of EDR Coordinators, that distinction might not be significant, but if the intent is to measure the prevalence of misconduct, the numbers should be considered in the context of other information.

Additionally, according to our interviews and focus groups, the Informal Advice discussions people have with DWRs and EDR Coordinators are often very broad and might include issues that are not covered by the Plan. In fact, sometimes the advice given is that another avenue outside of the EDR Plan might be more appropriate to the situation. One DWR pointed out that a simple count of these contacts could be difficult to interpret because, for example, an employee who wants to vent to someone about an unintentional snub from a co-worker could be counted the same as a conversation in which an employee seeks to understand options for pursuing a serious sexual harassment issue.

These comments suggest that, if information about numbers of Informal Advice contacts are collected at the national, circuit, or local level, there should be a clear definition of what constitutes a “contact” and how to count them. In addition, it raises the issue of what, if any, additional information ought to be collected to ensure the counts are interpretable, which in turn raises confidentiality concerns.

Confidentiality concerns relating to reporting Informal Advice contacts

The Working Group recognized confidentiality concerns in recommending that only the *number* of Informal Advice contacts, and only from DWRs and OJI,¹³⁴ be counted. However, because much of the activity under Informal Advice is done through contacts with EDR Coordinators, we asked DWRs and EDR Coordinators for their opinions about collecting the number of those contacts.

Some DWRs and EDR Coordinators thought that, as long as it was solely numbers of contacts collected, that would not violate confidentiality, and could help document issues and the work being done by EDR Coordinators. Others expressed concern that even counts could have a chilling effect on people wishing to make these contacts. For example, an employee might be unsure whether their workplace issue is covered under the Plan and not want others in their court or office being able to infer, based on numbers reported, that they had sought this assistance. One EDR

134. The Working Group also explained that these numbers would help provide a “usage rate” for how often the newly created OJI and DWR positions were being used for confidential advice and guidance. 2022 Working Group Report, *supra* note 18, at 22.

Coordinator stated, “I think you might lose some of the sense of comfort that employee would have coming to you for informal advice if you’re telling them ‘this is confidential to the extent it can be confidential, but I’m also logging it and reporting it as a number.’”

These different considerations—wanting to document usage of the Plan and work done by DWRs and EDR Coordinators, but also preserving confidentiality in a way that employees are comfortable using the process—suggest that specifying the reason(s) for collecting Informal Advice contacts is important for determining who they should be collected from and exactly what information should be collected. The decision about whether to collect such information might reasonably depend on local court factors, particularly court size and number of employees, because the risk of identification is potentially greater in smaller workplaces.

Periodic National Employee Surveys

National surveys can provide important information to supplement the data obtained on usage of the EDR processes. For example, as previously mentioned, our interviews and focus groups indicate that the Informal Advice option is used far more frequently than Assisted Resolution or Formal Complaint. To some extent this is axiomatic, as many employees will begin with Informal Advice and then proceed to one of the more formal options. But DWRs and EDR Coordinators we spoke with said that they cannot be certain why Informal Advice contacts so vastly outweigh the others. Most believe that this is because matters are able to be resolved to the employee’s satisfaction through the use of Informal Advice. But there was an acknowledgement among those we spoke with that these differences in usage could also reflect a hesitance to go beyond Informal Advice and its strict confidentiality protections. Regularly surveying employees about their reasons for using different processes, and their experiences with them, could shed light on this issue. The recent national survey may provide useful baseline information against which to gauge subsequent information obtained about the effectiveness and impact of the judiciary’s various processes and initiatives.

Local Court or Office Surveys

As mentioned previously, a number of those we talked with said that they thought being able to see data specific to their courts from the national survey results would be extremely helpful in identifying any issues they might not be aware of and targeting training and other solutions to address those issues. The Working Group is expected to report publicly with its recommendations based on the national survey results, and the results could suggest topics about which individual courts and offices might want to solicit more local information.

Requests for individual surveys could become more frequent as courts and offices become aware of the national results through the Working Group and become aware of this FJC resource, which many of those we talked to did not seem to know about. The FJC regularly informs chief judges about its survey programs, though would like to increase their visibility and usage, to meet this need, as resources allow.

One caveat about local court surveys relates to the discussion in [Chapter 4](#) about law clerks potentially being reticent to bring up issues under the Plan. This same reticence might extend to completing a survey, if they believe there is any chance their responses could be identified by their content. While it would be worthwhile to include law clerks in any local survey of court employees, other opportunities for them to share input, such as those discussed in [Chapter 4](#), might be more likely to encourage their participation and candor.

Periodic Review of Court and Office Plans

As discussed in [Chapter 4](#), some circuits, local courts, and offices have adopted EDR plans that vary in substantive ways from the Model EDR Plans. While OJI has copies of all court and office plans, there is not a system in place for it to monitor and report on plan variations and whether they fit within the minimum provisions of the Model EDR Plan—i.e., that they do not “diminish or curtail . . . any of the rights or remedies afforded Employees under this Model EDR Plan.” OJI might create such a system based on the plan review process and database developed in this study, and could communicate with circuit executives and DWRs to advise them about any potential issues with plan variations.

Options for Judiciary Consideration

- 5.1 Building on existing evaluation efforts and this study’s findings, consider developing a comprehensive plan and guidance for monitoring and evaluating the implementation and effectiveness of the EDR Plans and their resolution processes. Such a plan should balance concerns for confidentiality and anonymity and the need for information by national and local policymakers and managers.
- 5.2 Specifically, consider what additional resolution process data should be collected, analyzed, and used to monitor and evaluate them. Informal Advice, based on our interviews, is the most frequently employed resolution process, and documenting its use in the aggregate while preserving confidentiality could be informative, provided that careful attention is paid to interpretive challenges.
- 5.3 Consider whether additional resources should be allocated (for example, to OJI, the FJC, and/or DWR offices) to monitoring and evaluating the EDR Plans and their resolution processes.

Chapter 6: Educational and Outreach Efforts Related to Workplace Issues

Pursuant to Task 3 in the contract, this chapter provides information about training on workplace issues being offered to judges and other judiciary employees, as well as outreach efforts to make employees and prospective employees aware of their rights and responsibilities under EDR Plans and other mechanisms. We obtained this information from several sources, including interviews with the Director of OJI, circuit DWRs, and members of the FJC Education Division; focus groups with EDR Coordinators and chief district and bankruptcy judges; the intranet website of OJI; and written materials, including a list of workplace conduct-related trainings from the FJC and slides of trainings provided by OJI and seven of the circuit DWRs. In addition to describing existing training and outreach efforts, we identify elements of these efforts that are working well, according to those we interviewed, and possible areas for improvement or expansion.

Background

The Model EDR Plan states that “Courts and Employing Offices must 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.”¹³⁵ The Model FPDO Plan contains a similar provision.¹³⁶ As discussed in more detail below, both the Office of Judicial Integrity and some circuit DWRs offer annual training to fulfill this requirement.

Although the Model Court and FPDO Plans require that training be made available to employees, they do not state that employees are required to complete the training. In its 2022 report, the Working Group recommended that the Model EDR Plan be revised to emphasize that courts and employing offices should “take affirmative action” to ensure the training is completed, a recommendation that has been forwarded to committees of the Judicial Conference for consideration. As discussed below, many courts already track participation in and completion of this training, but implementation of the Working Group recommendation would presumably make this more consistent across courts and employing offices.

Judges and employees are also offered many training opportunities related to workplace issues besides the required annual training. These include offerings from OJI, circuit DWRs, EDR Coordinators, and the FJC Education Division. While the required annual training focuses specifically on the Model EDR Plan and its provisions, other related training can be more broadly focused (e.g., how managers can approach difficult conversations; creating an exemplary workplace environment) or more narrowly focused (e.g., identifying and preventing sexual harassment)

In addition to training requirements, the Model EDR Plans indicate that courts and employing offices have an obligation to make employees aware of their rights and obligations under the Plans

135. Model EDR Plan, *supra* note 8, § V.D.4.

136. Model FPDO EDR Plan, *supra* note 10, § V.D.4.

in other specific ways, including posting specified information about employee rights on internal and external main homepages (discussed in more detail in [Chapter 7](#)) and prominently displaying in the workplace posters showing options for addressing wrongful conduct in the workplace, with names and contact information for OJI, the circuit DWR, and the local EDR Coordinators; employee’s rights in the federal judiciary workplace; and a flow chart of the Formal Complaint process under the EDR Plan.¹³⁷ Our interviews identified additional ways in which courts and offices provide outreach about workplace and EDR-related issues.

Training Sources and Content

There are three main sources of workplace and EDR-related training for employees. They include the AO Office of Judicial Integrity (OJI), circuit Directors of Workplace Relations (DWRs), and the Federal Judicial Center (FJC). Some EDR Coordinators also provide training for employees in their courts, often in consultation with their circuit DWRs.

OJI Training

According to the OJI website and our interviews with the OJI Director, the Office of Judicial Integrity provides several different national trainings on topics relevant to workplace conduct in the judiciary, including national annual EDR training for judges, managers, and judiciary employees; EDR Coordinator Training and Certification; and Help Sessions for EDR Data Reporting and Confirmation. The OJI also, in conjunction with circuit DWRs, offers tailored training programs for court employees, managers, judges, EDR Coordinators, or specific offices and court units.

OJI works with DWRs, the FJC, and other groups such as workplace conduct committees to identify topics for trainings and suggestions for how to make trainings representative, illustrative, and relevant. In October 2023, for example, the OJI collaborated with circuit DWRs to offer virtual workplace conduct training tailored to law clerks and “the unique nature of clerkships and the chambers work environment.” Also in 2023, the OJI worked with a circuit DWR to present an in-person program for all court units within the circuit on sexual harassment. OJI staff also make presentations about workplace conduct and EDR at various conferences held by different groups (e.g., a Probation and Pretrial Services conference; a court unit executive leadership conference; the National Conference of Bankruptcy Clerks) throughout the judiciary. The OJI website provides information about how to request a tailored training, as well as links to resources that list training opportunities available from the OJI and the FJC.

Training for EDR Coordinators

OJI provides EDR coordinator training and certification through self-paced, interactive online training. All EDR coordinators are required to complete this training at the start of their term as an EDR Coordinator. The training, which EDR Coordinators described as involving a commitment

137. Model EDR Plan, *supra* note 8, app. 5.

of several days, includes sections on “The Basics”; Wrongful Conduct; Informal Advice; Assisted Resolution; and Formal Complaint and Administrative Responsibilities. Trainees must take a test at the end of each module and achieve at least 80% on each test to be certified.¹³⁸

According to our interviews, some EDR Coordinators have taken additional training beyond the OJI course. One circuit’s EDR coordinators received two to three additional trainings beyond the required certification, led by their circuit DWR, which covered additional circuit-specific issues and provided opportunities for question-and-answer sessions. Another circuit provided specialized training to both EDR coordinators and Human Resources (HR) staff that covered the responsibilities for each of these groups with respect to EDR matters. Some EDR Coordinators also seek out sessions on workplace conduct at conferences to further their training. And as discussed below, some DWRs hold regular meetings with the EDR Coordinators within their circuits, which may include training.

Annual EDR Training for Judiciary Employees

For the last three years, OJI has provided annual EDR Plan training to employees from across the judiciary. In 2023, roughly 9,000 judiciary employees participated in this training. This training included a module for all judiciary employees and a separate module for judges, chief unit executives, and managers. In 2023 the EDR training was offered live virtually on ten different days in November and December, with opportunities for questions and answers.¹³⁹ Recordings and Powerpoint slides from the two different modules were posted in January 2024 on the OJI website. According to our interviews and focus groups, some courts and offices use the OJI training as the primary annual training for their employees, while others use it to supplement circuit-based training or as an option for employees who could not attend training offered in their own court or circuit. DWRs whose circuit plans differed in significant ways from the Model EDR Plan reported that they provided their own training that was more customized to their circuit plan.

OJI training reviews employment policies and protections, options for reporting concerns, EDR resources and points-of-contact, and EDR rights and processes. It also explains the purpose of the Model EDR Plan, outlines protections from discriminatory harassment and explains how sexual harassment is addressed by the Model EDR Plan and JC&D Rules. The training walks through examples of sexual harassment (physical, verbal, and nonverbal) and uses Poll Everywhere¹⁴⁰ to gauge whether participants consider each example to be sexual harassment. It also defines what is and what is not abusive conduct, explicitly identifying that reasonable performance management practices are not considered abusive conduct. (A useful addition to the written presentation would be scenarios depicting abusive conduct, as is done with sexual harassment. Such behavior can take many forms and may be more difficult for all parties to identify

138. Source: Materials provided by and interviews with the Judicial Integrity Officer.

139. *Id.*

140. Poll Everywhere is a web-based service that allows audience members to respond anonymously to questions in real time. The results of the questions can be displayed for the audience to see live.

accurately and goes beyond behavior statutorily prohibited in other branches of government and the private sector.)

The presentation also outlines additional protections beyond the model EDR plan, including the Family and Medical Leave Act, Uniformed Services Employment and Re-employment Rights Act (USERRA), Occupational Safety and Health Act, the Worker Adjustment and Retraining Notification (WARN) Act, and the Employee Polygraph Protection Act.

Employees also learn in more detail about informal advice, assisted resolution, and the formal complaint process. The training covers which EDR remedies are available for employees, as well as EDR procedural rights, including fairness, impartiality, and conflicts of interest; the right to representation; and interim relief. There is particular emphasis on confidentiality throughout the EDR process. The training explains the network of people available to support an employee during the EDR complaint process (OJI, DWRs, and EDR Coordinators) and provides contact information for OJI and DWRs.

Finally, this training also covers the Codes of Conduct for U.S. judges, judicial employees, and FPDO employees, and explains the Rules for Judicial-Conduct & Judicial-Disability Proceedings and the process by which complaints go through that review process.

OJI's management module supplements the annual employee training and focuses on the roles and responsibilities within the EDR process that are unique to management positions.¹⁴¹ According to the OJI website, this training "provides best practices for both proactively addressing concerns of wrongful conduct and taking the necessary responsive steps to prevent recurrence." Topics include relevant national policies, confidentiality, anti-retaliation, a manager's role in EDR matters, and how to foster an exemplary workplace. The presentation provides hypothetical situations and uses Poll Everywhere to gain instant feedback and insights into participant learning. It also walks participants through the processes for Assisted Resolution and Formal Complaints, focusing on the roles of managers and judges in these processes. Lastly, the training addresses more general responsibilities of judges, unit executives, and managers and their respective courts or offices under the Model EDR Plan, including the appointment and training of local EDR Coordinators, ensuring notice of workplace rights, and conducting annual EDR training.

Training Offered by Circuit Directors of Workplace Relations

One of the roles of circuit DWRs is to provide and facilitate EDR and workplace-related training throughout their respective circuits. Our interviews with DWRs indicated that the extent to which they are directly involved in conducting training depends in part on their professional background prior to becoming a DWR, and on whether EDR Coordinators within their circuit provide training, though most DWRs said that training is a major part of their responsibilities.

DWR training is often provided upon request so that courts can fulfill EDR Plan requirements. When developing training programs and materials, DWRs can pull from a variety of sources, such

141. Source: Materials provided by and interviews with the Judicial Integrity Officer.

as those available from the OJI and the FJC and developed in other circuits. DWRs use a Microsoft Teams channel to share resources (including training materials), ask questions, and collaborate. Some DWRs have created their own training scripts, which are available across circuits. In addition, DWRs in circuits with workplace committees also consult with those committees.

While specific content varies, DWR training materials generally cover EDR Plan protections, examples of prohibited conduct, definitions of wrongful conduct, the EDR Plan process, and resolution options. These trainings also identify contact information for DWRs and EDR coordinators, and in some presentations, participants are shown how to navigate EDR-related internet and intranet pages.

In addition to EDR-specific training, some DWRs provide broader workplace conduct training. In general, the idea behind the broader trainings is that the more education and awareness people have about interacting and communicating with each other in respectful and appropriate ways, the better the workplace environment will be overall, and in turn this will reduce the likelihood of behaviors that could rise to an EDR level. Examples of broader topics DWRs have covered include respect in the workplace; ten principles of an exemplary workplace; the role of apology in workplace conflicts; generational diversity in the workplace; understanding and preventing retaliation; communication in the workplace; and how to handle uncomfortable workplace issues. Some DWRs also offer training on more specific issues, such as disability discrimination/reasonable accommodation or preventing workplace harassment. And some offer informal training opportunities; one DWR, for example, holds brown bag lunches with law clerks at which she discusses “soft skills,” such as giving or taking criticism, attending social events, or dealing with difficult people.

In addition to training for employees and managers generally, some circuit DWRs hold quarterly meetings with the EDR Coordinators from their circuits that include training, outside speakers, or discussion of specific scenarios and how to manage them. EDR Coordinators whose DWRs hold these meetings generally describe them as very helpful, because of both the content and the ability to interact with other EDR Coordinators in their circuit. Other DWRs said they are considering offering this as well, because their EDR Coordinators had said it would be helpful. The formality of these meetings varies, both in terms of how structured they are (e.g., having a formal training component vs. holding a drop-in meeting called “coffee and conversations”) and the extent to which participation of all EDR Coordinators is encouraged.

To both evaluate their trainings and identify potential topics to address in future trainings, some DWRs survey participants after trainings to solicit feedback on their programs, but there is no standard evaluation method and it is not a required component of training.

FJC Education on Workplace Issues

The FJC also provides training throughout the judiciary. The FJC Education Division has four training groups: Judicial and Legal Education; Management and Professional Development; Executive Education; and Probation and Pretrial Education. Each group works with an advisory

committee that includes judges and other judiciary employees to identify training needs and develop content. The FJC’s training is provided in a variety of ways, including in-person programs, “train the trainer” programs, webinars, and podcasts. According to our interviews with FJC Education Division staff and written materials provided by the FJC, topics related to workplace conduct are often integrated within more broadly focused training sessions (e.g., on leadership or interacting with colleagues), rather than in a stand-alone format. A list of relevant programs is included in [Appendix N](#).

The Judicial & Legal Education group (JLE) provides training for federal judges (except Supreme Court justices) and attorneys, including ethics and workplace conduct training. They also provide specific ethics training for career law clerks. This group provides new judge orientations (for circuit, district, bankruptcy, and magistrate judges), and workplace conduct is addressed in all. To help identify topics of interest, JLE will often send surveys to judges in advance of the training, and they also ask judges for topic requests during face-to-face meetings. JLE uses a combination of in-person and online trainings. They create on-demand modules that allow judges and clerks to access the training at any time. JLE will often coordinate with OJI to confirm that program information is up to date. In advance of training offerings, JLE will send agendas to their target audiences through email as well as posting a notification of their training on the FJC site on the DCN.

The Executive Education group has three primary audiences: chief circuit, district, and bankruptcy judges; court unit executives; and chief deputies. The Executive Education group serves to educate those who manage others, and part of their focus is on workplace conduct, which is often woven into broader executive education programming. An advisory committee provides guidance to this group and includes chief district and bankruptcy judges and clerks of courts, chief deputy clerks, and chief probation and pretrial services officers. A planning committee, which includes a member of the advisory committee, is part of the development process for each program. This committee determines the needs and competencies that should be addressed by each program. The Executive Education group reaches their audiences in multiple ways, including webinars, videos, in-person sessions, and a thirty-minute podcast program. The group tracks the numbers of participants and uses this information to identify which topics drew in the most individuals. Developers of each training opportunity determine how they solicit feedback on their programs and how this information will be used to inform future iterations of the program.

The Management & Professional Development group (MPD) provides leadership and management education for court supervisors under the deputy level and aspiring leaders within the courts, as well as professional development training for nonsupervisory employees, including Code of Conduct and workplace conduct training.¹⁴² Also supported by an advisory committee that helps inform programmatic priorities, they use volunteer court faculty for feedback and development as well. The advisory committee meets in person once a year and has virtual quarterly meetings. Like

142. Federal Judicial Center, *Programs and Resources for All Court Employees*, <https://www.fjc.gov/education/programs-and-resources-all-court-employees>. See [Appendix N](#).

other FJC education groups, MPD offers a variety of in-person and virtual trainings that focus on topics like respect in the workplace and preventing workplace harassment. MPD coordinates with the AO's Office of General Counsel to update content and reflect the most pertinent topics of the day. While MPD does not consistently track and monitor the number of participants, participants register and receive certificates of completion for certain training programs so participation could potentially be tracked that way. Following the completion of MPD programs, participants complete evaluations and are often asked for suggestions on future trainings, whether or not the training met the learning objectives, and for general input on the presentations.

The FJC's Probation and Pretrial Education (PPE) group develops training for line officers and chief and deputy chief probation officers. This group reported their programming does not explicitly cover the EDR Plan, but it does address workplace conduct indirectly through a focus on competencies necessary to the job, including Everyday Leadership and Role Awareness. The PPE advisory committee meets monthly to identify needs for programming and resources. Evaluation forms are also used after PPE trainings to provide quantitative and qualitative feedback on the program.

Training by EDR Coordinators

Several participants in our EDR Coordinator focus groups mentioned that they do trainings for those within their courts or offices, and one DWR said that most of the EDR Coordinators in her circuit offer training within their courts. In addition, a DWR will often work directly with EDR Coordinators in a court or office that requests training to ensure that the training, while provided by the DWR, meets local needs.

Modes of Delivery and Outreach About Training

EDR and workplace conduct trainings are provided in a variety of modes: in person, online (including webinars), and through computer-animated videos and short training videos. OJI's annual training takes place through virtual live sessions, the slides and recordings from which are then made available on the OJI website and can be viewed on demand. DWRs and EDR Coordinators also provide training through more informal means, such as providing refresher trainings during judges' monthly meetings.

Those we interviewed, particularly EDR Coordinators, had different preferences with respect to in-person vs. virtual training, and generally appreciated having options for how to complete any required training. And some DWRs said that they alternated between providing in-person training one year and having employees take the OJI training the next year, both to provide different approaches and to account for resource limitations in providing in-person training.

With respect to outreach about training, employees receive notification of training opportunities through newsletters and emails from DWRs, EDR Coordinators, OJI, and the FJC. Internal employee websites are also updated with new trainings and programs. OJI's subpage "Employment Dispute Resolution (EDR) Resources and Training Opportunities" provides links to

available training opportunities from both the OJI and the FJC, and the FJC has a webpage dedicated to available programs relating to workplace conduct.

Requiring and Tracking Participation in Training

In our interviews and focus groups, we asked whether EDR training that was offered was presented as mandatory, and also whether anyone tracked attendance to ensure employees had completed annual training. DWRs indicated that, while they did not have the authority to require attendance at their trainings, many individual courts and offices within their circuits made the training mandatory for their employees. Similarly, most EDR Coordinators in our focus groups who responded to a question about this said that training was mandatory for those in their courts. For courts that made training mandatory, for the most part this applied only to nonjudge employees, but in some courts the chief judge had made training mandatory for judges as well.

We also asked about whether participation in training was tracked. The Office of Judicial Integrity tracks participation in its virtual annual training and provides this information to individual courts and offices on request. DWRs and EDR Coordinators we talked with indicated that some courts and offices track participation, such as through signed acknowledgements of having completed the training or confirming this by responding to an email from the EDR Coordinator. Depending on the court or office, this tracking was done at the circuit level (by the DWR), individual court/office level (either by the EDR Coordinator or HR personnel), or through coordination between the DWR and local EDR Coordinators. Some said their courts relied on OJI's tracking of attendance at the annual trainings. Other courts do not formally track participation in annual EDR trainings, but have a general sense that most employees are participating.

Participants' Assessments of Available Training Opportunities

Overall, the EDR Coordinators and judges who participated in focus groups indicated that the training available for both them and other employees was comprehensive and helpful. Those who had been involved in EDR matters before the 2019 Model EDR Plan noted that the annual training requirement in the Plan has greatly heightened employee awareness of their rights under the EDR Plan and the options for resolution. Relatedly, OJI, DWRs, and EDR Coordinators said that their training often leads to an immediate bump in the number of inquiries or requests for informal advice they receive.

We asked DWRs, EDR Coordinators, and chief district and bankruptcy judges about additional training or modifications of existing training that they thought would be useful, either for employees as a whole or for specific groups. The areas they identified include:

- *Brief “refresher” training or written materials, especially for EDR Coordinators.* EDR Coordinators in our focus groups explained that, while the initial training they received was very comprehensive, many of them have very few EDR-related contacts, so it is easy to forget details of the EDR Plan and processes as time goes by. They indicated that written

materials or periodic refresher training would help keep this information fresh in their minds so they would be better prepared when they received an inquiry.

- *More scenario-focused training.* EDR Coordinators discussed the fact that many situations arise in which it is difficult to discern whether they fall under the EDR plan, some other process, or are not protected—i.e., “grey areas.” They believe that scenarios focused on these kinds of situations, and how to tease out which process a given situation falls into, would be very helpful. Others noted that prior manager training, for example, had included scenarios, but the situations were too obvious, whereas most actual situations that come up are very nuanced. These comments suggest that it would be helpful for both EDR Coordinator training and general manager and employee training to include more scenarios of this type, to help participants understand how to determine on which side of the line a certain behavior might fall.
- *More targeted training for federal public defender office employees.* While there is a great deal of overlap between the Model EDR Plans for the courts and FPDOs, some FPDO EDR Coordinators in our focus groups indicated that their employees frequently received the same training provided to courts, some of which is not applicable to their offices (e.g., in terms of the different types of employees). They thought the training for employees in their offices would be more interesting and relevant if it also focused on the FPDO workplace setting and plan provisions specifically related to FPDO employees, such as protecting attorney-client privilege in the EDR context.
- *Broader training on creating an exemplary workplace.* In addition to training about the EDR Plan and processes, the OJI, the FJC, and most circuit DWRs also provide training on broader issues that relate to creating an exemplary workplace. This includes topics such as communication/how to have difficult conversations, civility in the workplace, and generational differences that could lead to misunderstandings or unintentionally offensive behavior between managers or judges and employees they supervise. Training on these broader issues, as pointed out by several of those we interviewed, has the potential for improving the workplace environment for all, as well as reducing behaviors and interactions that could ultimately become EDR matters.
- *Investigations training.* EDR matters that go beyond very informal advice often require an investigation to confirm what has been reported and to obtain others’ perspectives about the situation. While some DWRs and EDR Coordinators have been trained in conducting investigations, such training was normally obtained in another context, and most do not have this training. When an investigation is needed, those involved in administering the matter (EDR Coordinator, DWR, chief judge, or PJO) have to identify someone within their court or office with investigative expertise and ask them to conduct the investigation. While some circuits have trained investigators available for this work, other courts and offices lack this expertise. This patchwork approach creates administrative and workload challenges, and a number of those we interviewed said that it would be very helpful for certain people within the circuit, including perhaps some EDR Coordinators or the DWR,

to be trained in investigations. OJI is reportedly working on developing this type of training, in consultation with DWRs who have investigative experience.

- *Targeted training or written materials for chief judges.* Chief district and bankruptcy judges who participated in our focus groups said that they had received some training on EDR from the FJC and/or their DWR, but most thought they would benefit from more focused training about their responsibilities as chief judges under the EDR plans and/or some written materials that they could consult when a particular matter requiring their attention comes up. As with EDR Coordinators, a chief judge can have a good deal of time pass between receiving training and having an actual EDR matter come to them so targeted written materials and perhaps a website pointing to different resources specific to their role would be very useful. One judge described the needed resource as a “deep dive crash course” when “you have [a matter come up].”

Outreach

As mentioned previously, the Model EDR Plans require that courts make information about EDR and related issues available beyond formal training. One avenue for this that is specifically mentioned in the Plans involves posting specified information on external and internal court websites; these will be discussed in more detail in [Chapter 7](#). Another requirement is to put up posters, in break rooms and other frequented areas, that provide information about the EDR Plan, dispute resolution options and processes, and contact information for EDR Coordinators, DWRs, and OJI.¹⁴³

One of the recommendations from the 2022 Report of the Workplace Conduct Working Group was to “expand outreach and engagement.”¹⁴⁴ In explaining this recommendation, the Working Group noted that, in addition to engaging with numerous judiciary employees in preparing its initial (2018) report, it had in 2021 sent a letter to approximately 200 law schools across the country, to make them aware of the OJI and circuit DWR as avenues for seeking guidance or reporting concerns. The Working Group further encouraged circuits to continue or institute interactive listening efforts to help them fully understand employee concerns.

In our interviews with DWRs and EDR Coordinators, we asked about what they do to provide outreach about the EDR plan and processes. Many of them mentioned that they provide information about EDR in their new employee onboarding/orientation process, with some requiring that new employees read through the plan and sign an acknowledgement of having done so. While they acknowledged that the details of the information might get lost in the context of the large amount of the information a new employee receives, they believe that even if the employee just remembers the existence of the EDR Plan, it will help them locate the necessary information, including people to contact, if a matter comes up.

143. Model EDR Plan, *supra* note 8, app. 5.

144. Working Group Report, *supra* note 18, Recommendation 7, a 25.

Another way of conducting outreach that was mentioned by both DWRs and EDR Coordinators was making sure that they were known, by face and name, to employees throughout their courts and circuits. This includes activities such as attending EDR and related trainings in person to introduce themselves and visiting different districts or court units to meet employees in person, or, in a smaller circuit, meeting individually with new employees. They pointed out that if they are familiar to employees and can show that they are approachable, an employee with a workplace challenge is more likely to reach out to them, and more likely to reach out early. Those in smaller circuits indicated that it was relatively easy for them to make their presence known to employees in their circuit, while that was more of a challenge in larger districts or circuits.

Similarly, many chief district and bankruptcy judges in our focus groups said that they thought chief judges helped set the tone for their court by attending trainings along with employees, or introducing themselves at the beginning of the training and emphasizing the importance to the court of having a healthy workplace environment.

Finally, OJI and individual circuits have undertaken efforts to make outreach to prospective and current employees, particularly law clerks. OJI held a placement event with law schools in February 2024, and is working on an event to educate law school administrators about what OJI is, EDR and related policies in the judiciary, and how to get workplace issues to the right person in the judiciary, while also soliciting feedback about concerns that the law school administrators might be hearing about.¹⁴⁵ As mentioned previously, several circuits have established law clerk advisory committees as an avenue for learning about law clerk concerns, and others are considering doing this.

Options for Judiciary Consideration

- 6.1 Given the importance of the abusive conduct provision in the Model EDR Plan, based on our interviews and focus groups, consider ways to provide more training about what constitutes abusive conduct under judiciary policy, such as (i) including the identification and discussion of specific examples of abusive conduct, by judges, supervisors and peer employees, in all EDR Plan training, and (ii) having chief judges include discussion of workplace environment and abusive conduct at the annual circuit conferences.
- 6.2 Develop the following additional trainings and materials: 1) brief “refresher” training or written materials, especially for EDR Coordinators; 2) more scenario-focused training; 3) more targeted training for FPDOs; 4) broader training on creating an exemplary workplace; 5) investigations training; and 6) targeted training or written materials for chief judges.
- 6.3 Provide more opportunities for interaction between DWRs and the EDR Coordinators within their respective circuits. Also provide opportunities for EDR Coordinators to interact with each other (with appropriate caveats about confidentiality of specific EDR matters).
- 6.4 Consider having DWRs develop a repository of training materials for shared use throughout the judiciary. Formalizing the collaboration and content sharing that currently exists through

145. Second interview with Judicial Integrity Officer.

the DWR Microsoft Teams channel into a repository of training materials creates an opportunity to provide transparency and build standardization of common elements of EDR training across the circuits. For new DWRs, this repository can serve as a resource to ensure that all fundamental EDR information is covered throughout each circuit.

- 6.5 Consider building upon Recommendation 8 of the 2022 Working Group Report, that courts and employing offices need to continue “to take affirmative steps to ensure completion” of annual EDR training. All training should be tracked for attendance to ensure compliance and to identify areas for additional outreach, including training for judges.
- 6.6 Relatedly, consider ways to ensure that all employees and all judges receive EDR training.
- 6.7 Consider having trainers consistently collect training feedback to identify the efficacy of the training provided, areas for improvement, and opportunities for new topics to cover. Feedback can be captured by quantitative ratings, open-ended questions, or a combination of both.
- 6.8 Consider developing PJO training and written guidance to ensure consistency across the courts. As discussed in [Chapter 4](#), a number of interviewees and focus group participants indicated that it would be helpful for PJOs to have more guidance about how to carry out their responsibilities. Written guidance could provide a step-by-step process, adaptable to the needs of different circuits, for PJOs as they carry out their responsibilities once they are asked to handle a Formal Complaint.

Chapter 7: Evaluation of Public-Facing Judiciary Websites

Pursuant to Task 4 in the FJC-Academy contract, this chapter summarizes workplace conduct information on public court websites, evaluating whether the information is complete, helpful, and accessible to court employees and the public. We obtained this information from a review of over 200 public-facing court of appeals, district court, bankruptcy court, and FPDO websites¹⁴⁶ (see [Data Collection Methods](#) section of Chapter 3 for details); a review of the national judiciary website, uscourts.gov; and interviews. We include suggestions for improving how national and local court public websites provide workplace conduct information to employees and to the public.

It is possible that courts and FPDOs included some of the required information on their internal websites in addition to, or in lieu of, including it on their public website. However, because the Plans apply to individuals who may not have access to those sites (e.g., former employees, interns, externs, volunteers), its inclusion on the public site is important.

Workplace Conduct Information on Court of Appeals, District Court, Bankruptcy Court, and FPDO Websites

The Model EDR Plans, adopted as policy by the Judicial Conference of the United States, require all court and FPDO public websites to include specified information about the EDR Plan and how employees can report allegations of wrongful conduct. Specifically, the Model EDR Plans state that every court and FPDO must:

post the following prominently on the homepage of both its internal and external websites under a link labeled “Your Employee Rights and How to Report Wrongful Conduct”:

- A. the entire EDR Plan, with all appendices and relevant contact information,
- B. Judicial Conduct and Disability Act,
- C. Rules for Judicial-Conduct and Judicial-Disability Proceedings,
- D. Judicial Conduct and Disability Complaint form; and
- E. contact information for all EDR Coordinators, the circuit Director of Workplace Relations, and the national Office of Judicial Integrity¹⁴⁷

Inclusion of Required Information

Table 1 below shows the number and percentage of different courts and offices that included on their public websites each of the elements required by the Model EDR Plans. Each cell of the table lists the number of courts/offices satisfying the requirement, with percentages in parentheses.

146. This review did not include the website of the U.S. Supreme Court (to which the Model EDR Plan does not apply) or standalone probation/pretrial services websites. Probation/pretrial services are units of the district court. Three district and bankruptcy courts with consolidated Clerk’s Offices have one website for both courts. We include these websites for both the district and bankruptcy courts. Because judiciary websites are constantly updated, this analysis should be viewed as a “snapshot” of information about workplace conduct on judiciary websites as of Spring 2024.

147. Model EDR Plan, *supra* note 8, § V.D; Model FPDO EDR Plan, *supra* note 10, § V.D.

Table 1: Inclusion of Required Information by Type of Court/Office.¹

	EDR Plan (with all appendices)	JCDA	Rules for JCJDP	JC&D Complaint Form	EDR Coordinator Contact	DWR Contact	OJI Contact
Court of Appeals (13)	13 (100%)	13 (100%)	13 (100%)	11 (85%)	13 (100%) ^a	13 (100%)	13 (100%)
District, CIT, CFC (96)	89 (93%) ^b	86 (90%)	87 (91%)	71 (74%)	67 (70%)	53 (56%) ^c	62 (65%)
Bankruptcy (90)	75 (83%) ^d	82 (91%)	80 (89%)	60 (67%)	59 (66%)	51 (57%)	54 (60%)
FPDOs (65)	39 (60%) ^e	15 (23%)	18 (28%)	16 (25%)	20 (31%)	18 (28%)	17 (26%)
All (264)	216 (82%)	196 (74%)	198 (75%)	158 (60%)	159 (60%)	135 (51%)	146 (55%)

¹ Percentages in the court of appeals; District, CIT, CFC; Bankruptcy; and FPDOs rows are the percentage of courts or offices of the indicated type which satisfy the specific requirement noted in the column heading. Percentages in the All row are the percentage of all public judiciary websites (as defined in the Data Collection Methods section of [Chapter 3](#)) which satisfy the requirement. Percentages are rounded to the nearest whole number.

We group the Court of International Trade and Court of Federal Claims with district courts in this analysis because they are specialized trial courts. We use the term (district/specialized trial court) to collectively refer to these courts.

^a Staff members of the Office of Workplace Relations can serve as EDR Coordinators in the Ninth Circuit, so OWR contact information is counted as EDR Coordinator contact information for the Ninth Circuit.

^b Five additional district court websites (2%) posted the court's EDR Plan, but were missing one or more appendices. Two district court websites did not post the court's EDR Plan.

^c The Court of International Trade and Court of Federal Claims do not have a DWR.

^d Nine additional bankruptcy court websites (10%) posted the court's EDR Plan, but were missing one or more appendices. Six bankruptcy court websites did not post the court's EDR Plan.

^e One additional FPDO website (2%) posted the Office's EDR Plan, but was missing one or more appendices. Twenty-five FPDOs (38%) did not post the Office's EDR Plan.

Eighty-two percent of public judiciary websites post the EDR Plan with all appendices (an additional 6% of websites post the EDR Plan, but are missing at least one appendix).

Seventy-four percent of public judiciary websites post or link to the Judicial Conduct and Disability Act. Seventy-five percent post or link to the Rules for Judicial-Conduct and Judicial-Disability Proceedings. Sixty percent post or link to the Judicial Conduct and Disability Complaint form.

Sixty percent of public judiciary websites provide contact information on the website (not counting contact information in the EDR Plan document) for at least one EDR Coordinator (name, email address, and/or phone number). Fifty-one percent provide contact information for the DWR. Fifty-five percent provide contact information for OJI. Not all contact information provided on

public judiciary websites is current.¹⁴⁸ Comparisons to the internal judiciary online directory revealed phone numbers that appeared to be out of date or have digits transposed; different EDR Coordinators from those listed for the court/office in the directory; and general phone numbers or email addresses instead of direct contact information (for example, listing the main phone number for the Probation Office to reach an EDR Coordinator who is a Probation Office employee), which may make confidential contact or reporting more difficult. The names of DWRs and the national Judicial Integrity Officer are also sometimes outdated.

Half of all public judiciary websites are missing at least one required piece of information, and 11% of websites have no workplace conduct information at all. The percentages of court of appeals, district court, and bankruptcy court public websites with no workplace conduct information are low (0%, 1%, and 3%, respectively), but 38% of FPDO public websites have none of the required information.

Thirty-three percent of public judiciary websites have all of the required information on one page. Eight percent have all the required information, but it is spread across multiple pages. Spreading the required information across multiple pages, especially when there is no cross-linking between these pages, makes the information more difficult to find.

Thirty-four percent of public judiciary websites include all information required by the *Guide*. Eighty-five percent of court of appeals websites include the required information, as do 43% of district/specialized trial court websites, 34% of bankruptcy court websites, and 9% of FPDO websites.

Table 2: Organization and Completeness of Required Information, by Type of Court/Office.

	All required information on one page	All required information on the website, but spread across multiple pages	At least one required piece of information missing	No workplace conduct information on website
Court of Appeals (13)	6 (46%)	7 (54%)	0	0
District, CIT, CFC (96)	38 (40%)	7 (7%)	50 (52%)	1 (1%)
Bankruptcy (90)	28 (1%)	7 (8%)	52 (58%)	3 (3%)
FPDOs (65)	6 (19%)	0	34 (52%)	25 (38%)
All (264)	78 (30%)	21 (8%)	136 (52%)	29 (11%)

148. As compared by FJC staff to the contact information for EDR Coordinators, DWRs, and OJI listed for each court/office in InfoWeb, the internal judiciary online directory.

Visibility of and Ease of Access to Required Information

Table 3: Link on Homepage to Required Information, by Type of Court/Office.

	“Your Employee Rights and How to Report Wrongful Conduct” link on the homepage	Other homepage link (not labeled as required)	Workplace conduct information on website, but not linked from home page
Court of Appeals (13)	12 (92%)	1 (8%)	0
District, CIT, CFC (96)	63 (66%)	31 (32%)	1 (1%)
Bankruptcy (90)	60 (67%)	28 (31%)	1 (1%)
FPDOs (65)	16 (25%)	24 (37%)	1 (2%)
All (264)	151 (57%)	84 (32%)	4 (2%)

Fifty-seven percent of public judiciary websites have a link on the homepage labeled “Your Employee Rights and How to Report Wrongful Conduct,” as required by the *Guide*, or a slight variation on that wording (such as “Court Employee Rights and How to Report Misconduct;” “Employee Rights/How to Report Wrongful Conduct;” or “Employee Rights and Reporting Wrongful Conduct”). Almost all courts of appeals, and two-thirds of district/specialized courts and bankruptcy courts, include the required link, properly labeled, on their homepages. One-quarter of FPDO homepages include the required link, properly labeled.

If a website’s homepage does not include the properly labeled link, about one-third of courts include at least one link to some or all of the required information on their homepages. These links are often specifically to Judicial Conduct and Disability information, labeled in a variety of ways (e.g., “JCDA”; “JC&D/Judicial Misconduct & Disability Guidelines”; “Judicial Conduct”). Other common homepage links that lead to required information include links to employment pages (with labels such as “Employment”; “Job Openings”; “Careers”; and “Human resources”); links labeled with terms related to EDR or workplace conduct/relations (e.g., “Employee Dispute Resolution”; “EDR Policy”; “EEO-EDR Plan”; “Equal Employment Opportunity”; “Anti-Discrimination and Harassment Contact Information”; “Workplace Conduct”; “Workplace Relations”); truncations of the required wording (e.g., “Your Employee Rights” or “Employee Rights”); and links to general resources pages (e.g., “Resources”; “Court Information”; “Links”; “Selected Policies”).

Including the properly labeled link on the homepage can improve website users’ ability to find the required information, as can the formatting and placement of the link. Techniques used on public judiciary websites that may increase the visibility of the link include:

- Placing the link directly on the homepage so that it is visible without the user needing to click on, or hover over, menus or tabs to display the link.
- Making the text of the link large enough so that website users can easily see it.
- Placing the link in the footer of the website so that it is visible on every page (in combination with making the text of the link large enough to see).
- Placing the link in a special feature, like a framed box or a button, or adding color to the link.
- Placing the link under a menu heading that is labeled to indicate relevance to workplace conduct (not under generic headings like “Links” or “Resources”).

Satisfaction of All Guide to Judiciary Policy Requirements

Overall, 26% of public judiciary websites fulfill all the requirements set forth in the *Guide* (include all required information and include the required homepage link, properly labeled). Seventy-seven percent of court of appeals websites fulfill all requirements, as do 32% of district/specialized trial court websites, 27% of bankruptcy court websites, and 5% of FPDO websites.

Additional Resources

Forty-one percent of public judiciary websites included resources or information related to workplace conduct beyond the required information, such as:

- Additional posters i.e., EDR Policy Info Checklist, EDR Options for Resolution, Key Things to Remember About EDR Rights
- Anti-Discrimination and Harassment Notice
- Anti-Discrimination and Civility Notice
- Circuit Confidentiality Protection Policy
- Employee Codes of Conduct
- EDR Plan Acknowledgement Form
- EDR *Interpretive Guide and Handbook*
- EDR Review Procedures
- EDR Plan videos
- Equal Employment Opportunity Plan
- Fact Sheet for Workplace Protections in the Federal Judiciary
- Procedures for Public Posting of Resolving an EDR Complaint
- Ways for employees to report anonymously¹⁴⁹

149. The website of the Ninth Circuit Office of Workplace Relations has an anonymous reporting tool, which could be used as a model for other courts, offices, or [uscourts.gov](https://www.ca9.uscourts.gov/workplace). See <https://www.ca9.uscourts.gov/workplace>.

Use of Websites to Distribute Workplace Conduct Information: Interviewees and Focus Group Participants

During interviews with DWRs, the Joint Study Team asked about the role of websites in disseminating information about workplace conduct in their circuit. Several DWRs cited public and internal websites as a primary source of information for employees.

It is the responsibility of IT or HR departments to assist in updating workplace conduct information on court/office websites. EDR Coordinators or DWRs coordinate with these departments to post new information and updates. Some DWRs have developed SharePoint sites with information related to workplace conduct, which they can regularly administer themselves. SharePoint sites are internal judiciary websites, usually maintained by and accessible to employees of a specific court or office.

Workplace Conduct Information on uscourts.gov

The public-facing website of the federal judiciary is uscourts.gov. This website contains national information about workplace and judicial conduct, posted on two separate webpages. Local courts/offices often link to this website to fulfill some of the requirements of the *Guide to Judiciary Policy* vol. 12, ch. 2, § 225(d)(5), especially the requirements related to Judicial Conduct and Disability information, rather than posting the information directly on the court website.

The uscourts.gov site maintains a webpage called “Workplace Conduct in the Judiciary” that is accessible via the “About the Federal Courts” dropdown tab at the top of the homepage or via the menu at the bottom of the website (“Workplace Conduct”). Workplace conduct information on the webpage includes:

- Information for current and former judiciary employees on reporting misconduct, workplace harassment, and other wrongful conduct, including the available avenues for doing this and information about how to contact OJI, circuit DWRs, and EDR Coordinators;
- A link to and brief information about the 2019 Model EDR Plan;
- Links to the Codes of Conduct for all judicial employees and for judges;
- Links to Rules for Judicial Conduct and Judicial Disability Proceedings and other ethics policies;
- Information about relevant training from the FJC, AO, and OJI; and
- Information about the Working Group and links to its reports.

Side menus on the site link to a fact sheet about workplace protections in the federal judiciary, a list of circuit DWRs and links to each circuit’s workplace conduct information; and background materials on the federal judiciary’s efforts in the area of workplace conduct.

There is a separate webpage for Judicial Conduct and Disability information, accessible via the “Judges & Judgeships” dropdown tab at the top of the homepage or via the menu at the bottom of the website (“Judicial Conduct & Disability”). Information on this webpage includes links to:

- The Judicial Conduct and Disability Act of 1980;
- The Rules for Judicial-Conduct and Judicial-Disability Proceedings;
- A Frequently Asked Questions (FAQ) document about filing a judicial conduct or disability complaint against a federal judge;
- A graphical overview of the process for filing a complaint against a judge;
- Yearly statistics about judicial conduct and disability complaints and actions taken in response to them;
- A Digest of Authorities on the Judicial Conduct and Disability Act; and
- Links to each circuit’s resources about filing a judicial conduct or disability complaint, along with resources from the Court of Federal Claims and the Court of International Trade.

Options for Judiciary Consideration

Court/Office Websites

- 7.1 Make it the responsibility of EDR Coordinators and/or DWRs to review both external and internal court/office websites on a periodic basis to ensure all required information is posted on the website, is linked from the homepage, is up-to-date, and that any links are operational. Encourage EDR Coordinators to review their court/office’s website if their court/office redesigns its website.
- 7.2 Encourage EDR Coordinators and/or DWRs to request that EDR contact information be updated when there is a transition in EDR Coordinator, DWR, or the national Judicial Integrity Officer.
- 7.3 Ensure that the contact information provided for EDR Coordinators, DWRs, and OJI is complete, is written directly on the website (not only included in the EDR Plan document), and includes ways in which these people can be contacted anonymously.
- 7.4 Encourage courts/offices not to limit the material included on a workplace conduct/relations page to the required information, but also to post additional resources or information about related policies, like an Anti Discrimination and Harassment Notice; the EDR *Interpretive Guide and Handbook*; court/office-specific confidentiality, grievance, or adverse action policies; the Codes of Conduct for judges and for employees, or other information. DWRs may be best positioned to develop recommended additional resources for court/office websites within their circuits.
- 7.5 Provide guidance regarding where on the website to locate workplace conduct information. Provide examples of, or a template for, how to organize this information, reminding courts/offices of the *Guide to Judiciary Policy*’s requirements and clarifying that EDR and JC&D information should be located on the same page. Suggest that courts/offices individually list or directly link to each piece of required information so that website users can easily access the information (do not rely on links which require a website user to follow further links to find the required information). Suggest that courts/offices index the required

information with relevant terms so that website users can search for the information if they cannot find it by browsing.

- 7.6 If courts/offices cannot easily change the organization of workplace conduct information on their websites, consider cross-linking between webpages with EDR and JC&D information to make sure employees and the public can find all the required information.
- 7.7 Provide guidance regarding or examples of the types of homepage features that make the required homepage link easy to find (such as buttons, box containers, or links visible in the body of the homepage).
- 7.8 Consider whether confidential reporting tools or forms could be added to court/office websites to supplement current contact options.
- 7.9 Periodically evaluate whether internal judiciary websites include all required information, as well as the visibility and ease of use of that information.

uscourts.gov

- 7.10 Develop a FAQ document for EDR similar to the FAQ document the site has for JC&D.
- 7.11 Link to the Online System for Clerkship Application and Review (OSCAR) workplace conduct page for prospective law clerks (see https://oscar.uscourts.gov/federal_judiciary_workplace_conduct_resources).
- 7.12 Consider developing other formats of resources, like the videos or process charts/graphics some circuits have developed and posted on their websites.

Chapter 8: Conclusion

As expressed by the Chief Justice in 2017, the federal judiciary seeks to “ensure an exemplary workplace for every judge and every court employee.” Formation of the Workplace Conduct Working Group in 2018 and subsequent implementation of many of its recommendations have reflected the serious attention the judiciary has paid to these issues in recent years. In particular, the substantially revised Model EDR Plans and creation of the Office of Judicial Integrity and Directors of Workplace Relations positions in each circuit have raised awareness of these issues and have together provided many options for those seeking to learn about or pursue EDR matters.

This report serves to inform Congress, the judiciary, and others about how the Model EDR Plans have been implemented in courts and employing offices, and how the judiciary’s efforts in the areas of workplace conduct and employment dispute resolution have been working in practice. In addition, we identify issues that might not yet be adequately addressed and some that might best be approached outside of the Model EDR Plan. Finally, based on the information collected, we suggest ways that the judiciary might continually monitor and improve its workplace and EDR efforts (a compilation of these Options for Judiciary Consideration can be found in [Appendix A](#)). Overall, this report provides analysis and suggestions for consideration by the judiciary in strengthening the health of its workplace environment.

Appendix A: Options for Judiciary Consideration

Chapter 4: Implementation of the Model EDR Plans

- 4.1 Add language to the next iteration of the Model EDR Plan that provides guidance about how and by whom variations from the Model EDR Plan should be evaluated in terms of whether they potentially diminish or curtail rights or remedies.
- 4.2 Review plans to ensure that errors were not introduced when largely adopting the Model EDR Plan (e.g., about which chief judge is referenced) and that any tailoring did not make changes to the EDR process.
- 4.3 When considering updates to the Model EDR Plans, solicit feedback from DWRs, EDR Coordinators, and nonattorney employees about ways to make the Model EDR Plan more understandable to nonattorneys.
- 4.4 Expand the section of the *EDR Interpretive Guide and Handbook* about procedures to be followed by PJOs, or develop a separate guide on this topic, which could then be adapted at the circuit level if necessary to meet local needs. Create a confidential repository for redacted EDR decisions, either nationally or at the circuit level, that is accessible to PJOs.
- 4.5 Have certain judges trained for the PJO role within a circuit, who could also have Complaints referred to them from district and bankruptcy courts and offices, enabling consistency and development of expertise in this area.
- 4.6 Develop ways for magistrate judges, senior judges, and EDR Coordinators to get workload credit for time spent on EDR matters.
- 4.7 Create law clerk advisory groups, listening opportunities, exit interviews, and documents with suggested practices for judge-law clerk interactions in those circuits that do not have them, to help address underlying structural issues that create power imbalances in the judge-law clerk relationship.
- 4.8 Add monetary compensation to available remedies (consideration of this already recommended by Working Group).
- 4.9 In addition to existing reporting requirements in the Model EDR Plan, the Code of Conduct for U.S. Judges, and the Rules for Judicial Conduct and Disability Proceedings, consider other ways, including targeted educational programming, to address the reluctance among some judges to report on or sit in judgment of their judicial colleagues.
- 4.10 Encourage courts/offices to appoint EDR Coordinators from different court units, when possible, particularly when one EDR Coordinator is an HR employee or supervisor, so that employees have an option to go outside their employing unit.
- 4.11 Adopt strategies to increase transparency to build public confidence in the courts' administration of workplace conduct, including making the review of Formal Complaints more consistent (see above suggestions regarding PJOs) and establishing national guidance on redaction and publication of EDR decisions.

Chapter 5: Monitoring and Assessing How the Resolution Processes are Working

- 5.1 Building on existing evaluation efforts and this study’s findings, consider developing a comprehensive plan and guidance for monitoring and evaluating the implementation and effectiveness of the EDR Plans and their resolution processes. Such a plan should balance concerns for confidentiality and anonymity and the need for information by national and local policymakers and managers.
- 5.2 Specifically, consider what additional resolution process data should be collected, analyzed, and used to monitor and evaluate them. Informal Advice, based on our interviews, is the most frequently employed resolution process, and documenting its use in the aggregate while preserving confidentiality could be informative, provided that careful attention is paid to interpretive challenges.
- 5.3 Consider whether additional resources should be allocated (for example, to OJI, the FJC, and/or DWR offices) to monitoring and evaluating the EDR Plans and their resolution processes.

Chapter 6: Educational and Outreach Efforts Related to Workplace Issues

- 6.1 Given the importance of the abusive conduct provision in the Model EDR Plan, based on our interviews and focus groups, consider ways to provide more training about what constitutes abusive conduct under judiciary policy, such as (i) including the identification and discussion of specific examples of abusive conduct, by judges, supervisors and peer employees, in all EDR Plan training, and (ii) having chief judges include discussion of workplace environment and abusive conduct at the annual circuit conferences.
- 6.2 Develop the following additional trainings and materials: 1) brief “refresher” training or written materials, especially for EDR Coordinators; 2) more scenario-focused training; 3) more targeted training for FPDOs; 4) broader training on creating an exemplary workplace; 5) investigations training; and 6) targeted training or written materials for chief judges.
- 6.3 Provide more opportunities for interaction between DWRs and the EDR Coordinators within their respective circuits. Also provide opportunities for EDR Coordinators to interact with each other (with appropriate caveats about confidentiality of specific EDR matters).
- 6.4 Consider having DWRs develop a repository of training materials for shared use throughout the judiciary. Formalizing the collaboration and content sharing that currently exists through the DWR Microsoft Teams channel into a repository of training materials creates an opportunity to provide transparency and build standardization of common elements of EDR training across the circuits. For new DWRs, this repository can serve as a resource to ensure that all fundamental EDR information is covered throughout each circuit.
- 6.5 Consider building upon Recommendation 8 of the 2022 Working Group Report, that courts and employing offices need to continue “to take affirmative steps to ensure completion” of annual EDR training. All training should be tracked for attendance to ensure compliance and to identify areas for additional outreach, including training for judges.
- 6.6 Relatedly, consider ways to ensure that all employees and all judges receive EDR training.

- 6.7 Consider having trainers consistently collect training feedback to identify the efficacy of the training provided, areas for improvement, and opportunities for new topics to cover. Feedback can be captured by quantitative ratings, open-ended questions, or a combination of both.
- 6.8 Consider developing PJO training and written guidance to ensure consistency across the courts. As discussed in [Chapter 4](#), a number of interviewees and focus group participants indicated that it would be helpful for PJOs to have more guidance about how to carry out their responsibilities. Written guidance could provide a step-by-step process, adaptable to the needs of different circuits, for PJOs as they carry out their responsibilities once they are asked to handle a Formal Complaint.

Chapter 7: Evaluation of Public Facing Judiciary Websites

Court/Office Websites

- 7.1 Make it the responsibility of EDR Coordinators and/or DWRs to review both external and internal court/office websites on a periodic basis to ensure all required information is posted on the website, is linked from the homepage, is up-to-date, and that any links are operational. Encourage EDR Coordinators to review their court/office's website if their court/office redesigns its website.
- 7.2 Encourage EDR Coordinators and/or DWRs to request that EDR contact information be updated when there is a transition in EDR Coordinator, DWR, or the national Judicial Integrity Officer.
- 7.3 Ensure that the contact information provided for EDR Coordinators, DWRs, and OJI is complete, is written directly on the website (not only included in the EDR Plan document), and includes ways in which these people can be contacted anonymously.
- 7.4 Encourage courts/offices not to limit the material included on a workplace conduct/relations page to the required information, but also to post additional resources or information about related policies, like an Anti Discrimination and Harassment Notice; the EDR *Interpretive Guide and Handbook*; court/office-specific confidentiality, grievance, or adverse action policies; the Codes of Conduct for judges and for employees, or other information. DWRs may be best positioned to develop recommended additional resources for court/office websites within their circuits.
- 7.5 Provide guidance regarding where on the website to locate workplace conduct information. Provide examples of, or a template for, how to organize this information, reminding courts/offices of the *Guide to Judiciary Policy*'s requirements and clarifying that EDR and JC&D information should be located on the same page. Suggest that courts/offices individually list or directly link to each piece of required information so that website users can easily access the information (do not rely on links which require a website user to follow further links to find the required information). Suggest that courts/offices index the required information with relevant terms so that website users can search for the information if they cannot find it by browsing.

- 7.6 If courts/offices cannot easily change the organization of workplace conduct information on their websites, consider cross-linking between webpages with EDR and JC&D information to make sure employees and the public can find all the required information.
- 7.7 Provide guidance regarding or examples of the types of homepage features that make the required homepage link easy to find (such as buttons, box containers, or links visible in the body of the homepage).
- 7.8 Consider whether confidential reporting tools or forms could be added to court/office websites to supplement current contact options.
- 7.9 Periodically evaluate whether internal judiciary websites include all required information, as well as the visibility and ease of use of that information.

uscourts.gov

- 7.10 Develop a FAQ document for EDR similar to the FAQ document the site has for JC&D.
- 7.11 Link to the Online System for Clerkship Application and Review (OSCAR) workplace conduct page for prospective law clerks (see https://oscar.uscourts.gov/federal_judiciary_workplace_conduct_resources).
- 7.12 Consider developing other formats of resources, like the videos or process charts/graphics some circuits have developed and posted on their websites.

Appendix B: Recommendations from the 2018 Report of the Federal Judiciary Workplace Conduct Working Group

Recommendations Relating to Revising the Codes of Conduct and Guidance Documents

The Working Group recommends that the Committee on Codes of Conduct formulate more precise language in the Code of Conduct for United States Judges to make clear that:

- 1) *A judge has an affirmative duty to promote civility, not only in the courtroom, but throughout the courthouse. The admonitions that judges show patience, dignity, respect, and courtesy to litigants, jurors, witnesses, lawyers, and the public also apply to judicial employees.*
- 2) *A judge should neither engage in nor tolerate inappropriate workplace conduct, including comments or statements that could reasonably be interpreted as harassment, abusive behavior, or retaliation for reporting misconduct.*
- 3) *A judge has a responsibility to curtail inappropriate conduct by others, including other judges. The judicial virtues of mutual respect, independence, and collegiality should not prevent a judge from intervening when necessary to protect an employee (including a fellow judge's chambers employee) from inappropriate conduct.*

The Working Group recommends that the Committee also revise the Code of Conduct for Judicial Employees to formulate more precise language to make clear that:

- 1) *Judicial employees, including supervisors, have a duty to promote workplace civility, avoid harassment, and take action when they observe misconduct by others.*
- 2) *Confidentiality obligations do not prevent any employee—including law clerks—from revealing abuse or reporting misconduct by any person.*
- 3) *Retaliation against a person who reports misconduct is itself serious misconduct.*
- 4) *The Working Group recommends that the Administrative Office and the FJC take on the challenge of reviewing all of their guidance respecting workplace conduct and civility to ensure that they provide a consistent, accessible message that the judiciary will not tolerate harassment or other inappropriate conduct.*

Recommendations Relating to Procedures for Identifying and Correcting Misconduct

The Working Group recommends that the Judicial Conference's Committee on Judicial Conduct and Disability revise the Conduct Rules or associated commentary to make clear that:

- 1) *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. Complainants should clearly understand that they need not themselves be the subject of the alleged misconduct. That clarification should encourage and facilitate early reporting and action on potential misconduct*

- 2) *Workplace harassment is within the definition of misconduct. The Committee on Judicial Conduct and Disability should adopt language and examples in its procedural rules that are congruent with any changes that the Committee on Codes of Conduct makes to the Code of Conduct for United States Judges.*
- 3) *Confidentiality obligations should never be an obstacle to reporting judicial misconduct or disability. Complainants should understand that the obligations of confidentiality that judicial employees must observe in the conduct of judicial business do not shield a judge from a complaint under the JC&D Act.*
- 4) *A judge has an obligation to report or disclose misconduct and to safeguard complainants from retaliation. The Committee on Codes of Conduct should state these principles in the Code of Conduct for United States Judges, but they warrant repetition in the Conduct Rules.*
- 5) *The Working Group recommends that the judiciary as a whole consider possible mechanisms for improving the transparency of the JC&D Act process. Public confidence in the JC&D Act will benefit by efforts, already agreed upon by the Administrative Office, to identify harassment complaints in its statistical reports. Individual circuits also should investigate making decisions on complaints filed in their courts more readily accessible to the public through searchable electronic indices.*

The Working Group recommends that the Judicial Conference’s Committee on Judicial Resources consider revisions to the judiciary’s Model EDR Plan—to accomplish several discrete goals:

- 1) *The Model EDR Plan should be rendered more “user-friendly” through simplified language and more succinct direction on the steps to be followed in the dispute resolution process.*
- 2) *The Model EDR Plan should ensure a uniform scope of coverage throughout the judiciary. Some circuits have excluded certain classes of individuals from access to their EDR Plans. The Committee should consider mandatory coverage for all persons working in the court system, including interns, externs, and chambers employees.*
- 3) *The Model EDR Plan’s reference to sex discrimination should be examined to ensure it is consistent with established legal definitions and to make clear that harassment, without regard to motivation, is wrongful conduct.*
- 4) *The Model EDR Plan should make clear that, when a chief district judge or chief bankruptcy judge receives a report of wrongful conduct that could constitute reasonable grounds for inquiry into whether a judge has engaged in misconduct under the JC&D Act, the chief judge should inform the chief circuit judge of the report and any actions taken in response.*
- 5) *The Model EDR Plan’s time limit for initiating a claim should be extended from 30 days to 180 days from the date of the alleged violation or when the complainant became aware of the violation.*
- 6) *The Committee should consider steps to improve the training and qualifications of EDR Coordinators, who play a critical role in providing information and training to employees*

regarding their rights under the EDR Plan and assist employees in accessing the claims procedures.

The Working Group recommends the establishment of offices at both the national and circuit level to provide employees with advice and assistance with their concerns about workplace misconduct apart from the JC&D Act and EDR Plans:

- 1) At the national level, the Working Group recommends that the Administrative Office establish an internal Office of Judicial Integrity that would provide counseling and assistance regarding workplace conduct to all judiciary employees through telephone and email service.*
- 2) At the circuit level, the Ninth Circuit Judicial Council recently announced the creation of a new office for a Director of Workplace Relations to oversee workplace issues and discrimination and sexual harassment training in that circuit. The Working Group recommends that the Judicial Conference encourage and approve funding through its budgeting process for all other circuits to provide similar services for their employees.*
- 3) In addition to these national and circuit-level resources, every court should clearly identify for its employees local sources to which they can turn for advice or assistance about workplace conduct issues.*

Recommendations Relating to Education and Training Programs

- 1) The judiciary should ensure that all new judges and new employees receive basic workplace standards training as part of their initial orientation program, with “refresher” training conducted at regular intervals.*
- 2) The FJC should develop advanced training programs specifically aimed at developing a culture of workplace civility.*
- 3) The FJC, the Administrative Office, and individual courts should continuously evaluate their educational programs to assess their effectiveness, paying close attention to new learning techniques, and developments in the field.*

Appendix C: 2019 Model EDR Plan for Courts

[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:

*Last substantive revision (Transmittal 12-043) September 17, 2019
Last revised (minor technical changes) March 8, 2022*

- Title VII, Civil Rights Act of 1964;
- Age Discrimination in Employment Act of 1967;
- Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973;
- Family and Medical Leave Act of 1993;
- Uniformed Services Employment and Reemployment Rights Act of 1994;
- Whistleblower Protection Provision ([Guide, Vol. 12, § 220.10.20\(c\)](#));
- Worker Adjustment and Retraining Notification Act;
- Occupational Safety and Health Act; and
- The Employee Polygraph Protection Act of 1988.

See [Guide, Vol. 12, Ch. 2](#).

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),¹ or disability.

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

¹ The age discrimination provision does not apply to hiring, retirement, or separation of probation and pretrial services officers under [5 U.S.C. chapters 83](#) and [84](#).

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.

III. REPORTING WRONGFUL CONDUCT

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 supervisor, human resources professional, Unit Executive, Employment Dispute Resolution (“EDR”) Coordinator, Chief Judge, Chief Circuit Judge, Circuit Director of Workplace Relations, or to the national Office of Judicial Integrity. *See [Code of Conduct for Judicial Employees](#)*, Canon 3(C). Employees are also encouraged to report wrongful conduct in the workplace by non-Employees. Court and chambers’ confidentiality requirements do not prevent any Employee—including law clerks—from revealing or reporting wrongful conduct by any person.

IV. OPTIONS FOR RESOLUTION

The Judiciary’s goal is to address wrongful conduct as soon as possible and to provide multiple, flexible options for doing so. An Employee is always free to address a conduct issue directly with the person who allegedly committed wrongful conduct or to contact a colleague, supervisor, Unit Executive, Judge, Chief Judge, or other individual to discuss or address the situation. This Plan provides the following additional options, and Employees may choose the option(s) that best fit their needs and comfort level.

- A. Plan Options.** This Plan provides three options to address wrongful conduct, as explained in detail below:
- 1. Informal Advice**
 - 2. Assisted Resolution**
 - 3. Formal Complaint**
- B. General Rights.** All options for resolution are intended to respect the privacy of all involved to the greatest extent possible, and to protect the fairness and thoroughness of the process by which allegations of wrongful conduct are initiated, investigated, and ultimately resolved.

1. **Confidentiality.** All individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct. Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation. An assurance of confidentiality must yield when there is reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity of the Judiciary.

Confidentiality obligations in the [Code of Conduct for Judicial Employees](#) concerning use or disclosure of confidential information received in the course of official duties do not prevent nor should they discourage Employees from reporting or disclosing wrongful conduct, including sexual, racial, or other forms of discriminatory harassment by a Judge, supervisor, or other person.

Supervisors, Unit Executives, and Judges must take appropriate action when they learn of reliable information of wrongful conduct, such as sexual, racial, or other discriminatory harassment, which may include informing the appropriate Chief Judge.

2. **Impartiality.** All investigations, hearings, and other processes under this Plan must be conducted in a thorough, fair, and impartial manner. The EDR Coordinator, the Circuit Director of Workplace Relations, and the Presiding Judicial Officer must be impartial and may not act as an advocate for either Party. The EDR Coordinator, Circuit Director of Workplace Relations, or Presiding Judicial Officer must recuse if he or she participated in, witnessed, or was otherwise involved with the conduct or employment action giving rise to the claim. Recusal of these individuals is also required if the matter creates an actual conflict or the appearance of a conflict.
3. **Right to representation.** Both the Employee and the Employing Office responsible for providing any remedy have the right to be represented by an attorney or other person of their choice at their own expense. Another Employee may assist the Employee or Employing Office if doing so will not constitute a conflict of interest or unduly interfere with his or her duties, as determined by the assisting Employee's appointing officer.
4. **Interim Relief.** An Employee, including a law clerk or other chambers employee, who pursues any of the options under this Plan may request transfer, an alternative work arrangement, or administrative leave if the Employee alleges egregious conduct by a supervisor, Unit Executive, or Judge that makes it untenable to continue working for that person. Any such

request must be made to the Unit Executive or Chief Judge, as appropriate, to determine appropriate interim relief, if any, taking into consideration the impact on any Employing Office.

5. **Allegations Regarding a Judge.** An Employee alleging that a Judge has engaged in wrongful conduct may use any of the options for resolution as set forth in Section C. An Employee may also file a complaint under the Judicial Conduct and Disability Act, [28 U.S.C. §§ 351-364](#).

C. Specific Options

1. **Informal Advice.** An Employee may contact an EDR Coordinator, Circuit Director of Workplace Relations, or the national Office of Judicial Integrity for confidential advice and guidance (*see* § IV.B.1) about a range of topics including:

- the rights and protections afforded under this Plan, the Judicial Conduct and Disability Act, and any other processes;
- ways to respond to wrongful conduct as it is happening; and/or
- options for addressing the conduct, such as informal resolution, participating in Assisted Resolution, or pursuing a Formal Complaint under this Plan, the Judicial Conduct and Disability Act, or any other processes.

2. **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.

a. To pursue this option, an Employee must contact an EDR Coordinator or Circuit Director of Workplace Relations and complete a “Request for Assisted Resolution” ([Appendix 2](#)). An Employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint. Filing a Request for Assisted Resolution does not toll (extend) the time for filing a Formal Complaint under § IV.C.3 unless one of the Parties requests, and the Chief Judge or Presiding Judicial Officer grants, an extension of time for good cause, as permitted in § IV.C.3.a.

b. If the allegations concern the conduct of a Judge, the Chief Judge of the appropriate district or circuit Court must be notified and will be responsible for coordinating any Assisted Resolution and/or taking any other action required or appropriate under the circumstances. *See, e.g.*, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

c. If the allegations concern the conduct of an Employee, the EDR Coordinator or Circuit Director of Workplace Relations will coordinate Assisted Resolution and must notify the appropriate Unit Executive(s). The Unit Executive is responsible for assessing the allegation(s) and taking appropriate steps to resolve the matter. If the allegations concern the conduct of a Unit Executive, the EDR Coordinator must notify the Chief Judge, who is responsible for assessing the allegation(s) and addressing the matter as appropriate.

d. The Unit Executive or Chief Judge responsible for assessing the allegations, as indicated in (b) and (c) above, may deny the Request for Assisted Resolution at any time if he or she concludes it is frivolous; it does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

e. If Assisted Resolution is successful in resolving the matter, the Parties will so acknowledge in writing.

f. The Parties by mutual assent, or the EDR Coordinator or Circuit Director of Workplace Relations in his or her discretion, will determine when to conclude the Assisted Resolution process. If Assisted Resolution is not successful in resolving the matter, the EDR Coordinator or Circuit Director of Workplace Relations will advise the Employee of his or her rights to file a Formal Complaint and/or pursue action under the Judicial Conduct and Disability Act, if applicable, or any other processes.

3. Filing a Formal Complaint. An Employee may file a Formal Complaint (“Complaint”) with any of the Court’s EDR Coordinators to address a claim of wrongful conduct.

a. To file a Complaint, an Employee must submit a “Formal Complaint” ([Appendix 3](#)) to any of the Court’s EDR Coordinators within 180 days of the alleged wrongful conduct or within 180 days of the time the Employee becomes aware or reasonably should have become aware of such wrongful conduct. Use of the Informal Advice or Assisted Resolution options does not toll (extend) this 180-day

deadline unless the Chief Judge of the Court or the Presiding Judicial Officer grants an extension of time for good cause.

b. An Employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint.

c. The Employee filing the Complaint is called the Complainant. The Party responding to the Complaint is the Employing Office that is responsible for providing any appropriate remedy and is called the Respondent. The Complaint is not filed against any specific individual(s) but against the Employing Office.

d. Complaint Regarding a Judge. An Employee alleging that a Judge has engaged in wrongful conduct may file a Complaint under this Plan. The EDR Coordinator must immediately provide a copy of the Complaint to the Chief Circuit Judge (or the next most-senior active Circuit Judge, if the allegation is against the Chief Circuit Judge), who will oversee the EDR Complaint process. If a District, Magistrate, or Bankruptcy Judge is the subject of the Complaint, the EDR Coordinator must also provide a copy of the Complaint to the Chief District Judge (unless the Chief District Judge is the subject of the Complaint, in which case the Complaint will be given only to the Chief Circuit Judge).

If a Judge becomes the subject of both a Complaint under this Plan and a complaint under the Judicial Conduct and Disability Act, the Chief Circuit Judge will determine the appropriate procedure for addressing both, which may include holding the EDR claim in abeyance and determining how best to find any common issues of fact, subject to all requirements of the Judicial Conduct and Disability Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, this EDR Plan. Regardless of whether there is a formal complaint under the Judicial Conduct and Disability Act, the Chief Circuit Judge should consider the need for any necessary or appropriate interim relief.

e. Formal Complaint Procedures and Procedural Rights

i. Appointment of Presiding Judicial Officer. Upon receipt of a Complaint, the EDR Coordinator will immediately send a copy of the Complaint to the Chief Judge of the Court, who will appoint a Presiding Judicial Officer. The Presiding Judicial Officer will be a Judge in the Court or, when appropriate, a Judge from another Court (with the consent of the respective Chief Judge of that Court).

ii. Presiding Judicial Officer. The Presiding Judicial Officer oversees the Complaint proceeding. The Presiding Judicial Officer will

provide a copy of the Complaint to the head of the Employing Office against which the Complaint has been filed (Respondent), except when the Presiding Judicial Officer determines for good cause that the circumstances dictate otherwise. The Presiding Judicial Officer must provide the individual alleged to have violated rights under this Plan notice that a Complaint has been filed and the nature and substance of the Complaint allegations.

The Presiding Judicial Officer will provide for appropriate investigation and discovery, allow for settlement discussions, determine any written submissions to be provided by the Parties, determine if a hearing is needed, determine the time, date, and place of the hearing, issue a written decision, and, if warranted, order remedies.

iii. *Disqualification and Replacement.* Either Party may seek disqualification of the EDR Coordinator or the Presiding Judicial Officer by written request to the Chief Judge, explaining why the individual should be disqualified.

If the Presiding Judicial Officer is disqualified, the Chief Judge will designate another Judge to serve as Presiding Judicial Officer. If the EDR Coordinator is disqualified, the Chief Judge will appoint one of the alternate EDR Coordinators or, if available, an EDR Coordinator from another Court (with the consent of the respective Chief Judge of that Court).

iv. *Response.* The Respondent may file a Response to the Complaint with the EDR Coordinator within **30 days** of receiving the Complaint. The EDR Coordinator must immediately send the Response to the Presiding Judicial Officer and to the Complainant.

v. *Investigation and Discovery.* The Presiding Judicial Officer will ensure that the allegations are thoroughly, impartially, and fairly investigated, and may use outside trained investigators if warranted. The investigation may include interviews with persons alleged to have violated rights under this Plan and witnesses, review of relevant records, and collecting documents or other records. The Presiding Judicial Officer will provide for such discovery to the Complainant and Respondent as is necessary and appropriate. The Presiding Judicial Officer will also determine what evidence and written arguments, if any, are necessary for a fair and complete assessment of the allegations and response.

vi. *Case preparation.* The Complainant may use official time to prepare his or her case, so long as it does not unduly interfere with the performance of duties.

vii. *Extensions of time.* Any request for an extension of time must be in writing. The Presiding Judicial Officer may extend any of the deadlines set forth in this EDR Plan for good cause, except for the deadline to issue a written decision, which may only be extended by the Chief Judge.

viii. *Established Precedent.* In reaching a decision, the Presiding Judicial Officer should be guided by judicial and administrative decisions under relevant rules and statutes, as appropriate. The Federal Rules of Evidence and any federal procedural rules do not apply.

ix. *Notice of Written Decision.* The EDR Coordinator or Presiding Judicial Officer will immediately send a copy of the written decision to the Parties, the Chief Judge of the Court, and to any individual alleged to have violated rights protected by this Plan. The EDR Coordinator will inform the Parties of appeal rights, procedures, and deadlines.

f. Resolution of Complaint Without a Hearing. After notifying the Parties and giving them an opportunity to respond, the Presiding Judicial Officer may resolve the matter without a hearing.

i. The Presiding Judicial Officer may dismiss a Complaint and issue a written decision at any time in the proceedings on the grounds that: it is untimely filed, is frivolous, fails to state a claim, or does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

ii. After completion of investigation and discovery, the Presiding Judicial Officer may, on his or her own initiative or at the request of either Party, issue a written decision if the Presiding Judicial Officer determines that no relevant facts are in dispute and that one of the Parties is entitled to a favorable decision on the undisputed facts.

iii. The Parties may enter into an agreed written settlement if approved in writing by the Presiding Judicial Officer and the Chief Judge.

g. Resolution of Complaint With a Hearing. If the Complaint is not resolved in its entirety by dismissal, Assisted Resolution, decision without a

hearing, or settlement, the Presiding Judicial Officer will order a hearing on the merits of the Complaint.

i. *Hearing.* The hearing will be held no later than **60 days** after the filing of the Complaint unless the Presiding Judicial Officer extends the deadline for good cause. The Presiding Judicial Officer will determine the place and manner of the hearing.

ii. *Notice.* The Presiding Judicial Officer must provide reasonable notice of the hearing date, time, and place to the Complainant, the Respondent, and any individual(s) alleged to have violated the Complainant's rights.

iii. *Right to Present Evidence.* The Complainant and Respondent have the right to present witnesses and documentary evidence and to examine adverse witnesses.

iv. *Record of Proceedings.* A verbatim record of the hearing must be made and will be the official record of the proceeding. This may be a digital recording or a transcript.

v. *Written Decision.* The Presiding Judicial Officer will make findings of fact and conclusions of law and issue a written decision no later than **60 days** after the conclusion of the hearing, unless an extension for good cause is granted by the Chief Judge.

h. Remedies. When the Presiding Judicial Officer finds that the Complainant has established by a preponderance of the evidence (more likely than not) that a substantive right protected by this Plan has been violated, the Presiding Judicial Officer may direct the Employing Office to provide remedies for the Complainant. The remedies are limited to providing relief to the Complainant, should be tailored as closely as possible to the specific violation(s) found, and take into consideration the impact on any Employing Office. The Chief Judge and Employing Office (Respondent) must take appropriate action to carry out the remedies ordered in the written decision, subject to any applicable policies or procedures.

i. *Allowable Remedies* may include:

- placement of the Complainant in a position previously denied;
- placement of the Complainant in a comparable alternative position;
- reinstatement to a position from which the Complainant was previously removed;
- prospective promotion of the Complainant;

- priority consideration of the Complainant for a future promotion or position;
- back pay and associated benefits, when the statutory criteria of the Back Pay Act are satisfied²;
- records modification and/or expungement;
- granting of family and medical leave;
- any reasonable accommodation(s); and
- any other appropriate remedy to address the wrongful conduct.³

ii. *Unavailable Remedies.* Other than under the Back Pay Act, monetary damages are not available. The Presiding Judicial Officer may award attorney’s fees only if the statutory requirements under the Back Pay Act are satisfied.

i. **Review of Decision (Appeal).** The Complainant and/or the Respondent may appeal the decision to the judicial council of the circuit by submitting in writing a Request for Review of Decision setting forth the grounds for appeal within **30 days** of the date of the decision under procedures established by that judicial council ([Appendix 4](#)). The EDR Coordinator will inform the Parties of the procedures for seeking review. The decision will be reviewed based on the record created by the Presiding Judicial Officer and will be affirmed if supported by substantial evidence and the proper application of legal principles.

² *Back Pay Act.* Remedies under the Back Pay Act, including attorney’s fees, may be ordered only when the statutory criteria of the Back Pay Act are satisfied, which include: (1) a finding of an unjustified or unwarranted personnel action; (2) by an appropriate authority; (3) which resulted in the withdrawal or reduction of all or part of the Employee’s pay, allowances, or differentials. An order of back pay is subject to review and approval by the Director of the Administrative Office of the United States Courts. See [5 U.S.C. § 5596\(b\)\(1\)](#) and *Guide*, Vol. 12, § 690.

³ The issue in an EDR Complaint is whether the Employing Office is responsible for the alleged conduct; it is not an action against any individual. The Presiding Judicial Officer lacks authority to impose disciplinary or similar action against an individual. When there has been a finding of wrongful conduct in an EDR proceeding, an appointing official, or official with delegated authority, should separately assess whether further action, in accordance with any applicable policies and procedures, is necessary to correct and prevent wrongful conduct and promote appropriate workplace behavior, such as:

- requiring counseling or training;
- ordering no contact with the Complainant;
- reassigning or transferring an Employee;
- reprimanding the Employee who engaged in wrongful conduct;
- issuing a suspension, probation, or demotion of the Employee who engaged in wrongful conduct; and/or
- terminating employment for the Employee who engaged in wrongful conduct.

V. COURT AND EMPLOYING OFFICE OBLIGATIONS

To ensure that Employees are aware of the options provided by this Plan, and that the Plan is effectively implemented, Courts and Employing Offices must adhere to the following:

A. Adopt and Implement EDR Plan. All Courts must adopt and implement an EDR Plan based on this Model EDR Plan. Courts may join with others to adopt consolidated EDR Plans. Any modification of this Model EDR Plan (1) may expand, but should not diminish or curtail, any of the rights or remedies afforded Employees under this Model EDR Plan, and (2) must be approved by the judicial council of its circuit. A copy of each EDR Plan and any subsequent modifications must be filed with the Administrative Office.

B. Records. At the conclusion of informal or formal proceedings under this Plan, all papers, files, and reports will be filed with the EDR Coordinator. No papers, files, or reports relating to an EDR matter will be filed in any Employee's personnel folder, except as necessary to implement an official personnel action.

Final decisions under this Plan will be made available to the public, appropriately redacted, in accordance with procedures established by the judicial council of the circuit.

C. EDR Coordinators. The Chief Judge will designate both a primary EDR Coordinator and at least one alternate EDR Coordinator for the Court. A Court may use an EDR Coordinator from another Court, or may use the Circuit Director of Workplace Relations as an alternate EDR Coordinator, if necessary, with the approval of the appropriate Chief Judge. An Employee may choose the EDR Coordinator with whom he or she wishes to seek Informal Advice, request Assisted Resolution, or file a Complaint under this EDR Plan.

An EDR Coordinator must be an Employee who is not a Unit Executive. A Judge may not be an EDR Coordinator. All EDR Coordinators must be trained and certified as set forth in the *EDR Interpretive Guide and Handbook*.

D. Advising Employees of their Rights. Courts and Employing Offices must:

1. **prominently post** on their internal and external main homepages a direct link, labeled "Your Employee Rights and How to Report Wrongful Conduct," to:
 - the entire EDR Plan with all Appendices and relevant contact information;

- the Judicial Conduct and Disability Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Judicial Conduct and Disability Complaint form; and
 - contact information for all of the Court’s EDR Coordinators, Circuit Director of Workplace Relations, and the national Office of Judicial Integrity.
2. **prominently display** in the workplace:
- the posters set forth in [Appendix 5](#); and
 - an Anti-Discrimination and Harassment Notice that: (a) states that discrimination or harassment based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability is prohibited; (b) explains that Employees can report, resolve, and seek remedies for discrimination, harassment, or other wrongful conduct under the EDR Plan by contacting any of the Court’s EDR Coordinators and/or the Circuit Director of Workplace Relations, and/or the national Office of Judicial Integrity; (c) identifies the names and contact information of all Court EDR Coordinators, the Circuit Director of Workplace Relations, and the national Office of Judicial Integrity; and (d) states where the EDR Plan can be located on the Court’s website.
3. ensure that each new Employee receive an electronic or paper copy of the EDR Plan and acknowledge in writing that he or she has read the Plan; and
4. 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.
- E. Reporting.** Courts and Employing Offices will provide annually, to the Administrative Office of the United States Courts, data on: (1) the number and types of alleged violations for which Assisted Resolution was requested, and for each matter, whether it was resolved or was also the subject of a Complaint under this Plan or other complaint; (2) the number and type of alleged violations for which Complaints under this Plan were filed; (3) the resolution of each Complaint under this Plan (dismissed or settled prior to a decision, or decided with or without a hearing); and (4) the rights under this Plan that were found by decision to have been violated. Courts and Employing Offices should also provide any information that may be helpful in identifying the conditions that may have enabled wrongful conduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its recurrence.

F. Appendices Attached:

1. Definitions
2. Request for Assisted Resolution
3. Formal Complaint Form
4. Request for Review of Decision Procedures and Sample Form (each Court to attach its circuit's Request for Review Procedures)
5. Posters

This Plan supersedes all prior Model Equal Employment Opportunity and Employment Dispute Resolution Plans.

Effective date: September 17, 2019

DEFINITIONS APPENDIX 1

Circuit Director of Workplace Relations: A circuit Employee who coordinates workplace conduct issues and the implementation of all Court EDR Plans within the circuit. The scope of duties may vary by circuit, but generally, a Circuit Director of Workplace Relations may: provide Informal Advice and Assisted Resolution under any EDR Plan within the circuit; assist in training the EDR Coordinators within the circuit; provide or arrange for training throughout the circuit on workplace conduct, discrimination, and sexual harassment; and collect and analyze statistical data and other information relevant to workplace conduct matters.

Court: The Court (Courts of Appeals, District Courts, Bankruptcy Courts, Court of Federal Claims and Court of International Trade, or of any Court created by an Act of Congress in a territory that is invested with any jurisdiction of a District Court of the United States) in which the Employing Office that would be responsible for ordering redress, correction, or abatement of a violation of rights under this EDR Plan is located. In the case of disputes involving employees of the federal public defender, “Court” refers to the appropriate Court of Appeals. In the case of disputes involving probation and pretrial services, “Court” refers to the appropriate District Court.

EDR Coordinator: A Court Employee, other than a Judge or Unit Executive, designated by the Chief Judge to coordinate all of the Options for Resolution provided for in this Plan. The EDR Coordinator provides confidential advice and guidance (*see* § IV.B.1.) if an Employee seeks Informal Advice; coordinates the Assisted Resolution process, including any necessary investigation; accepts Complaints under this Plan for filing; and assists the Presiding Judicial Officer in the Complaint proceeding, as directed. The EDR Coordinator maintains and preserves all Court files pertaining to matters initiated and processed under this EDR Plan. The EDR Coordinator assists the Court in meeting its obligations under this Plan to train and advise employees of their rights under this Plan, and to post the Plan as directed. Additional information on the EDR Coordinator’s responsibilities may be found in the *EDR Interpretive Guide and Handbook*.

Employee: All employees of a Court. This includes Unit Executives and their staffs; judicial assistants and other chambers employees; law clerks; federal public defenders, chief probation officers and chief pretrial services officers and their respective staffs; court reporters appointed by a Court; and paid and unpaid interns, externs, and other volunteer employees.

Employing Office/Respondent: The office of the Court, or Federal Public Defender Office, that is responsible for providing any appropriate remedy. The Court is the Employing Office of Judges and chambers employees.

Judge: A judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, a judge of the Court of Federal Claims, a judge of

the Court of International Trade, or a judge of any Court created by Act of Congress in a territory that is invested with any jurisdiction of a district court of the United States.

Office of Judicial Integrity: The office of the Administrative Office of the United States Courts staffed to provide advice and guidance to Employees nationwide about workplace conduct issues, including sexual, racial, and other discriminatory harassment, abusive conduct and other wrongful conduct. Contact information for the Office of Judicial Integrity can be found on JNet and on uscourts.gov.

Parties: The Employing Office and the Employee who has filed a request for Assisted Resolution or a Formal Complaint.

Protected Category: Race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over),⁴ or disability.

Unit Executive: Circuit executive, district court executive, clerk of court, chief probation officer, chief pretrial services officer, federal public defender, bankruptcy administrator, bankruptcy appellate panel clerk, senior staff attorney, chief preargument/conference attorney/circuit mediator, or circuit librarian.

⁴ The age discrimination provision does not apply to hiring, retirement, or separation of probation and pretrial services officers under [5 U.S.C. chapters 83](#) and [84](#).

**REQUEST FOR ASSISTED RESOLUTION
APPENDIX 2**

***USE OF ASSISTED RESOLUTION DOES NOT EXTEND THE 180-DAY
DEADLINE TO FILE A FORMAL COMPLAINT UNLESS THE DEADLINE IS
EXTENDED UNDER EDR PLAN § IV.C.3.a***

Submitted under the Procedures of the [Court] Employment Dispute Resolution Plan

Court: _____

Full name of person submitting the form: _____

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

Name and address of Employing Office from which you seek assistance (*if the matter involves a judge or chambers employee, the Employing Office is the Court*):

Your job title/job title applied for: _____

Date of interview (*for interviewed applicants only*): _____

Date(s) of alleged incident(s) for which you seek Assisted Resolution:

Summary of the actions or occurrences for which you seek Assisted Resolution (attach additional pages as needed):

Names and contact information of any witnesses to the actions or occurrences for which you seek Assisted Resolution:

Describe the assistance or corrective action you seek:

Alleged Wrongful Conduct for which you seek Assisted Resolution (*check all that apply*):

- | | | |
|---|---|---|
| <input type="checkbox"/> Discrimination based on (<i>check all that apply</i>): | <input type="checkbox"/> Harassment based on (<i>check all that apply</i>): | |
| <input type="checkbox"/> Race | <input type="checkbox"/> Race | |
| <input type="checkbox"/> Color | <input type="checkbox"/> Color | |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Sex | |
| <input type="checkbox"/> Gender | <input type="checkbox"/> Gender | |
| <input type="checkbox"/> Gender identity | <input type="checkbox"/> Gender identity | |
| <input type="checkbox"/> Pregnancy | <input type="checkbox"/> Pregnancy | |
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Sexual orientation | |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Religion | |
| <input type="checkbox"/> National origin | <input type="checkbox"/> National origin | |
| <input type="checkbox"/> Age | <input type="checkbox"/> Age | |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Disability | |
| <input type="checkbox"/> Abusive Conduct | <input type="checkbox"/> Uniform Services | <input type="checkbox"/> Occupational Safety and Health |
| <input type="checkbox"/> Retaliation | Employment and | <input type="checkbox"/> Polygraph Protection |
| <input type="checkbox"/> Whistleblower Protection | Reemployment Rights | <input type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Family and Medical Leave | <input type="checkbox"/> Worker Adjustment and Retraining | |

Do you have an attorney or other person who represents you?

Yes

Please provide name, mailing address, email address, and phone number(s):

No

I acknowledge that this Request will be kept confidential to the extent possible, but information may be shared to the extent necessary and with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan (*see* EDR Plan § IV.B.1).

Your signature _____

Date submitted _____

Request for Assisted Resolution reviewed by EDR Coordinator/Circuit Director of Workplace Relations on _____

EDR Coordinator/Circuit Director of Workplace Relations name _____

EDR Coordinator/Circuit Director of Workplace Relations signature _____

Local Court Claim ID (Court Initials–AR–YY–Sequential Number): _____

FORMAL COMPLAINT FORM
APPENDIX 3

Submitted under the Procedures of the [Court] Employment Dispute Resolution Plan

Court: _____

Full name of person submitting the form (Complainant): _____

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

Name and address of Employing Office from which you seek a remedy (*if the matter involves a judge or chambers employee, the Employing Office is the Court*):

Your job title/job title applied for: _____

Date of interview (*for interviewed applicants only*): _____

Date(s) of alleged incident(s) for which you seek a remedy:

Summary of the actions or occurrences giving rise to the Complaint (*attach additional pages as needed*):

Describe the remedy or corrective action you seek (*attach additional pages as needed*):

Identify, and provide contact information for, any persons who were involved in this matter, who were witnesses to the actions or occurrences, or who can provide relevant information concerning the Complaint (*attach additional pages as needed*):

Identify the Wrongful Conduct that you believe occurred (*check all that apply*):

- | | |
|---|---|
| <input type="checkbox"/> Discrimination based on (<i>check all that apply</i>): | <input type="checkbox"/> Harassment based on (<i>check all that apply</i>): |
| <input type="checkbox"/> Race | <input type="checkbox"/> Race |
| <input type="checkbox"/> Color | <input type="checkbox"/> Color |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Gender | <input type="checkbox"/> Gender |
| <input type="checkbox"/> Gender identity | <input type="checkbox"/> Gender identity |
| <input type="checkbox"/> Pregnancy | <input type="checkbox"/> Pregnancy |
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Sexual orientation |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Religion |
| <input type="checkbox"/> National origin | <input type="checkbox"/> National origin |
| <input type="checkbox"/> Age | <input type="checkbox"/> Age |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Disability |

- Abusive Conduct
- I have already sought Assisted Resolution for this Abusive Conduct claim.

Provide date Request for Assisted Resolution submitted and concluded, and describe the resolution, if any:

- | | | |
|---|--|---|
| <input type="checkbox"/> Retaliation | <input type="checkbox"/> Uniform Services | <input type="checkbox"/> Occupational Safety |
| <input type="checkbox"/> Whistleblower | <input type="checkbox"/> Employment and | <input type="checkbox"/> and Health |
| <input type="checkbox"/> Protection | <input type="checkbox"/> Reemployment | <input type="checkbox"/> Polygraph Protection |
| <input type="checkbox"/> Family and Medical | <input type="checkbox"/> Rights | <input type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Leave | <input type="checkbox"/> Worker Adjustment | |
| | <input type="checkbox"/> and Retraining | |

Do you have an attorney or other person who represents you?

Yes

Please provide name, mailing address, email address, and phone number(s):

No

I have attached copy(ies) of any documents that relate to my Complaint (such as emails, notices of discipline or termination, job application, etc.)

I acknowledge that this Complaint will be kept confidential to the extent possible, but information may be shared to the extent necessary and with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan (*see* EDR Plan § IV.B.1).

I affirm that the information provided in this Complaint is true and correct to the best of my knowledge:

Complainant signature _____

Date submitted _____

Complaint reviewed by EDR Coordinator on _____

EDR Coordinator name _____

EDR Coordinator signature _____

Local Court Claim ID (Court Initials–FC–YY–Sequential Number): _____

REQUEST FOR REVIEW OF DECISION (APPEAL)
APPENDIX 4

Submitted under the Procedures of the [Court] Employment Dispute Resolution Plan
[To be drafted by each Circuit and attached here by each Court]

SAMPLE FORM

Name of Requesting Party _____
Address _____
Phone Number(s) _____
Email Address _____

Name of Court in Which Presiding Judicial Officer's Decision Was Issued

_____, Requesting Party v.
_____, Responding Party

Request for Review of Decision on Formal Complaint

Notice is hereby given that _____, (Requesting Party) in the above named case, hereby requests review by the Judicial Council for the _____ Circuit from the decision by Judge _____ entered in this matter on the ____ day of _____, 20__.

- Attached to this request is a copy of the Presiding Judicial Officer's decision.

State the reason(s) you contend that the Presiding Judicial Officer's decision was in error (**attach additional pages if necessary**):

Submitted this _____ day of _____, 20__.

Signature of Requesting Party _____

Signature of Counsel, if any _____

Approved by the _____ Circuit Judicial Council on _____.

**POSTERS
APPENDIX 5**

How to Address Wrongful Conduct in the Workplace

INFORMAL ADVICE



To request advice about a workplace concern, contact your Employment Dispute Resolution (EDR) coordinator, Circuit Director of Workplace Relations, or the Office of Judicial Integrity. They can provide you with advice and guidance on how to address the issue including:

- Your rights under the EDR Plan
- Advice on handling discriminatory, harassing, or abusive conduct
- Options for addressing the conduct



ASSISTED RESOLUTION

Contact an EDR Coordinator or Circuit Director of Workplace Relations to request Assisted Resolution. This interactive, flexible process may include:

- Discussions with the source of the conduct
- Preliminary investigation, including interviewing witnesses
- Resolving the matter by agreement

FORMAL COMPLAINT



Contact an EDR coordinator to file a formal complaint.

The Complaint must be filed within **180 days** of the alleged violation or the discovery of the violation.

This formal process includes:

- Appointment of Presiding Judicial Officer
- An investigation and/or hearing if appropriate
- Written decision
- Appeal rights

Confidentiality

All options for resolution are intended to respect privacy of all involved to the greatest extent possible, and to protect the fairness and thoroughness of the process by which allegations of wrongful conduct are initiated, investigated, and ultimately resolved.

Contact Information:

Local EDR Coordinator
First Name, Last Name
Phone
Email

Circuit Director of Workplace Relations
First Name, Last Name,
Phone
Email

National Office of Judicial Integrity
Judicial Integrity Officer
202-502-1603
AO_OJI@ao.uscourts.gov



Your Rights

In a Federal Judiciary Workplace

Employees of the Federal Judiciary are protected by the employment rights listed below, as described in *Guide to Judiciary Policy*, Vol. 12, Ch. 2.

Employees have options for resolution, including Informal Advice, Assisted Resolution, and filing a Formal Complaint. Formal Complaints must be filed within 180 days of when the Employee knew or should have known of the alleged violation. More information, including a list of court EDR Coordinators, can be found on JNet.

Employees may confidentially report workplace discrimination, harassment, abusive behavior, or retaliation to an EDR Coordinator, Circuit Director of Workplace Relations, or the Judicial Integrity Officer (202-502-1603).

Protection from Unlawful Discrimination

Prohibits discrimination in personnel actions based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), or disability.

Protection from Harassment

Prohibits sexual harassment, discriminatory harassment, and abusive conduct.

Protection for Exercising Workplace Rights

Prohibits intimidation, retaliation, or discrimination against employees who exercise their employment rights or report or oppose wrongful conduct, including **whistleblower protection**.

Family and Medical Leave

Provides rights and protections for employees needing leave for specified family and medical reasons.

Protection for Veterans and Members of the Uniformed Services

Protects employees performing service in the uniformed services from discrimination and provides certain benefits and reemployment rights.

Notification of Office Closings and Mass Layoffs

Under certain circumstances, requires that employees be notified of an office closing or of a mass layoff at least 60 days in advance of the event.

Hazard-Free Workspaces

Requires employing offices to comply with occupational safety and health standards, and provide workplaces free of recognized hazards.

Polygraph Testing Prohibition

Restricts the use and the results of polygraph testing.

These rights are fully explained in Guide to Judiciary Policy, Vol. 12, Ch. 2.

The Employment Dispute Resolution Formal Complaint Process

File a Complaint

File a complaint with an EDR coordinator within **180 days** of the conduct (or discovery of the conduct).



Gather Information

The Presiding Judicial Officer decides what investigation and discovery are needed and if written arguments are needed.



Hearing

The Presiding Judicial Officer determines if a hearing is needed.



DECISION



RIGHTS

- An impartial investigation and/or hearing, if appropriate.
- Both parties may use a representative or attorney (at own expense).
- Both parties may present witnesses and examine adverse witnesses.
- A prompt written decision by a Presiding Judicial Officer.
- Appeal.

APPEAL



Parties have the right to appeal to the circuit judicial council within 30 days of a decision.

Appendix D: 2021 Model Federal Public Defender Organization Plan

[Guide to Judiciary Policy, Vol. 12, Appx. 2B]

I. INTRODUCTION

The Federal Judiciary, including Federal Public Defender Organizations (FPDOs), is committed to a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment. These values are essential to FPDOs, which hold Federal Public Defenders (FPDs) and their Employees to the highest standards. All FPDs 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 FPDOs, FPDs, 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 Federal Public Defender Employees](#), Canon 3(C). This Plan is promulgated by the circuit judicial council and United States Court of Appeals (COA) for adoption by each FPD within the circuit, pursuant to their respective authorities under [18 U.S.C. § 3006A\(g\)\(2\)\(A\)](#).

This Plan applies to all FPDOs, FPDs, current and former Employees (including all FPDO law clerks and paid and unpaid interns, externs, and other volunteers), and applicants for FPDO employment who have been interviewed. The following persons cannot seek relief under this Plan: FPDs,¹ Criminal Justice Act panel attorneys and applicants, private investigators, retained service providers, community defender employees, volunteer mediators, and any other non-Employees not specified above. See [Appendix 1](#) for full definitions.

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\(c\)](#)).

¹ FPDs are covered by the Court of Appeals EDR Plans and may seek relief under those Plans.

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:

- Title VII, Civil Rights Act of 1964;
- Age Discrimination in Employment Act of 1967;
- Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973;
- Family and Medical Leave Act of 1993;
- Uniformed Services Employment and Reemployment Rights Act of 1994;
- Whistleblower Protection Provision ([Guide, Vol. 12, § 220.10.20\(c\)](#));
- Worker Adjustment and Retraining Notification Act;
- Occupational Safety and Health Act; and
- The Employee Polygraph Protection Act of 1988.

See [Guide, Vol. 12, Ch. 2](#).

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.

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.

III. REPORTING WRONGFUL CONDUCT

The Judiciary, including FPDOs, 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 supervisor, human resources professional, FPD, Circuit Executive, COA or FPDO Employment Dispute Resolution (“EDR”) Coordinator, Chief Circuit Judge, Circuit Director of Workplace Relations (DWR), or to the national Office of Judicial Integrity. *See* [Code of Conduct for Federal Public Defender Employees](#), Canon 3(C). Employees are also encouraged to report wrongful conduct in the workplace by non-Employees. Confidentiality requirements do not prevent any Employee from revealing or reporting wrongful conduct. *See* Plan §§ IV(B)(2) and (3).

IV. OPTIONS FOR RESOLUTION

The goal of the Judiciary and FPDO is to address wrongful conduct as soon as possible and to provide multiple, flexible options for doing so. An Employee is always free to address a conduct issue directly with the person who allegedly committed wrongful conduct or to contact a colleague, supervisor, FPD, or other individual to discuss or address the situation. This Plan provides the following additional options, and Employees may choose the option(s) that best fit their needs and comfort level.

- A. Plan Options.** This Plan provides three options to address wrongful conduct, as explained in detail below:
- 1. Informal Advice**
 - 2. Assisted Resolution**
 - 3. Formal Complaint**
- B. General Rights.** All options for resolution are intended to respect the privacy of all involved to the greatest extent possible, and to protect the fairness and thoroughness of the process by which allegations of wrongful conduct are initiated, investigated, and ultimately resolved.
- 1. Confidentiality.** All individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct.

Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation. An assurance of confidentiality must yield when there is reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity of the Judiciary and of the FPDO and its obligations to clients.

Confidentiality obligations in the [Code of Conduct for Federal Public Defender Employees](#) concerning use or disclosure of confidential information received in the course of official duties, including attorney-client and work-product privileged information, do not prevent nor should they discourage Employees from reporting or disclosing wrongful conduct, including sexual, racial, or other forms of discriminatory harassment by the FPD, a Judge, a supervisor, or other person.

Supervisors, FPDs, and Circuit Executives must take appropriate action when they learn of reliable information of wrongful conduct, such as sexual, racial, or other discriminatory harassment, which may include informing the appropriate Chief Circuit Judge.

2. **Attorney-Client and Work-Product Obligations.** All individuals involved in the processes under this Plan must protect attorney-client and work-product privileged communications. See [Code of Conduct for Federal Public Defender Employees](#), Canon 3(D).
3. **Impartiality.** All investigations, hearings, and other processes under this Plan must be conducted in a thorough, fair, and impartial manner. The COA or FPDO EDR Coordinator, the Circuit DWR, and the Presiding Judicial Officer must be impartial and may not act as an advocate for either Party. The EDR Coordinators, Circuit DWR, or Presiding Judicial Officer must recuse if he or she participated in, witnessed, or was otherwise involved with the conduct or employment action giving rise to the claim. Recusal of these individuals is also required if the matter creates an actual conflict or the appearance of a conflict.
4. **Right to representation.** Both the Employee and the FPDO responsible for providing any remedy have the right to be represented by an attorney or other person of their choice at their own expense. Another Employee may assist the Employee or FPDO if doing so will not constitute a conflict of interest or unduly interfere with his or her duties, as determined by the assisting Employee's appointing officer.
5. **Interim Relief.** An Employee who pursues any of the options under this Plan may request transfer, an alternative work arrangement, or administrative leave if the Employee alleges egregious conduct by a supervisor or the FPD

that makes it untenable to continue working for that person. Any such request must be made to the FPD (or Chief Circuit Judge, if the FPD is the subject of the allegations) to determine appropriate interim relief, if any, taking into consideration the impact on the FPDO.

6. **Allegations Involving a Third Party.** An Employee alleging that a third party, including a Judge, Clerk of Court, or other Court Employee, has engaged in wrongful conduct and who reports the wrongful conduct to the FPDO, may—if the FPDO fails to take appropriate action—use any of the options for resolution from an FPDO as set forth in Section C. An FPDO is obligated to take appropriate action when an Employee alleges wrongful conduct by anyone, including a Judge.

An FPD may file a complaint regarding wrongful conduct by a Judge with the Chief Circuit Judge, in accordance with the COA’s EDR Plan. *See* Plan, fn 1.

An Employee or FPD may also file a complaint under the Judicial Conduct and Disability Act, [28 U.S.C. §§ 351-364](#).

C. Specific Options

1. **Informal Advice.** An Employee may contact a COA or FPDO EDR Coordinator, Circuit DWR, or the national Office of Judicial Integrity for confidential advice and guidance (*see* § IV.B.1) about a range of topics including:

- the rights and protections afforded under this Plan, the Judicial Conduct and Disability Act, and any other processes;
- ways to respond to wrongful conduct as it is happening; and/or
- options for addressing the conduct, such as informal resolution, participating in Assisted Resolution, or pursuing a Formal Complaint under this Plan, the Judicial Conduct and Disability Act, or any other processes.

2. **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.

a. To pursue this option, an Employee must contact a COA or FPDO EDR Coordinator or Circuit DWR and complete a “Request for Assisted Resolution” ([Appendix 2](#)). The Judiciary and FPDO encourage early reporting and action on wrongful conduct and strongly encourage Employees alleging claims under the EDR Plan to first use Assisted Resolution before filing a Formal Complaint. An Employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint. Filing a Request for Assisted Resolution does not toll (extend) the time for filing a Formal Complaint under § IV.C.3 unless one of the Parties requests, and the Chief Circuit Judge or Presiding Judicial Officer grants, an extension of time for good cause, as permitted in § IV.C.3.a.

b. If the allegations concern the conduct of a Judge and the Employee seeks assistance from the FPDO, the Chief Circuit Judge must be notified and will be responsible for coordinating any Assisted Resolution and/or taking any other action required or appropriate under the circumstances, including notice to the Chief District Judge. *See, e.g.,* Rules for Judicial-Conduct and Judicial-Disability Proceedings.

c. If the allegations concern the conduct of an Employee (not the FPD), the COA or FPDO EDR Coordinator or Circuit DWR will coordinate Assisted Resolution and must notify the FPD. The FPD is responsible for assessing the allegation(s) and taking appropriate steps to resolve the matter. If the allegations concern the conduct of the FPD, the COA or FPDO EDR Coordinator or Circuit DWR must notify the Chief Circuit Judge, who is responsible for assessing the allegation(s) and addressing the matter as appropriate.

d. Consistent with an FPDO employee’s ethical obligation to protect attorney-client and work product privileged information, he or she shall redact privileged information and clients’ personal identification information including case numbers from all communications during the request and process of Assisted Resolution.

e. The FPD (or Chief Circuit Judge) responsible for assessing the allegations, as indicated in (b) and (c) above, may deny the Request for Assisted Resolution at any time if he or she concludes it is frivolous; it does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

f. If Assisted Resolution is successful in resolving the matter, the Parties will so acknowledge in writing.

g. The Parties by mutual assent, or the COA or FPDO EDR Coordinator or Circuit DWR in his or her discretion, will determine when to conclude the Assisted Resolution process. If Assisted Resolution is not successful in resolving the matter, the COA or FPDO EDR Coordinator or Circuit DWR will advise the Employee of his or her rights to file a Formal Complaint under this Plan and/or pursue action under the Judicial Conduct and Disability Act, if applicable, or any other processes.

3. Filing a Formal Complaint. An Employee may file a Formal Complaint (“Complaint”) with any of the COA EDR Coordinators to address a claim of wrongful conduct.

a. To file a Complaint, an Employee must submit a “Formal Complaint” ([Appendix 3](#)) to any of the COA EDR Coordinators within 180 days of the alleged wrongful conduct or within 180 days of the time the Employee becomes aware or reasonably should have become aware of such wrongful conduct. Use of the Informal Advice or Assisted Resolution options does not toll (extend) this 180-day deadline unless the Chief Circuit Judge or the Presiding Judicial Officer grants an extension of time for good cause.

b. An Employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint.

c. The Employee filing the Complaint is called the Complainant. The Party responding to the Complaint is the FPDO that is responsible for providing any appropriate remedy and is called the Respondent. The Complaint is not filed against any specific individual(s) but against the FPDO.

d. Complaint Regarding a Judge. An Employee alleging that a Judge has engaged in abusive conduct or harassment may file a Complaint under this Plan to seek a remedy from the FPDO, only if the FPDO failed to reasonably try to prevent and promptly correct the abusive conduct or harassment. Otherwise, there is no recognized remedy against the FPDO under this Plan for wrongful conduct by a Judge. The EDR Coordinator must immediately provide a copy of the Complaint to the Chief Circuit Judge (or the next most-senior active Circuit Judge, if the allegation is against the Chief Circuit Judge), who will oversee the EDR Complaint process. If a District, Magistrate, or Bankruptcy Judge is the subject of the Complaint, the EDR Coordinator must also provide a copy of the Complaint to the Chief District Judge (unless the Chief District Judge is the subject of the Complaint, in which case the Complaint will be given only to the Chief Circuit Judge).

If a Judge becomes the subject of both a Complaint under this Plan and a complaint under the Judicial Conduct and Disability Act, the Chief Circuit Judge will determine the appropriate procedure for addressing both, which may include holding the EDR claim in abeyance and determining how best to find any common

issues of fact, subject to all requirements of the Judicial Conduct and Disability Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, this EDR Plan. Regardless of whether there is a formal complaint under the Judicial Conduct and Disability Act, the Chief Circuit Judge should consider the need for any necessary or appropriate interim relief.

e. Consistent with a Complainant's ethical obligation to protect attorney-client and work-product privileged information, Complainant shall file a Complaint that is redacted to protect privileged information and clients' personal identification information including case numbers.

f. Formal Complaint Procedures and Procedural Rights

i. *Appointment of Presiding Judicial Officer.* Upon receipt of a Complaint, the COA EDR Coordinator will immediately send a copy of the Complaint to the Chief Circuit Judge, who will appoint a Presiding Judicial Officer. The Presiding Judicial Officer will be a Judge in the circuit Court of Appeals or, when appropriate, a Judge from another court² other than the district court where the FPDO is located (with the consent of the respective Chief Judge of that court).

ii. *Presiding Judicial Officer.* The Presiding Judicial Officer oversees the Complaint proceeding. The Presiding Judicial Officer will provide a copy of the Complaint to the FPD against whose FPDO the Complaint has been filed (Respondent), except when the Presiding Judicial Officer determines for good cause that the circumstances dictate otherwise. The Presiding Judicial Officer must provide the individual alleged to have violated rights under this Plan notice that a Complaint has been filed and the nature and substance of the Complaint allegations.

The Presiding Judicial Officer will provide for appropriate investigation and discovery, allow for settlement discussions, determine any written submissions to be provided by the Parties, determine if a hearing is needed, determine the time, date, and place of the hearing, issue a written decision, and, if warranted, order remedies.

iii. *Disqualification and Replacement.* Either Party may seek disqualification of the COA EDR Coordinator or the Presiding Judicial Officer by written request to the Chief Circuit Judge, explaining why the individual should be disqualified.

If the Presiding Judicial Officer is disqualified, the Chief Circuit Judge will

² Court of Appeals, district court, bankruptcy court, Court of Federal Claims and Court of International Trade, or any court created by an Act of Congress in a territory invested with any jurisdiction of a district court of the United States.

designate another Judge to serve as Presiding Judicial Officer pursuant to subsection (f)(i). If the COA EDR Coordinator is disqualified, the Chief Circuit Judge will appoint one of the alternate COA EDR Coordinators or, if available, an EDR Coordinator from another court (with the consent of the respective Chief Judge of that court).

iv. *Response.* The Respondent may file a Response to the Complaint with the COA EDR Coordinator within **30 days** of receiving the Complaint. The Respondent must protect attorney-client and work-product privilege in any Response. The COA EDR Coordinator must immediately send the Response to the Presiding Judicial Officer and to the Complainant.

v. *Investigation and Discovery.* The Presiding Judicial Officer will ensure that the allegations are thoroughly, impartially, and fairly investigated, and may use outside trained investigators if warranted. The investigation may include interviews with persons alleged to have violated rights under this Plan and witnesses, review of relevant records, and collecting documents or other records. The Presiding Judicial Officer will provide for such discovery to the Complainant and Respondent as is necessary and appropriate. The Presiding Judicial Officer will also determine what evidence and written arguments, if any, are necessary for a fair and complete assessment of the allegations and response.

vi. *Case preparation.* The Complainant may use official time to prepare his or her case, so long as it does not unduly interfere with the performance of duties.

vii. *Extensions of time.* Any request for an extension of time must be in writing. The Presiding Judicial Officer may extend any of the deadlines set forth in this EDR Plan for good cause, except for the deadline to issue a written decision, which may only be extended by the Chief Circuit Judge.

viii. *Established Precedent.* In reaching a decision, the Presiding Judicial Officer should be guided by judicial and administrative decisions under relevant rules and statutes, as appropriate. The Federal Rules of Evidence and any federal procedural rules do not apply.

ix. *Notice of Written Decision.* The COA EDR Coordinator or Presiding Judicial Officer will immediately send a copy of the written decision to the Parties, the Chief Circuit Judge, and to any individual alleged to have violated rights protected by this Plan. The COA EDR Coordinator will inform the Parties of appeal rights, procedures, and deadlines.

g. Resolution of Complaint Without a Hearing. After notifying the Parties and giving them an opportunity to respond, the Presiding Judicial Officer

may resolve the matter without a hearing.

i. The Presiding Judicial Officer may dismiss a Complaint and issue a written decision at any time in the proceedings on the grounds that: it is untimely filed, is frivolous, fails to state a claim, or does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

ii. After completion of investigation and discovery, the Presiding Judicial Officer may, on his or her own initiative or at the request of either Party, issue a written decision if the Presiding Judicial Officer determines that no relevant facts are in dispute and that one of the Parties is entitled to a favorable decision on the undisputed facts.

iii. The Parties may enter into an agreed written settlement if approved in writing by the Presiding Judicial Officer and the Chief Circuit Judge.

h. Resolution of Complaint With a Hearing. If the Complaint is not resolved in its entirety by dismissal, Assisted Resolution, decision without a hearing, or settlement, the Presiding Judicial Officer will order a hearing on the merits of the Complaint.

i. *Hearing.* The hearing will be held no later than **60 days** after the filing of the Complaint unless the Presiding Judicial Officer extends the deadline for good cause. The Presiding Judicial Officer will determine the place and manner of the hearing.

ii. *Notice.* The Presiding Judicial Officer must provide reasonable notice of the hearing date, time, and place to the Complainant, the Respondent, and any individual(s) alleged to have violated the Complainant's rights.

iii. *Right to Present Evidence.* The Complainant and Respondent have the right to present witnesses and documentary evidence and to examine adverse witnesses.

iv. *Record of Proceedings.* A verbatim record of the hearing must be made and will be the official record of the proceeding. This may be a digital recording or a transcript.

v. *Written Decision.* The Presiding Judicial Officer will make findings of fact and conclusions of law and issue a written decision no later than **60 days** after the conclusion of the hearing, unless an extension for good

cause is granted by the Chief Circuit Judge.

i. Remedies. When the Presiding Judicial Officer finds that the Complainant has established by a preponderance of the evidence (more likely than not) that a substantive right protected by this Plan has been violated, the Presiding Judicial Officer may direct the FPDO to provide remedies for the Complainant. The remedies are limited to providing relief to the Complainant, should be tailored as closely as possible to the specific violation(s) found, and take into consideration the impact on the FPDO. The Chief Circuit Judge and/or FPDO (Respondent) must take appropriate action to carry out the remedies ordered in the written decision, subject to any applicable policies or procedures.

i. *Allowable Remedies* may include:

- placement of the Complainant in a position previously denied;
- placement of the Complainant in a comparable alternative position;
- reinstatement to a position from which the Complainant was previously removed;
- prospective promotion of the Complainant;
- priority consideration of the Complainant for a future promotion or position;
- back pay and associated benefits, when the statutory criteria of the Back Pay Act are satisfied³;
- records modification and/or expungement;
- granting of family and medical leave;
- any reasonable accommodation(s); and
- any other appropriate remedy to address the wrongful conduct.⁴

³ *Back Pay Act*. Remedies under the Back Pay Act, including attorney's fees, may be ordered only when the statutory criteria of the Back Pay Act are satisfied, which include: (1) a finding of an unjustified or unwarranted personnel action; (2) by an appropriate authority; (3) which resulted in the withdrawal or reduction of all or part of the Employee's pay, allowances, or differentials. An order of back pay is subject to review and approval by the Director of the Administrative Office of the United States Courts. See [5 U.S.C. § 5596\(b\)\(1\)](#) and *Guide*, Vol. 12, § 690.

⁴ The issue in an EDR Complaint is whether the FPDO is responsible for the alleged conduct; it is not an action against any individual. The Presiding Judicial Officer lacks authority to impose disciplinary or similar action against an individual. When there has been a finding of wrongful conduct in an EDR proceeding, an appointing official, or official with delegated authority, should separately assess whether further action, in accordance with any applicable policies and procedures, is necessary to correct and prevent wrongful conduct and promote appropriate workplace behavior, such as:

- requiring counseling or training;
- ordering no contact with the Complainant;
- reassigning or transferring an Employee;
- reprimanding the Employee who engaged in wrongful conduct;
- issuing a suspension, probation, or demotion of the Employee who engaged in wrongful conduct; and/or
- terminating employment for the Employee who engaged in wrongful conduct.

ii. *Unavailable Remedies.* Other than under the Back Pay Act, monetary damages are not available. The Presiding Judicial Officer may award attorney's fees only if the statutory requirements under the Back Pay Act are satisfied.

j. **Review of Decision (Appeal).** The Complainant and/or the Respondent may appeal the decision to the judicial council of the circuit by submitting in writing a Request for Review of Decision setting forth the grounds for appeal within **30 days** of the date of the decision under procedures established by that judicial council ([Appendix 4](#)). The COA EDR Coordinator will inform the Parties of the procedures for seeking review. The decision will be reviewed based on the record created by the Presiding Judicial Officer and will be affirmed if supported by substantial evidence and the proper application of legal principles.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION OBLIGATIONS

To ensure that Employees are aware of the options provided by this Plan, and that the Plan is effectively implemented, FPDOs must adhere to the following:

A. **Adopt and Implement EDR Plan.** All FPDOs must adopt and implement an EDR Plan based on this Model EDR Plan, if authorized by the Court of Appeals. Any modification of this Model EDR Plan (1) may expand, but should not diminish or curtail, any of the rights or remedies afforded Employees under this Model EDR Plan, and (2) must be approved by the judicial council of its circuit. A copy of each EDR Plan and any subsequent modifications must be filed with the Court of Appeals and with the Administrative Office.

B. **Records.** At the conclusion of informal or formal proceedings under this Plan, all papers, files, and reports will be filed with the FPDO EDR Coordinator. No papers, files, or reports relating to an EDR matter will be filed in an Employee's personnel folder, except as necessary to implement an official personnel action.

Final decisions under this Plan will be made available to the public, appropriately redacted, in accordance with procedures established by the judicial council of the circuit, to include redaction of attorney-client and work-product privileged information.

C. **EDR Coordinators.** The FPDO will designate both a primary FPDO EDR Coordinator and at least one alternate FPDO EDR Coordinator for the FPDO. An FPDO may use an EDR Coordinator from another FPDO, or may use the Circuit Director of Workplace Relations as an alternate FPDO EDR Coordinator, if necessary, with the approval of the appropriate FPDO or the Chief Circuit Judge, respectively. In addition, any EDR Coordinators appointed to serve the COA under the COA's EDR Plan are also available to the FPD and FPDO Employees. An Employee may choose the COA or FPDO EDR Coordinator with whom he or she

wishes to seek Informal Advice or request Assisted Resolution. An Employee may only file a Formal Complaint with a COA EDR Coordinator.

An FPDO EDR Coordinator must be an FPDO Employee. An FPD may not be an EDR Coordinator. All EDR Coordinators must be trained and certified as set forth in the *EDR Interpretive Guide and Handbook*.

D. Advising Employees of their Rights. Courts and FPDOs must:

1. **prominently post** on their internal and external main homepages a direct link, labeled “Your Employee Rights and How to Report Wrongful Conduct,” to:
 - the entire EDR Plan with all Appendices and relevant contact information;
 - the Judicial Conduct and Disability Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Judicial Conduct and Disability Complaint form; and
 - contact information for all of the COA and FPDO EDR Coordinators, Circuit DWR, and the national Office of Judicial Integrity.
2. **prominently display** in the workplace:
 - the posters set forth in [Appendix 5](#); and
 - an Anti-Discrimination and Harassment Notice that: (a) states that discrimination or harassment based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability is prohibited; (b) explains that Employees can report, resolve, and seek remedies for discrimination, harassment, or other wrongful conduct under the EDR Plan by contacting any of the COA or FPDO EDR Coordinators and/or the Circuit DWR, and/or the national Office of Judicial Integrity; (c) identifies the names and contact information of all COA and FPDO EDR Coordinators, the Circuit Director of Workplace Relations, and the national Office of Judicial Integrity; and (d) states where the EDR Plan can be located on the FPDO’s website.
3. ensure that each new Employee receive an electronic or paper copy of the EDR Plan and acknowledge in writing that he or she has read the Plan; and
4. conduct training annually for all FPDs and Employees 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.

E. Reporting. FPDOs will provide annually, to the Administrative Office of the United States Courts and to the Chief Circuit Judge, data on: (1) the number and types of alleged violations for which Assisted Resolution was requested, and for each matter, whether it was resolved or was also the subject of a Complaint under this Plan or

other complaint; (2) the number and type of alleged violations for which Complaints under this Plan were filed; (3) the resolution of each Complaint under this Plan (dismissed or settled prior to a decision, or decided with or without a hearing); and (4) the rights under this Plan that were found by decision to have been violated. FPDOs should also provide any information that may be helpful in identifying the conditions that may have enabled wrongful conduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its recurrence.

As to any incident for reporting above which necessarily contains or refers to attorney-client or work-product privileged information inherently involved in the Complaint, hearing or resolution process, FPDOs will report the incident as required above, but should redact privileged information where applicable.

F. Case assignment due to potential conflict. An Employee who filed or was the subject of a Request for Assisted Resolution or Formal Complaint (whether pending or concluded), and who is assigned to appear before a Judge who assessed and addressed the Request for Assisted Resolution, who served as Presiding Judicial Officer for the Formal Complaint, or who was involved with allegations made in a Request for Assisted Resolution or a Formal Complaint, may request that the FPD reassign the case to another lawyer. The FPD has full discretion to determine whether reassignment of the case is appropriate under the circumstances.

G. Appendices Attached:

1. Definitions
2. Request for Assisted Resolution
3. Formal Complaint Form
4. Request for Review of Decision Procedures and Sample Form (each FPDO to attach its circuit's Request for Review Procedures)
5. Posters

Effective date: September 28, 2021

DEFINITIONS APPENDIX 1

Circuit Director of Workplace Relations: A circuit Employee who coordinates workplace conduct issues and the implementation of all court and FPDO EDR Plans within the circuit. The scope of duties may vary by circuit, but generally, a Circuit Director of Workplace Relations may: provide Informal Advice and Assisted Resolution under any EDR Plan within the circuit; assist in training the EDR Coordinators within the circuit; provide or arrange for training throughout the circuit on workplace conduct, discrimination, and sexual harassment; and collect and analyze statistical data and other information relevant to workplace conduct matters.

EDR Coordinator: A Court of Appeals (COA) EDR Coordinator is an EDR Coordinator designated by the Chief Circuit Judge under the EDR Plan of the COA. An FPDO EDR Coordinator is an FPDO Employee, other than the FPD, designated by the FPDO to assist with Informal Advice and Assisted Resolution matters. The COA and FPDO EDR Coordinators provide confidential advice and guidance (*see* § IV.B.1.) if an Employee seeks Informal Advice and coordinates the Assisted Resolution process, including any necessary investigation. The COA EDR Coordinator (only) accepts Formal Complaints under this Plan for filing and assists the Presiding Judicial Officer in the Complaint proceeding, as directed. The FPDO EDR Coordinator maintains and preserves all court files pertaining to matters initiated and processed under this EDR Plan. These EDR Coordinators assist the Court of Appeals and FPDO in meeting their obligations under this Plan to train and advise employees of their rights under this Plan, and to post the Plan as directed. Additional information on the EDR Coordinator's responsibilities may be found in the *EDR Interpretive Guide and Handbook*.

Employee: All current and former employees of FPDOs, all FPDO law clerks, paid and unpaid interns, externs, and other volunteers, and applicants for employment who have been interviewed.

FPDO/Respondent: The FPDO responsible for providing any appropriate remedy.

Judge: A judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, a judge of the Court of Federal Claims, a judge of the Court of International Trade, or a judge of any court created by Act of Congress in a territory that is invested with any jurisdiction of a district court of the United States.

Office of Judicial Integrity: The office of the Administrative Office of the United States Courts staffed to provide advice and guidance to Employees nationwide about workplace conduct issues, including sexual, racial, and other discriminatory harassment, abusive conduct and other wrongful conduct. Contact information for the Office of Judicial Integrity can be found on JNet and on uscourts.gov.

Parties: The FPDO and the Employee who has filed a request for Assisted Resolution or a Formal Complaint.

Protected Category: Race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability.

**REQUEST FOR ASSISTED RESOLUTION
APPENDIX 2**

***USE OF ASSISTED RESOLUTION DOES NOT EXTEND THE 180-DAY
DEADLINE TO FILE A FORMAL COMPLAINT UNLESS THE DEADLINE IS
EXTENDED UNDER EDR PLAN § IV.C.3.a***

Submitted under the Procedures of the Federal Public Defender Organization
Employment Dispute Resolution Plan

District: _____

Full name of person submitting the form: _____

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

Name and address of FPDO from which you seek assistance:

Your job title/job title applied for: _____

Date of interview (*for interviewed applicants only*): _____

Date(s) of alleged incident(s) for which you seek Assisted Resolution:

Summary of the actions or occurrences for which you seek Assisted Resolution (attach additional pages as needed):

Names and contact information of any witnesses to the actions or occurrences for which you seek Assisted Resolution:

Describe the assistance or corrective action you seek:

Alleged Wrongful Conduct for which you seek Assisted Resolution (*check all that apply*):

- | | |
|---|---|
| <input type="checkbox"/> Discrimination based on (<i>check all that apply</i>): | <input type="checkbox"/> Harassment based on (<i>check all that apply</i>): |
| <input type="checkbox"/> Race | <input type="checkbox"/> Race |
| <input type="checkbox"/> Color | <input type="checkbox"/> Color |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Gender | <input type="checkbox"/> Gender |
| <input type="checkbox"/> Gender identity | <input type="checkbox"/> Gender identity |
| <input type="checkbox"/> Pregnancy | <input type="checkbox"/> Pregnancy |
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Sexual orientation |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Religion |
| <input type="checkbox"/> National origin | <input type="checkbox"/> National origin |
| <input type="checkbox"/> Age | <input type="checkbox"/> Age |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Disability |
-
- | | | |
|---|--|---|
| <input type="checkbox"/> Abusive Conduct | <input type="checkbox"/> Uniform Services | <input type="checkbox"/> Occupational Safety |
| <input type="checkbox"/> Retaliation | <input type="checkbox"/> Employment and | <input type="checkbox"/> and Health |
| <input type="checkbox"/> Whistleblower | <input type="checkbox"/> Reemployment | <input type="checkbox"/> Polygraph Protection |
| <input type="checkbox"/> Protection | <input type="checkbox"/> Rights | <input type="checkbox"/> Other (describe) |
| <input type="checkbox"/> Family and Medical | <input type="checkbox"/> Worker Adjustment | |
| <input type="checkbox"/> Leave | <input type="checkbox"/> and Retraining | |

Do you have an attorney or other person who represents you?

Yes

Please provide name, mailing address, email address, and phone number(s):

No

I acknowledge that this Request will be kept confidential to the extent possible, but information may be shared to the extent necessary and with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan (*see* EDR Plan § IV.B.1).

Your signature _____

Date submitted _____

Request for Assisted Resolution reviewed by EDR Coordinator/Circuit Director of Workplace Relations on _____

EDR Coordinator/Circuit Director of Workplace Relations name _____

EDR Coordinator/Circuit Director of Workplace Relations signature _____

Local Court Claim ID (Court Initials–AR–YY–Sequential Number): _____

FORMAL COMPLAINT FORM
APPENDIX 3

Submitted under the Procedures of the Federal Public Defender Organization
Employment Dispute Resolution Plan

District: _____

Full name of person submitting the form (Complainant): _____

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

Name and address of FPDO from which you seek a remedy:

Your job title/job title applied for: _____

Date of interview (*for interviewed applicants only*): _____

Date(s) of alleged incident(s) for which you seek a remedy:

Summary of the actions or occurrences giving rise to the Complaint (*attach additional pages as needed*):

Describe the remedy or corrective action you seek (*attach additional pages as needed*):

Identify, and provide contact information for, any persons who were involved in this matter, who were witnesses to the actions or occurrences, or who can provide relevant information concerning the Complaint (*attach additional pages as needed*):

Identify the Wrongful Conduct that you believe occurred (*check all that apply*):

- | | |
|---|---|
| <input type="checkbox"/> Discrimination based on (<i>check all that apply</i>): | <input type="checkbox"/> Harassment based on (<i>check all that apply</i>): |
| <input type="checkbox"/> Race | <input type="checkbox"/> Race |
| <input type="checkbox"/> Color | <input type="checkbox"/> Color |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Gender | <input type="checkbox"/> Gender |
| <input type="checkbox"/> Gender identity | <input type="checkbox"/> Gender identity |
| <input type="checkbox"/> Pregnancy | <input type="checkbox"/> Pregnancy |
| <input type="checkbox"/> Sexual orientation | <input type="checkbox"/> Sexual orientation |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Religion |
| <input type="checkbox"/> National origin | <input type="checkbox"/> National origin |
| <input type="checkbox"/> Age | <input type="checkbox"/> Age |
| <input type="checkbox"/> Disability | <input type="checkbox"/> Disability |

- Abusive Conduct
- I have already sought Assisted Resolution for this Abusive Conduct claim.

Provide date Request for Assisted Resolution submitted and concluded, and describe the resolution, if any:

- | | | |
|---|--|---|
| <input type="checkbox"/> Retaliation | <input type="checkbox"/> Uniform Services Employment and Reemployment Rights | <input type="checkbox"/> Occupational Safety and Health |
| <input type="checkbox"/> Whistleblower Protection | <input type="checkbox"/> Worker Adjustment and Retraining | <input type="checkbox"/> Polygraph Protection |
| <input type="checkbox"/> Family and Medical Leave | | <input type="checkbox"/> Other (describe) |

Do you have an attorney or other person who represents you?

Yes

Please provide name, mailing address, email address, and phone number(s):

No

I have attached copy(ies) of any documents that relate to my Complaint (such as emails, notices of discipline or termination, job application, etc.)

I acknowledge that this Complaint will be kept confidential to the extent possible, but information may be shared to the extent necessary and with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan (*see* EDR Plan § IV.B.1).

I affirm that the information provided in this Complaint is true and correct to the best of my knowledge:

Complainant signature _____

Date submitted _____

Complaint reviewed by EDR Coordinator on _____

EDR Coordinator name _____

EDR Coordinator signature _____

Local Court Claim ID (Court Initials–FC–YY–Sequential Number): _____

REQUEST FOR REVIEW OF DECISION (APPEAL)
APPENDIX 4

Submitted under the Procedures of the Federal Public Defender Organization
Employment Dispute Resolution Plan

[To be drafted by each Circuit and attached here by each FPDO]

SAMPLE FORM

Name of Requesting Party _____

Address _____

Phone Number(s) _____

Email Address _____

Name of Court in Which Presiding Judicial Officer's Decision Was Issued

_____, Requesting Party v.

_____, Responding Party

Request for Review of Decision on Formal Complaint

Notice is hereby given that _____, (Requesting Party) in the above named case, hereby requests review by the Judicial Council for the _____ Circuit from the decision by Judge _____ entered in this matter on the day of _____, 20__.

Attached to this request is a copy of the Presiding Judicial Officer's decision.

State the reason(s) you contend that the Presiding Judicial Officer's decision was in error (**attach additional pages if necessary**):

Submitted this _____ day of _____, 20__.

Signature of Requesting Party _____

Signature of Counsel, if any _____

Approved by the _____ Circuit Judicial Council on _____.

POSTERS
APPENDIX 5

How to Address Wrongful Conduct in the Workplace

INFORMAL ADVICE

To request advice about a workplace concern, contact your Employment Dispute Resolution (EDR) coordinator, Circuit Director of Workplace Relations, or the Office of Judicial Integrity. They can provide you with advice and guidance on how to address the issue including:

- Your rights under the EDR Plan
- Advice on handling discriminatory, harassing, or abusive conduct
- Options for addressing the conduct



ASSISTED RESOLUTION

Contact an EDR Coordinator or Circuit Director of Workplace Relations to request Assisted Resolution. This interactive, flexible process may include:

- Discussions with the source of the conduct
- Preliminary investigation, including interviewing witnesses
- Resolving the matter by agreement



FORMAL COMPLAINT

Contact an EDR coordinator to file a formal complaint.

The Complaint must be filed within **180 days** of the alleged violation or the discovery of the violation.

This formal process includes:

- Appointment of Presiding Judicial Officer
- An investigation and/or hearing if appropriate
- Written decision
- Appeal rights



Confidentiality

All options for resolution are intended to respect privacy of all involved to the greatest extent possible, and to protect the fairness and thoroughness of the process by which allegations of wrongful conduct are initiated, investigated, and ultimately resolved.

Contact Information:

Local EDR Coordinator
First Name, Last Name
Phone
Email

Circuit Director of Workplace Relations
First Name, Last Name,
Phone
Email

National Office of Judicial Integrity
Judicial Integrity Officer
202-502-1603
AO_OJI@ao.uscourts.gov



Your Rights

In a Federal Judiciary Workplace

Employees of the Federal Judiciary are protected by the employment rights listed below, as described in *Guide to Judiciary Policy*, Vol. 12, Ch. 2.

Employees have options for resolution, including Informal Advice, Assisted Resolution, and filing a Formal Complaint. Formal Complaints must be filed within 180 days of when the Employee knew or should have known of the alleged violation. More information, including a list of court EDR Coordinators, can be found on JNet.

Employees may confidentially report workplace discrimination, harassment, abusive behavior, or retaliation to an EDR Coordinator, Circuit Director of Workplace Relations, or the Judicial Integrity Officer (202-502-1603).

Protection from Unlawful Discrimination

Prohibits discrimination in personnel actions based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), or disability.

Protection from Harassment

Prohibits sexual harassment, discriminatory harassment, and abusive conduct.

Protection for Exercising Workplace Rights

Prohibits intimidation, retaliation, or discrimination against employees who exercise their employment rights or report or oppose wrongful conduct, including **whistleblower protection**.

Family and Medical Leave

Provides rights and protections for employees needing leave for specified family and medical reasons.

Protection for Veterans and Members of the Uniformed Services

Protects employees performing service in the uniformed services from discrimination and provides certain benefits and reemployment rights.

Notification of Office Closings and Mass Layoffs

Under certain circumstances, requires that employees be notified of an office closing or of a mass layoff at least 60 days in advance of the event.

Hazard-Free Workspaces

Requires employing offices to comply with occupational safety and health standards, and provide workplaces free of recognized hazards.

Polygraph Testing Prohibition

Restricts the use and the results of polygraph testing.

These rights are fully explained in Guide to Judiciary Policy, Vol. 12, Ch. 2.

The Employment Dispute Resolution Formal Complaint Process

File a Complaint

File a complaint with an EDR coordinator within **180 days** of the conduct (or discovery of the conduct).



Gather Information

The Presiding Judicial Officer decides what investigation and discovery are needed and if written arguments are needed.



Hearing

The Presiding Judicial Officer determines if a hearing is needed.



RIGHTS



- An impartial investigation and/or hearing, if appropriate.
- Both parties may use a representative or attorney (at own expense).
- Both parties may present witnesses and examine adverse witnesses.
- A prompt written decision by a Presiding Judicial Officer.
- Appeal.

DECISION



APPEAL



Parties have the right to appeal to the circuit judicial council within 30 days of a decision.

Appendix E: Biographies of Academy Advisory Panel and Study Team Members

Panel of Academy Fellows

James Baker (Chair). Judge Jamie Baker is Director of the Syracuse University Institute for Security Policy and Law as well as a Professor at the Syracuse College of Law and the Maxwell School of Citizenship and Public Affairs. He also serves as a judge on the Data Protection Review Court.

Baker previously served as a judge and chief judge on the U.S. Court of Appeals for the Armed Forces. Baker also served as a presidentially appointed member (Obama) and Acting Chair of the Public Interest Declassification Board. As a career civil servant, Baker served as Legal Adviser and Deputy Legal Adviser to the National Security Council. He has also served as Counsel to the President's Foreign Intelligence Advisory Board and Intelligence Oversight Board, an attorney in the U.S. Department of State, an aide to Sen. Daniel Patrick Moynihan, and as a Marine Corps infantry officer. In 2017–18, Baker was the Robert E. Wilhelm Fellow at the Center for International Studies at MIT.

In addition to teaching at Syracuse University, Baker has taught at Yale, Iowa, Pittsburgh, Washington University (St. Louis), and Georgetown. He is the author of numerous articles and three books: *The Centaur's Dilemma: National Security Law for the Coming AI Revolution* (Brookings 2021); *In the Common Defense: National Security Law for Perilous Times* (Cambridge 2007); and, with Michael Reisman, *Regulating Covert Action* (Yale 1992).

Lisa Blomgren Amsler. Distinguished Professor Lisa Blomgren Amsler (formerly Bingham) has served on the faculty of Indiana University's Paul H. O'Neill School of Public and Environmental Affairs since 1992. She received her B.A. (1976 magna cum laude, double majors in Ancient Greek and Philosophy) from Smith College and her juris doctor (1979 with high honors) from the University of Connecticut School of Law. Amsler is also the Saltman Senior Scholar at the William S. Boyd School of Law, University of Nevada, Las Vegas. With more than 140 published works in law and social science, Amsler has crossed disciplines. A fellow of both the National Academy of Public Administration and Labor and Employment Relations Association, she has received national awards from different scholarly and practice communities, including the American Bar Association Section of Dispute Resolution for Outstanding Scholarly Work (2014), the International Association for Conflict Management (IACM)/Harvard Project on Negotiation Rubin Theory-to-Practice Award (2006) for research that affected practice, and the American Society for Public Administration's Dwight Waldo Award (2019) for distinguished contributions to the professional literature of public administration. Her newest book is *Dispute System Design: Preventing, Managing, and Resolving Conflict* (with Janet Martinez and Stephanie Smith, Stanford University Press 2020). In 2022, IACM gave it the Outstanding Book Award.

Richard Hoffman. Mr. Hoffman has been involved in court administration, planning, and justice system improvement in state and federal courts, the Admin. Office of the U.S. Courts, the National Center for State Courts, the U.S. Justice Department, and in sixteen countries on projects supported by USAID, the Asian Development Bank, and the World Bank. He was Executive Director, National Prison Rape Elimination Commission; Victims' Rights Compliance Coordinator, Md. Governor's Office of Crime Control and Prevention and Md. Crime Victims Resource Center; Research Associate Professor; Justice Programs Office, American University, School of Public Affairs; Principal Court Management Consultant; International Programs Division, National Center for State Courts; Director, Washington Office, The Justice Management Institute; Senior Counsel; Long Range Planning Office and Office of Program Review, Administrative Office of the U.S. Courts, where he participated in drafting the first Long Range Plan for the Federal Courts; Clerk of the Court, D.C. Court of Appeals; Chief Deputy Clerk, D.C. Court of Appeals; Trial Attorney; Executive Office for U.S. Trustees, U.S. Dept. of Justice; Attorney-Advisor, Office for Improvements in the Admin. of Justice, U.S. Dept. of Justice; Senior Staff Attorney, Washington and Boston offices, National Center for State Courts; Associate Attorney, Reavis & McGrath (now Norton Rose & Fulbright); President, Justice Strategies; Staff Attorney, Crim. Injuries Compensation., Md. Crime Victims Resource Ctr. He has received first prize awards for papers at three National Symposia on Court Administration and was National Chair of the ABA's Council of Appellate Staff Attorneys in the ABA Judicial Division.

Thomas Ross. Distinguished Fellow of Public Policy, Duke University; President, Volcker Alliance; President, University of North Carolina System; President, Davidson College; Executive Director, Z. Smith Reynolds Foundation; judge, N.C. Superior Court; Director of the Administrative Office of the Courts, State of North Carolina; Chief of Staff, Congressman Robin Britt; Attorney at Law, Smith Patterson Law Firm; Assistant Professor of Public Law and Government, University of North Carolina at Chapel Hill School of Government.

Ronald Sanders. A 2006 Fellow of the National Academy of Public Administration, Ronald has over four decades of service in the U.S. federal government, twenty-one of those years as a senior career executive and the last three as a political appointee. Senior Executive Service (SES) positions include Deputy Director of Civilian Personnel for the U.S. Air Force; Director of Civilian Personnel for the U.S. Department of Defense; Chief HR Officer for the U.S. Internal Revenue Service; Associate Director of the U.S. Office of Personnel Management; Associate Director of U.S. National Intelligence for Human Capital; and lastly, Chair of the U.S. Federal Salary Council. In the process, he has earned three Presidential Rank Awards (from three different agencies) and numerous other honors, including an Innovations in American Government award from Harvard University's Kennedy School of Government. In addition, he was Vice President and Fellow with a large, international consulting firm; the director of a university's school of public affairs, as well as the director of research centers for two other major universities; and the staff director of a state's cybersecurity center. With a doctorate in public administration from the George Washington University (and a Senior Fellow with its Center for Excellence in Public Leadership, which he

helped co-found in 1996), he is also on the National Council of the American Society of Public Administration, and is on the boards of the National Intelligence University Foundation and a private company, Management Concepts.

Academy Study Team

Brenna Isman, Director of Academy Studies. Ms. Isman has worked for the Academy since 2008 and provides oversight across the Academy's studies. She recently served as the Project Director for the Academy's project that assisted a national regulatory and oversight board in developing and implementing its strategic plan. She also recently directed the Academy's statutorily required assessments of the NASA's use of its Advisory Council and the Environmental Protection Agency's practices for determining the affordability of regulatory mandates, as well as the Academy's organizational assessments of the U.S. State Department's Office of Inspector General and the Amtrak Office of the Inspector General. Ms. Isman has served as a Senior Advisor on strategic plan development for the Postal Regulatory Commission (PRC) and Social Security Administration (SSA), and organizational change consulting support for the Coast Guard. Her prior consulting experience includes both public- and private-sector clients in the areas of communication strategy, performance management, and organizational development. Prior to joining the Academy, Ms. Isman was a Senior Consultant for the Ambit Group and a Consultant with Mercer Human Resource Consulting facilitating effective organizational change and process improvement. She holds an MBA from American University and a Bachelor of Science in Human Resource Management from the University of Delaware.

Roger Kodat, Senior Project Director. Mr. Kodat has led forty projects for the Academy. He brings twenty years of commercial and investment banking experience with JPMorgan Chase, and six years of senior-level federal government experience at the Department of the Treasury. Appointed by President George W. Bush in 2001 to serve as Deputy Assistant Secretary of Treasury, he was responsible for federal financial policy. Some of his tasks at Treasury included policy formulation for the 2006 Postal Accountability and Enhancement Act; rule making and oversight of federal loan and loan guarantee programs; and management of the Federal Financing Bank (a \$32 billion bank at that time). Mr. Kodat holds a BS in Education from Northwestern University and both an MBA in Finance and Master of Arts in Political Science from Indiana University.

Jesse Roth, Senior Advisor. Mr. Roth has thirty-six years of program review experience in the federal government. He had responsibility for reviews of several large, sensitive programs/operations in the intelligence community and was able to achieve improved program efficiency and effectiveness on each. The programs he reviewed included personnel processes, field operations and activities, procurement, finance and information technology. Mr. Roth often had responsibility for briefing senior management on the results of his work including the Agency

Director, Deputy Director, General Counsel as well as briefing senior members of Congress and testifying before congressional committees. Mr. Roth holds both a Bachelor's Degree in Business Administration from the University of Iowa and a Master's in Administration from Central Michigan University.

Kelly Spear, Senior Advisor. Ms. Spear is an economist with a passion for public service. She spent seven years working as an international business consultant at The Cohen Group, helping clients navigate the intersection of policy and business. Most recently, she consulted with Georgetown University's Beeck Center to analyze efforts to improve delivery of the social safety net and identify potential behavioral and economic barriers to digitization. Ms. Spear received her B.A. from Boston College, and a Master's Degree in International Economics from Johns Hopkins University. She has taught high school and college economics, speaks four languages, and loves to rock climb.

Kate Connor, Senior Research Analyst. Ms. Connor joined the Academy in 2018 as a Research Analyst and has served on several Academy studies, including work for the Agricultural Research Service, U.S. Department of Commerce Office of Inspector General, and the Defense Nuclear Facilities Safety Board. She currently serves on the Navy Working Capital Fund Study. Prior to joining the Academy, she served as a Public Policy and Government Relations Intern with the American Association of University Women and as an intern on the U.S. Senate Committee on the Budget. Ms. Connor taught high school social studies for several years before graduating from Georgetown University with a Master's in Public Policy. Ms. Connor also holds a BA in History and Political Science and a Master's in Teaching from the University of North Carolina at Chapel Hill.

Erika Cintron, Senior Research Associate. Ms. Cintron joined the Academy as a Research Associate in February 2023. She has served on studies for the Federal Aviation Agency, the National Science Foundation and the National Institutes of Health. Ms. Cintron graduated from the University of Florida with a Master's in Latin American Studies and BA in Political Science and International Studies.

Jonas Yee, Senior Research Associate. Mr. Yee joined the Academy as a Research Associate in December 2022. He has served on studies for the USDA Farm Production and Conservation Business Center and the U.S. Department of Health and Human Services. Jonas graduated from the University of California, Los Angeles with a BA in Political Science and a minor in Global Studies.

Appendix F: List of Plan Elements Reviewed and Coded in Database

The plan database contains one row for each plan change, including significant changes, clarifications, and tailoring. For court of appeals plans and FPDO circuit plans, the plan “change” is a modification or edit with respect to the relevant Model Plan. For district/bankruptcy court and local FPDO plans, the change is with respect to the relevant circuit plan.

The specific elements in the database are:

- **Plan:** name of court(s)/office(s) covered by the plan.
- **Page:** page number of the change in the local plan.
- **Section/subsection/paragraph:** the section, subsection, and paragraph numbers identifying the specific section of the plan changed. Section, subsection, and paragraph identifiers noted here correspond to the plan being coded. (Some plans modify the section numbers used in the Model Plans.)
- **Section title/subsection title/paragraph title:** title of the section, subsection, and/or paragraph that has been changed.
- **Summary:** a brief narrative summarizing the change.
- **Local language:** the exact language used in the local plan. This is the language used in a district/bankruptcy/local FPDO plan when a district/bankruptcy/local FPDO plan is being coded. This is the language used in a circuit plan when the circuit plan is being coded.
- **Circuit/Model language:** the exact language used in the relevant circuit plan (when the plan being coded is a district/bankruptcy/local FPDO plan) or relevant Model Plan (when the plan being coded is a circuit plan).
- **Circuit/Model section page notes:** notes on where the original language can be found in the relevant circuit or Model Plan.

Same as Model Plan: for district/bankruptcy/local FPDOs, when the local plan has changed language in the relevant circuit plan, this element captures whether the language used in the local plan is the same as the language originally used in the relevant Model Plan.

Appendix G: Interview Questions for Specific Groups Within FJC's Education Division

Types of Training, Topics of Training, and Training Audience

1. What types of trainings does your group provide? Who is your audience?
2. How do you determine the specific topics to be covered in your educational programs and other products (podcasts, webinars, etc.)? Is there an advisory group you work with? Do you coordinate with anyone else—e.g., the OJI, circuit DWRs, others? For workplace conduct issues specifically, are these topics integrated into more general programs, do they have their own distinct trainings, or is there a mixture of both?
3. What format do you use for your trainings (i.e., in person, online resources, different types of seminars or workshops, podcasts, videos, etc.)? How do you determine which format to use for a given training?
4. In general, how frequently do you update programs or content related to workplace conduct or add new programs or content? Are there programs that you have discontinued or substantially changed in recent years?

Attendees – Communication/Outreach, Participation, and Feedback

1. Do you track attendance? How do you use that information? How would you generally assess participation in your programs?
2. How have online resources, such as videos and podcasts, affected training accessibility and participation? Is there any data on this and if so, can you share it with us?
3. When we spoke with the FJC Education Division Director, she mentioned that the Education Division normally asks for feedback after each program. Does your group analyze those evaluations? Have you received any feedback of relevance to training on workplace conduct issues?
4. How do you notify your prospective attendees/audience of new training opportunities, podcasts, etc. in this area?

Follow Up and Conclusion

1. We understand that your division often incorporates workplace conduct issues into training programs that are focused on other topics. Would you be able to provide us with the name(s) of your programs that incorporate workplace conduct topics?
2. Is there anything we haven't asked about that you think is important for us to know to understand the FJC's trainings on workplace conduct?

Appendix H: Questions for First and Second Interviews with Judicial Integrity Officer and Circuit Directors of Workplace Relations

I. Interviews with OJI Director

A. Questions for Preliminary/Background Interview

1. We read about the role of the national Office of Judicial integrity on uscourts.gov and in the Model Plan. It would be helpful for us, though, for you to provide an overview of your position and the responsibilities and work of the OJI.
2. How is OJI situated within the Administrative Office? To whom do you and your office report?
3. We are also interested in how OJI works with the Directors of Workplace Relations (DWRs). What are the formal/informal channels of communication and interaction?
4. Can you tell us about your interactions with the Employment Dispute Resolution (EDR) coordinators?
5. For Task # 1 of our project, we have downloaded the EDR plans from the local court and FDO websites and are comparing them to the model plan to identify any significant variations.
 - Does OJI have a central repository for all local EDR plans, and any process for noting or evaluating local plan variations?
 - What do you think might be some significant differences between the local plans?
 - Do you think the DWRs might be a good source to help us understand what variation might exist and why?
6. Another part of our project (Task #3) is documenting national and local training related to workplace conduct.
 - Does the OJI provide training materials or any direct training on workplace conduct?
 - To identify local efforts, would the DWRs be good contacts? Who else might be?
7. We'd also be interested in any documents or data you think would be particularly helpful for us to review as we move forward in this study.

B. Questions for Second/Follow-up Interview

Training

1. Your office's website indicates that you or a DWR can create tailored training programs for various kinds of employees upon request from individual courts units and offices. How frequently does your office do these kinds of trainings? What topics have you covered in them, and what formats have you used?
2. Can you tell us more about your office's role in training FPDO employees, and the kinds of training you provide to them?

3. You also mentioned to us that your office was in the process of developing investigations training. Can you tell us more about that—i.e., the current status, intended audience, and the format in which it will be available?
4. Are there any additional types of training that you are contemplating?
5. One of the recommendations in the 2022 Working Group report was to strengthen annual EDR training by requiring courts and offices to not only ensure that training is available but to require their employees to complete such training. Can you let us know the status of that recommendation? What can you tell us about the status of other Working Group recommendations?

Federal Public Defender Offices

1. We have reviewed the plans and websites of federal defender offices. Many of them, as you probably know, follow the Model FPDO Plan or are covered by their circuit's FPDO plan. A lot of them do not have any information on their websites about the EDR plan and process, so we don't feel like we have a full picture of how FPDOs fit into the EDR process overall. Can you tell us more about this?

Your Annual Report and Overall Data Collection and Monitoring of the EDR Program

1. With regard to your annual report on the judiciary workplace:
 - 1.1. Do you have any update on when that report might be approved for release?
 - 1.2. Did you receive EDR data (as specified in the *Guide*) from every court and FPDO?
 - 1.3. Are there any general observations you can share with us that you made based on the data collected for this report?
2. Does your office collect any data from courts and offices beyond that required by the *Guide to Judiciary Policy*?
 - 2.1. If so, please describe.
 - 2.2. Are there additional pieces of data that you think should be collected to evaluate the successes and challenges of judiciary workplace policies and programs?
 - 2.3. We are aware that one of the recommendations from the 2022 Working Group report was that the judiciary also collect anonymized data about the number of Informal Advice contacts received by OJI and the DWRs. Do you know the status of this recommendation? Do you know why the recommendation did not extend to the number of informal advice contacts received by EDR Coordinators?
 - 2.4. Are there additional pieces of data that you think should be collected to evaluate the successes and challenges of judiciary workplace policies and programs?
 - 2.5. The 2022 Working Group report also recommended the development of a system for regular review of the judiciary's workplace conduct policies to ensure comprehensive implementation across courts and circuits. What do you envision such a system would entail, and what would be the role of your office?

Advising Employees of their Rights/Outreach

1. According to the Model Plan, individual courts/offices advise employees of their rights by posting EDR information on their websites and in the workplace, providing a copy of the EDR plan to new employees, and conducting annual training. Given the role of court

websites as a resource for employees seeking information about the EDR process, how do you think the judiciary can ensure that individual courts/offices have complete and up-to-date information about EDR on their websites (for instance, making sure that the most current version of the court's EDR plan is posted, EDR Coordinator/DWR/OJI contact information is easily accessible and up-to-date, etc.)?

Reflections on Workplace Plan and Processes

1. Reflecting overall on the judiciary's workplace plan and processes, what do you perceive as the most successful aspects?
2. Similarly, what are the greatest challenges relating to the workplace plan and processes?
3. Do you think the workplace plan and processes differentially advantage or disadvantage certain categories of employees? If so, which categories, and in what ways are they advantaged or disadvantaged?
4. Relatedly, are there allowable remedies under the plan that may be more difficult for courts/offices to implement for certain categories of employees? Have you received feedback from any courts/offices about challenges they've faced in implementing any allowable remedies? Have any solutions to those challenges been considered?
5. Are there additional modifications to the workplace program that you think would be beneficial? If so, what are they?

Wrap-Up

1. Is there anything we haven't asked about that you think is important for us to know for purposes of our study?

II. Interviews with Circuit Directors of Workplace Relations

A. Questions for Preliminary/Background Interviews

1. Can you tell us about your background prior to becoming a circuit DWR?
2. We have read about the role of the circuit DWR on uscourts.gov and in your circuit's EDR plan. It would be helpful for us, though, for you to provide an overview of your position—what your responsibilities are and the specific work you do. We understand that can vary across DWRs.
3. Do EDR and workplace relations issues take up all of your work time, or do you have any other responsibilities?
4. Can you tell us about the structure of your office? That is, to whom do you report and does anyone report directly to you? If so, what are their roles?
5. We are also interested in the interactions between the OJI and the DWRs. What are the formal/informal channels of communication and interaction?
6. Similarly, in what ways do you interact with the EDR coordinators in the districts within your circuit?
7. Are there any other offices or staff within or outside your circuit that you regularly interact with? If so, please describe.

8. For Task # 1 of our project, we have obtained copies of the EDR plans for all of the circuits, districts, and FD offices. We are examining differences between the circuit plans and the model plans, as well as comparing district plans to the model plan and to their respective circuit EDR plans to identify any significant variations.
 - For your circuit’s plan, are there any significant changes from the model plan that you think we should be aware of?
 - For the districts within your circuit, are you aware of any courts that have adopted local plans that vary in substantive or significant ways from the circuit plan?
9. Does your office provide training on EDR matters to the circuit or the district courts within your circuit? If so, please describe the kinds of training your office provides and to whom.
10. Do you advise on use of any training programs from outside your circuit, such as from the OJI or FJC? If so, please describe.
11. Do you belong to any circuit- or district-level advisory groups or other groups that focus on EDR issues?
12. Does your office collect any EDR-related data from within your circuit? If so, please describe.
13. We’d also be interested in any documents or data you think would be particularly helpful for us to review as we move forward in this study.

B. Questions for Second/Follow-up Interviews

EDR Plans and Implementation

1. In our initial interview with you, you mentioned that the [NAME OF CIRCUIT] Court of Appeals EDR Plan [has quite a few variations from the Model Plan/essentially adopts the Model EDR Plan]. [For those that had significant differences, name those identified in earlier interview and/or our plan review.]
 - a. Are those still the differences you consider most significant?
 - b. Are there other differences that have come to your attention since we last spoke?
 - c. Which differences do you think are the most impactful, and why?
2. We have also compared the EDR plans of the local courts and offices within each circuit to both the Model Plan and the circuit-level plan. [Note whether most courts and offices followed circuit plan; name any that appear to be potentially substantive differences]. Would you say that any of the variations from the Model Plan are significant or substantive?
3. Are there specific aspects of your circuit-level EDR Plan as used in your circuit and local court/offices that you think, or that you have heard from others, have been particularly *beneficial* for employees compared to what you know about the processes that were in place prior to adoption of the current Model EDR Plan? If so, what are these and how have they benefited employees or the overall workplace culture?
4. Are there *limitations or challenges* of the current EDR Plan or processes that you have perceived, either for employees or those who administer the plan and its processes (including yourself, EDR Coordinators, PJOs, etc.)? If so, what are they? Do you have any suggestions about how any challenges could be addressed?
5. Do you think the EDR plan and processes work better (or worse) for different types of employees? In other words, does the EDR plan, or do certain aspects of the EDR process,

advantage or disadvantage some types of employees compared to others? Is it easier (or more difficult) for certain types of employees to use the process, or find a satisfactory remedy? If so, please describe.

6. If you could propose any improvements to the Model EDR Plan for courts, what would you recommend and why?
7. What is your impression of how the FPDO plan are working in your circuit?
8. Our study is also looking to identify individual court policies or practices related to the workplace conduct (broader than the EDR Plan) that other courts or offices might benefit from learning about.
 - a. Can you describe any policies or practices that may be unique to your circuit, or to any local courts or offices within your circuit, that you think might be useful for other courts or offices?
 - b. Based on your regular interactions with other DWRs, are there any policies or practices that other circuits, districts, or offices are using that you think are noteworthy?

Options for Resolution and Related Processes

1. Each DWR seems to have different responsibilities and to interact with the local courts and offices within their circuit somewhat differently. In general, how would you describe those who most frequently reach out to you for Informal Advice (e.g., what courts or offices they're from, which types of employees you most frequently hear from (nonsupervisory employees, managers, judges))?
2. Do you have any involvement with Assisted Resolutions or Formal Complaints, either at the circuit or local court/office level? Do you ever serve as an alternate EDR Coordinator?
3. On average, how many new contacts does your office receive per month?
 - a. What is the rough breakdown/percentage among requests for Informal Advice, Assisted Resolution, and Formal Complaints that come to your office?
 - b. When you handle a process for a local court or office, how does the information about that get reported to OJI?
4. When a local court or office in your circuit has a need for an investigation or mediation related to an EDR matter, do you normally get involved with those, or are they handled at the local level?
5. We've heard from a number of DWRs and circuit executives that, due at least in part to confidentiality concerns, data collection about the EDR program is limited and DWRs have to rely primarily on feedback from EDR Coordinators and other anecdotal evidence to assess program effectiveness.
 - a. Do you share those confidentiality concerns about data collection?
 - b. Can you talk us through the confidentiality concerns you are aware of, and how they impact data collection?
 - c. As you are aware, the judiciary's Workplace Conduct Working Group has proposed that information be collected about the number of Informal Advice contacts received by the circuit DWRs and OJI.
 - What are your thoughts about that recommendation?
 - Do you think it would make sense to collect similar information about contacts that EDR Coordinators receive? Why or why not?

6. Is there any other information that you think could be collected—nationally, or more locally—that would help in evaluating the effectiveness of the EDR program without violating privacy and confidentiality concerns?
7. In the section on data reporting, the current Model Plan says that courts should annually provide four specific pieces of information to OJI, but additionally that “Courts and Employing Offices should also provide any information that may be helpful in identifying the conditions that may have enabled wrongful conduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its recurrence.”
 - a. Have you received or reported information of this kind?
 - b. Do you have any ideas about how this kind of information could be collected in a systematic way?

Training

In our first meeting with you, we talked about the kinds of training you were doing. We just have a few follow-up questions about training.

1. Do you provide workplace conduct/EDR training for FPDOs within your circuit.
 - a. If so, what kinds of training do you provide, and how frequently?
2. Are the EDR Coordinators in your circuit trained in mediation? Or do you have separate mediators who step in when mediation is requested?
 - a. Who provides training for mediators?
3. Are the EDR Coordinators in your circuit trained in conducting investigations?
 - a. If so, who provides this training?
4. Are there any additional trainings that currently don’t exist—on particular topics or for specific audiences—that you think would be helpful? If so, what would those be, and would they be provided at the national level, or more locally?
5. We understand that the Model EDR Plan requires that training be provided to all judges and employees, but participation is not mandatory. The judiciary’s Workplace Conduct Working Group has recommended that the Model Plan be revised to make clear that courts and offices have a responsibility to ensure that judges and other employees complete annual training, and some circuits have made training mandatory, or are considering doing this. Has your circuit considered making training mandatory, and do you have ideas about how this would be implemented in your circuit?

Outreach to Employees About the EDR Process and Their Rights Under it

1. Where do you think most employees in your circuit get information about their rights and responsibilities under the EDR Plan?
2. Given the role of court websites as a resource for employees seeking information about the EDR process, how do you think the judiciary can ensure that individual courts/offices have complete and up-to-date information about EDR on their websites (for instance, making sure that the most current version of the court’s EDR plan is posted, EDR Coordinator/DWR/OJI contact information is easily accessible and up-to-date, etc.)?

Wrap Up

1. Is there anything we haven’t asked about any of the topics we’ve discussed today that you think we should know about?

Appendix I: Interview Questions for Circuit Executives

A. Role of Circuit Executive and Other Circuit-level EDR Decision Makers

- 1) As circuit executive, what is your role with respect to workplace and EDR issues in your circuit?
- 2) Could you describe the role and responsibilities of the circuit DWR? Does the DWR report to you?
- 3) Who else—people, committees, groups—is involved with workplace and EDR issues at the circuit level, and what are their roles?

B. Adoption of Circuit EDR Plan and Establishment of DWR Office

- 1) Please tell us about the process of adopting your circuit's EDR plan. Who was involved, and what was the process for deciding what the final plan would look like?
- 2) From our plan review, it seems that your circuit [made relatively few changes from the Model Plan/made quite a few changes from the Model Plan]. Is this accurate? Can you explain why you made [few/many] changes?
- 3) Please tell us about the process of adopting your circuit's Request for Review of Decision (Appeal) Procedures to accompany the EDR Plan. Who was involved in drafting and making final decisions about their adoption?
- 4) Please describe the process your circuit went through in establishing the DWR Office and hiring your DWR. Who was involved, and what qualifications and experience did you look for from applicants? Have the DWR duties evolved at all over time? If so, how?

C. EDR Coordinators

- 1) Who is involved in selecting your court of appeals' EDR Coordinator(s), and what qualifications and experience are considered in making these selections?

D. EDR Data Collection and Dissemination

- 1) Aside from the data reported to OJI annually, are there additional types of information that you believe would be beneficial to collect, either nationally or at the circuit, district, or court unit level, to monitor the success of EDR programs?
- 2) In general, how do you think judiciary EDR programs should be evaluated for effectiveness?
- 3) Your circuit's Plan provides that final decisions under the Plan are to be made available to the public upon written request to the clerk's office.
Has your circuit had such requests under the court of appeals plan, and if so, how and where are these decisions made public?
[If your circuit has not done this, why not?]
level or at the individual court or office level?

E. Evaluation of Your Circuit's EDR Plan

- 1) Do you have a role in evaluating the efficacy of workplace conduct policies and procedures in your circuit?

- a) If so, what is your evaluation process and what metrics do you track?
- b) If not, who is responsible for monitoring and evaluating how the EDR program is implemented in your circuit?
- 2) Do you think the EDR Plan is working well in your circuit?
- 3) What are the benefits and challenges of the Plan that you perceive?
- 4) Have you received any positive feedback from employees?
- 5) Have you been made aware of any problems? If so, what are they?
- 6) Are there any changes or updates to the Plan or process under consideration? If so, can you share these with us and explain why they are being considered?

F. **Wrap-up/Final Question**

- 1) Is there anything else that you would like us to know about the EDR program in your circuit?

Appendix J: Interview Questions for Select Judge Members of Active Workplace Conduct Committees

1. Based on our review and coding of plan of your circuit's plan, your circuit appears to [have made several substantive changes from the Model Plan/adopted the Model Plan with few modifications] [These include: NAME CHANGES

Can you tell us which of these changes you think are the most significant, and why your committee decided to make them?

Are there other changes we didn't mention that you think are significant?]

OR [if few modifications]

[Can you recall why that was the case?]

2. From your perspective, did the implementation of the circuit plan go smoothly, or did you encounter some problems? If you encountered problems, what were they and how did your circuit address them?
3. Is your committee involved in evaluating the impact of the EDR plan? If so, how do you approach this, and what have you been able to learn?
4. In your capacities as a members of the EDR/Workplace Relations Committee, have you gotten feedback, formally or informally, from other judges about the EDR Plan? If so, can you share the general nature of that feedback?
5. Now that your circuit has had several years of experience with the EDR Plan, are there any changes you might suggest, or that perhaps your committee is pursuing? If so, what are those changes and why do you think they are necessary?
6. Throughout our data collection for this study, some people have expressed concern about whether certain employees, particularly law clerks, feel comfortable coming forward with EDR matters, or don't want to go beyond the informal advice process, because of fears of retaliation or a belief that there would not be an appropriate remedy. Do you agree with this concern? If so, do you have any ideas about whether there is anything further that can be done, either within or outside the context of the Model Plan, to address these concerns?

Is there anything else we haven't discussed that you think is important for us to know about your circuit's committee, EDR plan, or other related issues?

Appendix K: Focus Group Questions for EDR Coordinators and for Chief District and Bankruptcy Judges

I. EDR Coordinator Focus Groups

Participants introduce themselves—name, court or Defender Office, primary job, how long they have been an EDR Coordinator.

Topic 1: Your Role and Responsibilities as EDR Coordinator

- For each of you, what does being an EDR Coordinator involve?—that is, How would you describe your role and responsibilities as an EDR Coordinator?
- How much time do you spend on your responsibilities as EDR Coordinator in a typical month? Which responsibilities do you spend the most time on?
- Do you feel that you have enough time to perform both your regular job duties and your EDR Coordinator duties? Is there anything that could be done to help you carry out your EDR Coordinator duties more effectively?

Topic 2: Training and Outreach

Part 1: Your Training

- What training have you received to be an EDR Coordinator, and do you think it has been sufficient? Are there improvements you could suggest?

Part 2: Training for Employees

- What training do employees in your court [FPDOs: office] receive about EDR/workplace conduct? Who provides it, and what is the format (in person, online, other)?
- Do all employees receive training? Is it mandatory for any employees? Does your court/office track attendance?
- In addition to formal training, how do employees in your court/office learn about the EDR process and options they can pursue to address wrongful conduct?
- How well do you think current training and outreach efforts are working? Do you have suggestions for improving training or outreach?

Topic 3: Options for Resolution

- Roughly what percentage of your interactions with employees in your role as EDR Coordinator relate to Informal Advice, as opposed to the more formal processes?
- Are there certain options for resolution that you generally handle on your own? Are there certain options for resolution that involve working with or seeking advice from anyone else?
- Overall, how do you think the options for resolution are working for employees?

- How are they working for you and others who are administering them? Do you face any specific challenges as an EDR Coordinator in guiding employees through any of the options for resolution?
- Is there anything related to the EDR processes that is working particularly well?
- Are there aspects of any of the processes that you think aren't working well?

Topic 4: The Current EDR Plan

- Are there any aspects of your court's/office's EDR Plan that you think are particularly helpful to employees?
- Are there any aspects of your court's/office's EDR Plan that seem to be unclear or confusing to employees?
- Are there categories of employees for whom the EDR Plan seems to be more, or less, beneficial than it is for others?
- Are there any aspects of the Plan that are difficult for you as EDR Coordinator, or others in your court/office with responsibilities under the Plan, to implement in practice?

Topic 5: EDR Data Collection and Dissemination

- We understand that courts and employing offices are required to report certain data about EDR matters to the AO on an annual basis.
 - What is your role in collecting and reporting data about EDR matters?
 - What data do you collect?
 - Do you share data on EDR matters with anyone besides the AO (for instance, anyone at the circuit level)?
- Do you collect information about the matters you work on beyond the data you are required to report to the AO? If so, what do you collect and how do you use that information?
- Is there any other information or data that you think would be beneficial to collect and/or report to monitor the effectiveness of EDR programs?

Wrap-Up Question

- Is there anything else that you would like us to know about the EDR program or your general experiences as an EDR Coordinator?

II. Chief District and Bankruptcy Judge Focus Groups

Topic 1: Adoption and Implementation of Your Court's EDR Plan

- Were you involved in your court's decision as to whether to adopt your circuit plan as a whole or to make modifications?
 - If not, who made this decision? If so, who else was involved in making this decision?

- For those who were involved in the decision-making process, can you discuss the considerations that went into deciding whether to adopt the circuit plan, and whether your district made any substantive changes from that plan?
- Aside from substantive changes, were there clarifications of the plan provisions that your court thought was necessary? If so, what were they?
- How did the implementation of your court’s plan go?
 - If you encountered challenges, what were they, and how did you address them?

Topic 2: Your Responsibilities as Chief Judge Under the EDR Plan

- How much time do you spend in a typical month on your responsibilities related to the EDR plan and processes?
- Did you receive any training or educational materials related to your role with respect to the EDR plan and process? If so, please describe.
 - Were those materials sufficient?
 - Is there additional information or training that would be helpful?
- How do you go about appointing your court’s EDR Coordinators? What qualities and experience do you look for?
- Concerns have been raised about supervisors or HR staff being appointed EDR Coordinators because of possible conflicts of interest. What do you think of those concerns?
 - Would your court be able to appoint suitable EDR Coordinators if HR employees and supervisors were not options?
 - What do you think of having multiple EDR Coordinators from different court units—is that feasible in your court, if you don’t do that already?

Under the Model Plan, chief district and bankruptcy judges have certain specified responsibilities, including:

- Determining appropriate interim relief, if any, when an employee pursuing an EDR matter alleges egregious conduct that makes it untenable to continue; working for a supervisor, unit executive, or judge;
- Coordinating the Assisted Resolution process, or taking other appropriate actions, if the allegations involve a judge;
- In Assisted Resolution, assessing allegations concerning the conduct of a unit executive, and addressing the matter as appropriate;
- In their discretion, denying a request for Assisted Resolution for reasons enumerated in the Plan;
- In their discretion, granting an extension for good cause to the deadline for filing a Formal Complaint;
- Appointing the presiding judicial officer (PJO) when there is a Formal Complaint filed against a judge;

- Determining, on request of a party, whether the EDR Coordinator or PJO in a Formal Complaint process should be disqualified, and if so, appointing a replacement;
- Determining whether to extend the deadline for a PJO to issue a written decision on a Formal Complaint;
- Determining whether to approve a written settlement agreement approved by the parties; and
- In conjunction with the employing office (Respondent), taking appropriate action to carry out the remedies in a written decision of the PJO, subject to any applicable policies or procedures
- What do you see as the benefits and drawbacks of the chief judge having any or all of these responsibilities? [Note: we do not want you to divulge any details of particular EDR matters in discussing these]
 - Are there any of these responsibilities that you think have been, or could be, difficult to implement because of specific characteristics of your court? If so, what are those, and what do you think could be done differently for courts like yours?
- Without going into identifying details, have any of you had experience with the Assisted Resolution process? If so, what have your experiences been as far as how that process works? Do you have any suggestions for improvement of the process?
- Do you believe that the options for interim relief and available remedies under the Plan are sufficient?
- What are your views about the proposals that PJOs must come from a) another division, or b) outside the district?

Topic 3: How the EDR Plan is Working in Your Court

- Overall, how do you think the current EDR plan is working in your court? What do you see as the benefits and drawbacks of the plan?
- Are there changes you would suggest to the EDR Plan? If so, what are they?
- In your view, is the training made available to judges, supervisors, and court employees adequate?
 - If not, what additional training do you think is needed?
 - Is training mandatory in your court? If so, is that true for employees, supervisors, and judges?
 - Do you think the plan should make training mandatory for employees, supervisors, and/or judges?
- Have you gotten any feedback from other judges about their views about or experiences with the plan?
 - If so, what is the nature of that feedback?
 - Have you received any feedback from PJOs?

- Does your court do anything to monitor the success of the plan in your court? If so, please describe.
- How do you think the success of EDR plans can best be evaluated?
 - Is there any information that you don't currently have that would be helpful to you?
 - Do you have any concerns about the collection of EDR-related data?

We've heard from others that judges' buy-in is important to setting the tone in a court that EDR matters/creating an exemplary workplace should be taken seriously.

- What are your thoughts on this?
- What do you think chief judges can do to set an appropriate tone?
- Do you see any obstacles to doing this?

Wrap-Up Question

Is there anything else you would like us to know about the EDR plan and process in your court, or about your role as chief judge with respect to the plan?

Appendix L: List of Website Elements Reviewed and Coded in Website Database

The website database contains one row for each court or FPDO website.

The specific elements in the database are:¹

- Name of the court/office.

Homepage links

- Whether there is a link labeled “Your Employee Rights and How to Report Wrongful Conduct” on the homepage.
- If there is a link(s) to EDR/workplace conduct information on the homepage, but it is not labeled “Your Employee Rights and How to Report Wrongful Conduct,” the label of the link(s).
- Observations about the link(s) to EDR/workplace conduct information located on the homepage (for example, if the link is particularly prominent, if the link is hard to find, etc.).
- Whether there are multiple links to EDR/workplace conduct information on the homepage.

Links elsewhere on website

- Whether there is a link labeled “Your Employee Rights and How to Report Wrongful Conduct” anywhere else on the website, besides the homepage.
- The label(s) of any link(s) to EDR/workplace conduct information on the website, but not on the homepage and not labeled “Your Employee Rights and How to Report Wrongful Conduct.”
- Observations about the link(s) to EDR/workplace conduct information located elsewhere on the website (besides the homepage).

EDR/Workplace Conduct Webpages

- The URL of any EDR/workplace conduct-specific webpages on the sites.

Required Information (Guide to Judiciary Policy vol. 12, ch. 2, § 225(d)(5))

- Whether the website posts or directly links to:
 - The court/office’s EDR Plan.
 - The Judicial Conduct and Disability Act.
 - The Rules for Judicial-Conduct and Judicial-Disability Proceedings.
 - The Judicial Conduct and Disability Complaint form.
 - Contact information (name, phone number, email address) for:
 - The court/office’s EDR Coordinators.
 - The circuit Director of Workplace Relations.
 - The national Office of Judicial Integrity.
- Whether all required information is on the same webpage.
- Whether the contact information provided is up to date, as compared to the judiciary’s online directory (InfoWeb, accessible on the judiciary’s intranet).

1. A detailed codebook is on file with the FJC.

Other Materials

- URL of any grievance plan, adverse action plan, or other plan which details procedures for resolving any employee disputes, complaints, claims, of disparate treatment, etc. that are distinct from the EDR Plan.
- Whether the website includes other EDR, workplace conduct, or workplace relations materials besides the minimum requirements specified in the *Guide*, and a description of those materials.

Observations

- Comments on positive and negative aspects of included materials, how easy it is to find workplace conduct information, the organization of the information, etc.
- Whether any webpages or materials included on the website would be useful as examples.

Appendix M: Summary of Plan Adoption and Modifications

Court Plans in the Regional Circuits

First Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Added some clarifying language about who must be notified and who is responsible for coordinating Assisted Resolution when the allegations concern the conduct of a judge; who must be given a copy of the written decision when a judge is the subject of a Formal Complaint; edited some language to tailor the plan to the court of appeals. Otherwise adopted the Model Plan.</p>	<ul style="list-style-type: none"> • 7 plans across 10 courts. • 6 of the 7 plans made minor nonsubstantive edits, but otherwise adopted either the Model Plan or the circuit plan (which is the Model Plan with clarifying language added on two points). • 1 plan expanded language about confidentiality, including different levels of confidentiality employee can expect for different Options for Resolution under the Plan; required the PJO to be from outside the district and modified some sections of the Plan accordingly.

Second Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Adopted the Model Plan without modification.</p>	<ul style="list-style-type: none"> • 9 plans across 12 courts. • 8 of the 9 plans made minor nonsubstantive edits, but otherwise adopted the Model/circuit plan. • 1 plan made a number of changes that may have been aimed at tailoring the plan to the court, but in some circumstances affect the process.

Third Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Added some clarifying language about who must be notified and who is responsible for coordinating Assisted Resolution when the allegations concern the conduct of a judge; edited some language to tailor the plan to the court of appeals. Otherwise adopted the Model Plan.</p>	<ul style="list-style-type: none"> • 8 plans across 11 courts.¹ • 7 of the 8 made minor nonsubstantive edits, but otherwise adopted either the Model Plan or the circuit plan (which is the Model Plan with some clarifying language). (1 of these consolidated plans clarified throughout when and how the chief district judge versus the chief bankruptcy judge is involved in points of the process.) • 1 plan changed the Model Plan’s provision requiring use of Assisted Resolution before filing a Formal Complaint alleging abusive conduct to requiring use of Assisted Resolution before filing a Formal Complaint alleging wrongful conduct.

¹ The U.S. District Court of the Virgin Islands has jurisdiction over bankruptcy cases in the U.S. Virgin Islands. There is not a separate bankruptcy court in the U.S. Virgin Islands.

Fourth Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Made a number of changes to the Model Plan, including nonsubstantive clarifications such as stating that performance management discussions should be handled professionally and respectfully, that wrongful conduct does not have to meet the legal standard of discrimination, discriminatory harassment, or abusive conduct to be addressed under the plan, or encouraging prompt reporting; changing that employees who learn of “evidence” of wrongful conduct to “information regarding” wrongful conduct are encouraged to take action; adding a provision regarding consolidating multiple reports of wrongful conduct; clarifying that circuit mediator, DWR, and chief judge may share information; adding language about protecting privileged information; clarifying</p>	<ul style="list-style-type: none"> • 13 plans across 18 courts. • 2 plans adopted the Model Plan without substantive modification, but with minor edits. • 10 plans adopted the circuit plan, some with clarifications and edits, but largely without substantive changes. 3 of these plans added that the PJO should be from a division other than the one in which the complaint arose when possible. 2 of these plans added that, when determining common issues of fact when a judge is the subject of both an EDR Complaint and a JC&D complaint, common issues cannot be addressed and disposed of in the EDR Complaint prior to their being addressed and disposed of in the JC&D proceeding, unless otherwise ordered by the chief circuit judge. 6 of these plans changed

that any involved persons may consult or obtain representation by an attorney, but such attorney cannot participate in EDR proceedings; adding a provision encouraging those overseeing Assisted Resolution to allow the subject of a complaint the opportunity to be heard; adding a provision that mediation participants must sign an Agreement to Mediate form that outlines the confidentiality of the mediation process; clarifying that a denial of a Request for Assisted Resolution does not preclude an employee from filing a Formal Complaint; adding a provision to clarify who acts on the behalf of the employing office when two chambers staff are the complainant and subject of a Formal Complaint; changing the Model Plan's provision stating that if a judge is the subject of an EDR claim and a claim under the Judicial Conduct and Disability Act, the chief circuit judge may hold either claim in abeyance instead of holding the EDR claim in abeyance; adding a provision allowing a unit executive to request a stay of up to 30 days to address the wrongful conduct; adding language describing the limits of the PJO's role, with an emphasis on respecting the division between EDR versus processes which determine whether an employee or judge (JC&D) should be held accountable for alleged misconduct; changing the deadline for a Formal Complaint hearing to be held from 60 to 90 days; adding language to allow the PJO to solicit evidence from the subject of the complaint; specifying that records from mediation discussions will not be filed with the EDR Coordinator, and that final settlement agreements are not subject to public disclosure, among other modifications.

or deleted one or more references to the DWR or Circuit Mediator.

- 1 plan followed a combination of provisions of the Model and circuit plans, with alterations. This plan removes references to the DWR and specifies that an attorney representing the employee or employing office cannot be an employee of the district court and removes "or other person" as an option for representation.

Fifth Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Made a number of changes to the Model Plan, including specifying that the plan applies only to volunteers who have signed a gratuitous services agreement; adding the phrase “repeated or persistent” to examples of discriminatory harassment and sexual harassment; adding language about levels of confidentiality an employee can expect when using each Option for Resolution and mediation; specifying the parties alone determine when to conclude Assisted Resolution, removing the provision that they should do so by mutual assent; removing the provision stating that when there has been a finding of wrongful conduct, there should be a separate assessment of whether further action is needed to address the conduct, among other modifications.</p>	<ul style="list-style-type: none"> • 14 plans across 18 courts. • All adopted the circuit plan without any modification (1 court made minor formatting changes).

Sixth Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Adopted the Model Plan without modification.</p>	<ul style="list-style-type: none"> • 18 plans across 18 courts. • 15 of the 18 plans adopted the circuit/Model Plan without substantive modification. • 1 plan specifies EDR Coordinators by job title and specifies that an employee may choose one of the EDR Coordinators assigned to the employee’s unit, but otherwise adopted the circuit/Model Plan. • 1 plan revised the statement of the court’s obligations to adopt and implement the EDR Plan, but otherwise adopted the circuit/Model Plan. • 1 plan adds language stating that an employee may file either a grievance under the applicable Court Grievance Procedure or

	<p>an EDR Formal Complaint, but not both; clarifies who determines if another employee may assist a complainant if the allegations concern the assisting employee’s appointing officer; clarifies how data reporting should proceed for Assisted Resolution requests handled by the DWR; clarifies the deadlines in the Formal Complaint section as calendar days, and states that deadlines on nonbusiness days extend to the next business day; clarifies that those involved in the process should receive various notifications in writing; rewrites the section “Court and Employing Office Obligations” (Section V) to state what the court has done or will do, instead of what the court’s obligations are; removes language stating that alternate EDR Coordinators may be used and who they can be; removes language about who can be an EDR Coordinator; adds a definition of “frivolous” to Appendix 1: Definitions; and adds an appendix, which is a flow chart summarizing the EDR process, in addition to other nonsubstantive edits and clarifications.</p>
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Seventh Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Made a number of changes to the Model Plan, including adding three Protected Categories (gender expression, veteran status, genetic information); editing the definition and examples of discriminatory harassment; editing the definition of abusive conduct; adding a provision about what to do when a nonemployee allegedly committed wrongful conduct; changing the provision in the Model Plan that the use of Assisted Resolution does not toll (extend) the 180-day deadline for filing a Formal Complaint to use of Assisted</p>	<ul style="list-style-type: none"> • 9 plans across 14 courts. • 6 of the 9 plans adopted the circuit plan without substantive modification. • 1 plan adds the position of “external EDR counselor”; a separate “reasonable accommodations” policy in an appendix; and more stringent requirements regarding noticing employees of the EDR plan, in addition to clarifications. • 2 plans add clarifying language throughout to encourage early reporting of wrongful conduct and to highlight key provisions of

<p>Resolution does toll (extend) the deadline, but the deadline is not to exceed 300 days in any event; adding to the list of Allowable Remedies “equitable” relief, such as temporary stays of adverse actions, among other modifications.</p>	<p>the Options for Resolution earlier in the plan, in addition to adding material from the EDR <i>Interpretive Guide and Handbook</i> which outlines factors to be considered in determining whether conduct is “abusive;” adding language changing the description of Assisted Resolution as including a “facilitated discussion” between the person alleging wrongful conduct and the person alleged to have committed wrongful conduct (instead of simply a discussion between the two); and deleting footnote 2 about the Back Pay Act. 1 of these plans also adds a sentence stating that conduct on and off work premises is covered by the plan; and a provision stating that the unit executive or chief judge will determine if it is appropriate to provide the parties with a copy of any investigative report produced during Assisted Resolution.</p>
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Eighth Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Adopted the Model Plan without modification.</p>	<ul style="list-style-type: none"> • 11 plans across 19 courts.¹ • 6 plans are substantively the same as the Model/circuit plan (may include some copy editing, formatting changes, nonsubstantive word choice substitutions, or nonsubstantive tailoring to the court). • 5 plans add clarifying language or make at least one change that may be substantive. • 1 plan removes all references to the DWR, deletes the specific requirement that links to workplace conduct information must be on the court's internal and external homepages (leaving the basic requirement) and deletes the requirement to prominently display in the workplace the Appendix 5 posters.

	<ul style="list-style-type: none"> • 1 plan removes the reference to the DWR in the Impartiality paragraph. • 1 consolidated plan specifies that the chief judge of the court in which the complaint arose oversees the Formal Complaint process and makes all related decisions, and that if a unit executive allegedly commits conduct that leads an employee to request Assisted Resolution, the chief judge who supervises the unit executive in question is responsible for overseeing Assisted Resolution. The plan also states that one EDR Coordinator should be appointed from each court unit (by the chief judge who supervises the court unit) and that employees are free to use any of these EDR Coordinators. • 1 plan adds “Human Resources representative” to the list of people employees can contact for Informal Advice. • 1 plan clarifies which unit executive must assess the allegations and address the matter during Assisted Resolution when one employee makes allegations against another employee from a different court unit.
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¹ The Eastern and Western Districts of Arkansas share one bankruptcy court.

Ninth Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Made a number of changes to the Model Plan, including calling the plan a “policy”; changing references to the DWR to the Office of Workplace Relations/a staff member of the OWR and modifying certain provisions to incorporate OWR’s involvement; adding that the policy covers conduct on and off work premises; added eight Protected Categories (gender expression, marital status, parenthood, creed, ancestry, citizenship,</p>	<ul style="list-style-type: none"> • 20 plans across 28 courts.¹ • 16 plans adopted the circuit plan without substantive modification (9 plans of these adopted the circuit plan without any modification). • 4 plans make substantive additions, noted below, as well as clarifications. • 1 plan created additional groups and positions to advise on EDR matters and several as additional options for employees

<p>genetic information, and service in the uniformed forces); edited the definitions of discriminatory harassment and abusive conduct; clarified the scope of confidentiality during Informal Advice and mediation/settlement discussions; changed the Model Plan’s requirement that an employee asserting an Abusive Conduct claim must use Assisted Resolution before filing a Formal Complaint; removing language about how Assisted Resolution is concluded; clarifying who serves as the PJO and who must be notified when there is a complaint regarding a judge; adding a provision allowing the employing office to request a stay of Formal Complaint proceedings up to 60 days to address the wrongful conduct; deletes references to investigations and other processes being conducted “thoroughly”/in a “thorough” manner; adding that the PJO should make a recommendation as to whether the final decision is public; only requires contact information for EDR Coordinators, OWR, and OJI to be on the court’s internal homepage (not the external homepage as well), among other modifications.</p>	<p>to consult; the court modified the plan accordingly.</p> <ul style="list-style-type: none"> • 3 plans include bullying in the definition of abusive conduct and provide examples of bullying. • 1 plan adds examples of retaliatory behavior. • 2 plans allow either party to request a stay of a Formal Complaint (instead of just the employing office). • 1 plan removes the provision stating that the PJO may issue a written decision after investigation and discovery if the PJO determines that no facts are disputed.
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¹ The U.S. District Court of Guam and the U.S. District Court for the Northern Mariana Islands have jurisdiction over bankruptcy cases in their respective territories. Guam and the Northern Mariana Islands do not have separate bankruptcy courts.

Tenth Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Added language about a different confidentiality standard for mediation discussions and records, specifies that settlement discussions can include mediation, but otherwise adopted the Model Plan without substantive modification.</p>	<ul style="list-style-type: none"> • 13 plans across 16 courts. • 6 plans adopted the circuit plan without substantive modification. • 4 plans adopted the Model Plan without substantive modification (these plans do not include the circuit plan’s added language

	<p>about a different confidentiality standard for mediation discussions and records).</p> <ul style="list-style-type: none">• 1 plan edited the definition of discriminatory harassment (from “the workplace must be permeated with discriminatory intimidation, ridicule, <i>and</i> insult” to “intimidation, ridicule, <i>or</i> insult,” (emphasis added) but otherwise adopted the circuit plan.• 1 plan allows a judge to be an EDR Coordinator (consistent with the court’s pre-2019 Model Plan practices); specifies that the court must both conduct “and document” training annually; and clarifies that the chief circuit judge coordinates Assisted Resolution if the allegations concern the chief judge of the court, but otherwise adopts the circuit plan.• 1 plan makes a number of changes that include nonsubstantive clarifications (e.g., specifying calendar days for deadlines). More substantive changes: in examples of conduct that may give rise to sexual harassment, adds inappropriate remarks about “apparel;” adds examples of abusive conduct; expands on what is not abusive conduct, including stating that a single act is not abusive conduct unless it is egregious; adds the unit executive to who must be notified/is responsible for coordinating Assisted Resolution if the allegations concern the conduct of a judge, to who must be given a Formal Complaint if the chief judge is the subject, and to who will receive a copy of the written decision in a Formal Complaint process; and adds the chief judge to who must be notified/is responsible for coordinating Assisted Resolution if the allegations concern the conduct of an employee, but otherwise adopts the circuit plan.
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Eleventh Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Differs from the 2019 Model Plan in a number of ways, including keeping certain language from the previous EDR Plan. The circuit plan limits the ability of former employees to raise a claim; adds language about the relationship between EDR claims, Judicial Conduct & Disability complaints, and grievance/adverse action policies (including that an employee must choose between pursuing a claim under the EDR Plan or the Adverse Action Plan); adds “severe or pervasive” requirement to the definition of abusive conduct and elaborates on performance management actions and communications not being abusive conduct; does not specifically mention five of the employment statutes/policies listed in the Model Plan which have been applied to the judiciary through JCUS policy; adds to the definition of retaliation a provision that the court/its designees may respond to vexatious claims; adds language allowing consideration of physical and mental impairments and budgetary constraints in determining whether an accommodation requested by an employee is reasonable and can be provided; adds language stating that characteristics related to age can be considered; adds language clarifying the pregnancy leave policy; adds language clarifying the coverage of the FMLA; adds a provision indicating most occupational safety and health protections are under the jurisdiction of the General Services Administration (which provides the space and facilities used by the courts); adds a Whistleblower Protection provision which rewrites the Whistleblower Protection Policy</p>	<ul style="list-style-type: none"> • 11 plans across 18 courts. • 8 plans adopt the circuit plan without substantive modification. • 3 plans make one change or clarification, but otherwise adopt the circuit plan. 1 plan deletes language stating that the chief judge and employing office must take appropriate action to carry out the ordered remedies, and that expenditure of funds to do so requires approval of the chief judge. 1 plan changes the general obligation of the court to report EDR data to the AO to the Clerk of Court being responsible for reporting the data (this is generally a responsibility of an EDR Coordinator). 1 plan adds language to specify that a respondent has the right to be represented by an attorney, and that a fellow employee cannot represent the complainant or subject of the complaint.

(*Guide to Judiciary Policy* vol. 12, § 220.10.20(c)); modifies language regarding confidentiality protections; modifies language regarding recusal of the EDR Coordinator, DWR, or PJO; adds provision specifying procedure for a party to request the disqualification of the EDR Coordinator, PJO, or other person involved; modifies the provision regarding the right to representation to state that the individual alleged to have committed wrongful conduct, not just the individual's employing office, has the right to be represented by an attorney and removes that another employee may assist the complainant or employing office; modifies the interim relief provision to give discretion to the unit executive or PJO to consider whether interim relief is necessary, rather than allowing the employee to request relief; adds a provision stating that employees involved in EDR matters are expected to limit official duty time used on case preparation and should instead prepare their cases during breaks, lunch, or after hours, and any exceptions must be requested in writing and approved; modifies the provision regarding, for Assisted Resolution, who is responsible for assessing the allegations, coordinating Assisted Resolution, and addressing/resolving the matter; changes who is responsible for overseeing a Formal Complaint against a judge from the chief circuit judge to the Judicial Council; requires the PJO to provide the individual alleged to have committed wrongful conduct with a copy of the Formal Complaint, rather than the nature and substance of the allegations; allows any party other than the complainant, rather than just the respondent, to file a response to the complaint and otherwise

<p>makes reference to other interested parties' involvement in the process; adds a specific standard of proof for claims; changes the deadline for holding a hearing from 60 days after the filing of a Formal Complaint to 60 days after the deadline for filing a response (which is within 30 days of receipt of the complaint); states in several sections who is responsible for paying for specific services, like investigation, discovery, or hearing transcripts, as well as for remedies, and who must approve those expenditures; omits DWR as potential person to oversee Assisted Resolution or serve as an alternate EDR Coordinator; and states that EDR Coordinators must be trained as deemed appropriate by the court instead of according to the standards in the <i>EDR Interpretive Guide and Handbook</i>, among other changes.</p>	
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D.C. Circuit

Circuit Plan	District/Bankruptcy/Consolidated Plans
<p>Changed “derogatory comments about a person’s . . . foreign accent” to “accent” in list of examples of conduct that may give rise to discriminatory harassment; removed references to the DWR in several sections, including as a person who can coordinate Assisted Resolution or who can serve as an alternate EDR Coordinator and modified the definition of DWR; edited some language to tailor the plan to the court of appeals; and made grammar, formatting, or other nonsubstantive edits. Otherwise adopted the Model Plan.</p>	<ul style="list-style-type: none"> • 1 plan across 2 courts. • The consolidated district/bankruptcy plan adopts the circuit plan without substantive modification, but includes some nonsubstantive clarifications and edits (does not delete “foreign” from “foreign accent” in list of examples of conduct that may give rise to discriminatory harassment; refers to the Director of Workplace Relations as the “Workplace Relations Coordinator;” clarifies who “Chief Judge” refers to; uses the language of the Model Plan instead of the circuit plan in several paragraphs).

Appendix N: Federal Judicial Center Programs and Sessions on Workplace Conduct Issues



Management and Professional Development Education

Resources for Workplace Conduct Training

We have compiled the following resource list to aid court units in training and education related to workplace conduct, including sexual and workplace harassment. As we acquire or develop additional resources, we will add them to the list.

We offer several in-district training programs delivered by FJC-trained facilitators. To schedule an in-district training program, contact the staff member listed. The FJC covers the costs of participant materials and trainer travel and subsistence.

The list also includes training videos that can be used as local resources to hold discussions and conduct training. We have included video resources that address topics such as overcoming bias, valuing diversity, and strategies to enhance respectful communications. Efforts to incorporate these behaviors may serve to foster an environment less tolerant of prohibited harassment and discrimination. To request a video from the list below, click on the hyperlinked title, which will take you to a page where you can read a more comprehensive description and place an order. We have also included podcasts that address topics such as civility and humility.

To suggest updates to these resources, please contact the Management and Professional Development Education Group.

Sexual and Workplace Harassment

In-District Programs

Preventing Workplace Harassment (Employee Version, 4 hours)

This program focuses on employee awareness of workplace harassment. Participants learn what workplace harassment is and what it is not, the kinds of behavior that may be interpreted as workplace harassment, how a workplace can become a hostile environment, and how to minimize the occurrence of workplace harassment. Participants learn how to deal with harassment if it arises and what to do if they are involved in a workplace harassment investigation.

Preventing Workplace Harassment (Management Version, 4 hours)

This program emphasizes managers' responsibility to maintain an environment free of hostility, where courtesy and mutual respect are the basis for communication and conflict resolution. Participants learn

what workplace harassment is and what it is not, the kinds of behavior that may be interpreted as workplace harassment, and how a workplace can become a hostile environment. Managers also learn how to minimize the occurrence of workplace harassment, how to handle an allegation or incident, what to do during an investigation, how to handle a false or spiteful claim of workplace harassment, and how organizations can minimize the occurrence of harassment.

Video programs

Court Web: What You Do Not Know About Harassment Could Hurt You! (2017, 5523-V/17, 1 hour 12 mins.)

While covering behaviors that should always be avoided, this webcast focuses heavily on some of the gray areas where people without bad intent have offended others. The webcast also addresses how employees—including leaders—should respond to harassing or other unacceptable behavior.

It's Still Not Just About Sex Anymore: Harassment & Discrimination in the Workplace (2016, 5559-V/16, 21 mins.)

This program covers many forms of workplace harassment and discrimination. It provides dramatizations of harassment behaviors, demonstrating how these behaviors can lead to formal charges and result in serious consequences for the individuals involved. The program also teaches what is and is not acceptable in today's workplace and what each individual's responsibilities are toward his or her colleagues.

Let's Talk . . . Harassment – It Happens! (2015, 5588-V/15, 10 mins.)

This program defines harassment and explains the effects of harassment on people and organizations. It provides the legal definition of quid pro quo harassment and hostile-work-environment harassment.

Once & For All: Stopping Sexual Harassment at Work, Employee Version (2018, 5614-V/18, 52 mins.)

This program covers abusive conduct, bystander intervention, reporting, and strategies for building a culture of respect.

Once & For All: Stopping Sexual Harassment at Work, Manager Version (2018, 5613-V/18, 73 mins.)

This program provides supervisors and managers with practical steps for handling sexual harassment complaints and preventing misunderstandings or false claims. It also covers steps supervisors and managers can take if they are the target of a sexual harassment or sexual misconduct claim.

Sexual Harassment: The "Takeaway" for Managers (2016, 5511-V/16, 12 mins.)

This program, designed for managers, defines sexual harassment and explains why it is important to take a proactive approach to this problem. The program includes short vignettes that illustrate and dramatize the material presented. This program focuses on four key learning points: the legal definition of sexual harassment; a proactive response; the importance of documentation; and the fear of retaliation.

There Is Only Us (2019, 5612-V/19, 20 mins.)

This program reminds us that we are more alike than different. It features stories that highlight the importance of being more inclusive. It offers a process for conducting challenging, but necessary, conversations on ways to create a more empathetic culture.

Respectful Workplaces

In-district programs

Code of Conduct (2.5–3 hours)

This program helps court employees deal with a range of ethical issues. It is divided into two segments: a review of the Code of Conduct for Judicial Employees and a discussion of ethics scenarios.

Meet: Breaking New Ground—Respect and Inclusion in the Workplace (3.5 hours)

This program explores workplace situations that involve disrespect. Participants learn a four-step approach to resolving differences and fostering a respectful and tolerant workplace: **M**ake time to discuss the situation; **E**xplore differences; **E**ncourage respect; and **T**ake responsibility.

Personality Temperament Instrument Training (4 hours)

In this program, participants complete an instrument that identifies four common personality types. Through individual and group exercises, participants explore the four personality types and examine ways the different types can communicate and interact effectively with each other in the workplace.

Podcasts

In Session: Leading the Judiciary is an audio podcast designed to bring cutting-edge thinking about public- and private-sector leadership to the attention of judiciary executives. Each episode includes a conversation with one or more thought leaders whose research and expertise are relevant to the work of executives in the federal courts.

- Episode 25: Humility: An Essential Leadership Trait (2022, 29 mins.)
 - Marilyn Gist, author of *The Extraordinary Power of Leader Humility: Thriving Organizations and Great Results*, discusses the six key leader qualities that demonstrate humility, and the positive impact they have on organizations and the people in them.
- Episode 24: Cultivating an Inclusive Workplace (2021, 28 mins.)
 - Stefanie K. Johnson, author of *Inclusify: The Power of Uniqueness and Belonging to Build Innovative Teams*, discusses how diversity without inclusion fails to capitalize on the value of diverse teams. According to Dr. Johnson’s research, leaders must ensure individuals feel a sense of belonging, which includes encouraging all staff to use what makes them unique for the benefit of the organization.
- Episode 15: Understanding & Combating Racial Bias (2020, 33 mins.)
 - Dr. Jennifer Eberhardt, professor of psychology at Stanford University and MacArthur “genius” award recipient explains that although our brains are wired to see differences, research shows that self-awareness and thoughtful and deliberate decision making can help end the subtle and subjective discrimination we see and experience in our personal lives and workplaces.
- Episode 13: Creating Psychological Safety (2020, 34 mins.)
 - Research shows that psychological safety in organizations leads to higher productivity and higher morale. Amy Edmondson, professor at the Harvard Business School and author of *The Fearless Organization: Creating Psychological Safety in the Workplace for Learning and Growth* talks about how to create and sustain what she calls a “fearless” organization.

- Episode 5: Mastering Civility in the Workplace (2019, 25 mins.)
 - An interview with Christine Porath, author of *Mastering Civility: A Manifesto for the Workplace*, associate professor at McDonough School of Business at Georgetown University, and international consultant to organizations and government agencies.

Video programs

A Seat at the Table: Embracing Diversity (2018, 5616-V/18, 9 mins.)

This program explains the need to integrate inclusion and diversity across the organization; capitalize on different skills, ideas, and perspectives; appreciate how an inclusive workplace encourages productivity and innovation; and avoid practices that disrespect and marginalize employees.

Consciously Overcoming Unconscious Bias (2014, 5512-V/14, 8 mins.)

This program shows how unconscious bias, micro-inequities, and micro-affirmations overlap in the workplace and helps participants to recognize their own biases and the micro-inequities that express them. The program shares helpful tips, like listening, including, valuing, and engaging (or L-I-V-E), to improve participants' workplaces.

Diversity 101: The Complete Series (2016, 5560-V/16, 36 mins.)

This series, composed of eight short vignettes, teaches the core components of diversity, inclusion, and respect in the workplace. It covers issues such as unconscious/hidden bias, intolerance, crude jokes, and disrespectful comments, which can surface in any organization.

Diversity: Respect at Work (2013, 5297-V/13, 16 mins.)

This program helps employees understand, accept, and value differences. It covers ways to create a more inclusive workplace. It discusses the importance of “thinking before you speak” and resolving conflicts respectfully.

How to Be a Terrible Team Member (2015, 5507-V/15, 44 mins.)

Teamwork is defined as the combined actions of a group of people, especially when they are effective and efficient. Total harmony is not necessarily a defining trait of the most effective teams, as creative conflict about the work, when well managed and focused, has a decidedly positive effect on team efforts and outcomes. The trick is learning how to identify which traits and behaviors contribute to creative thinking, problem solving, learning, and growth—and which hinder those things. This program identifies nine damaging work styles that are barriers to effective teamwork.

Leadership Feedback: What employees want to tell you . . . but don't! (2014, 5457-V/14, 17 mins.)

This program is based on extensive interviews with employees who gave candid feedback about the leaders they worked for. Because the interviews were anonymous, employees were free to honestly discuss which leadership behaviors were motivating—or demotivating. Six key issues of leader-employee interaction emerged from this research and are illustrated in the program. For each issue, the program shows two scenarios—one with an ineffective leader, the other with an effective one.

Let's Talk . . . Bullying, Abusive Conduct, and Their Consequences (2015, 55990-V/15, 10 mins.)

This ten-minute program defines bullying and abusive conduct, the impact of both on people and organizations, and remedies. The definition of bullying is explored. Key bully-prevention learning points include what bullying and abusive conduct are, how bullying affects individuals and organizations, legal definitions, and remedies.

Let's Talk . . . Respect—It Matters (2015, 5589-V/15, 9 mins.)

This program equates respect in the workplace with professionalism. It provides examples of appropriate, respectful behaviors and unprofessional, unproductive behaviors.

Manager's Moments: How to Excel in Tricky Situations (2015, 5456-V/15, 34 mins.)

To keep teams motivated and running smoothly, managers need to recognize potentially troublesome employee situations and quickly take action. This program offers practical wisdom to busy professionals on everyday management challenges. The topics include: how to curb employee gossip; how to deal with difficult peers; how to manage upward; how to manage time thieves; and how and when to delegate.

The Respectful Supervisor: Motivating and Retaining Employees (2015, 5615-V/15, 11 mins.)

The degree to which employees are motivated depends in part on how they feel they are treated. Those who feel disrespected typically become demoralized. They are less productive, less engaged, and more likely to quickly move on to other jobs. This program covers effective ways supervisors can convey respect to employees such as paying attention, communicating regularly, and demonstrating commitment to employee well-being and success.

Workplace Conduct Program Sessions for Judges, Court Attorneys, and Executives

The Federal Judicial Center (FJC) has offered the following sessions on workplace conduct at programs (virtual and in person) for judges, court attorneys, and executives from 2018 through May 2024. The list below indicates the years in which the session was offered; it may have been offered multiple times within a year. Not listed here: program sessions on workplace conduct at various circuit workshop; general leadership programs in which workplace conduct may have been a component of the program.

National Symposium for United States Court of Appeals Judges
“Workplace Conduct: What Do I Need to Know” (2022)

Conference for Chief Judges of the United States Bankruptcy Courts
“Building an Exemplary Judiciary: Workplace Conduct” (2022)

Conference for Chief Judges of the United States District Courts
“Building an Exemplary Judiciary: Workplace Conduct” (2022)

Conference for Chief District Judges Chief Bankruptcy Judges
“Updates, Practical Tips, and Discussion on Workplace Conduct (2023, 2024)

Phase I Orientation for Newly Appointed U.S. District Judges
“Exemplary Workplace Conduct - Exercise and Discussion”
(2019, 2020, 2021, 2022, 2023, 2024)
“Judicial Ethics and Exemplary Workplace Conduct” (2020, 2021)
“Judicial Ethics and Code of Conduct” (2020, 2021, 2022, 2023, 2024)
“Workplace Conduct Exercise and Discussion” (2018)
“Preserving the Trust: Ethics and Federal Judges” (2018, 2019)

Phase I Orientation Seminar for Newly Appointed/Designated U.S. Magistrate Judges
“Art of Judging & The Respectful Workplace” (2022, 2023, 2024)
“Ethics” (2018, 2019, 2020, 2021, 2022, 2023, 2024)

Phase I Orientation Seminar for Newly Selected U.S. Bankruptcy Judges
“Participant-Centered Discussion: Ethics and Fostering an Exemplary Workplace”
(2022, 2023, 2024)
“The Judiciary as an Exemplary Place of Employment” (2021, 2022)
“Judicial Ethics and the Code of Conduct; Administration of the Federal Courts;
Workplace Conduct” (2021)

Phase II Orientation Seminar for Newly Appointed/Designated U.S. Magistrate Judges
“Ethics and Workplace Conduct” (2022, 2023)
“Plenary: Ethics” (2019)

Phase II Orientation for U.S. District Judges
“Respectful Workplaces” (2022, 2023, 2024)
“Navigating Ethics Issues for New Judges” (2021)

Orientation Seminar for Newly Appointed U.S. Court of Appeals Judges
“Navigating Ethics: Issues for New Judges” (2021, 2022, 2023)

National Conference for Pro Se and Death Penalty Staff Attorneys,
“Maintaining an Exemplary Workplace in the Judiciary: Understanding Your Rights and
Responsibilities” (2022)

Wm. Matthew Byrne, Jr., Judicial Clerkship Institute
“Ethics for Federal Law Clerks” (2022, 2023, 2024)
“Respectful Workplace” (2019)

National Leadership Conference for Circuit and Court Unit Executives
“Leading Exemplary Workplaces” (2022)

New Chief Circuit Judges Seminar
“Addressing Judicial Conduct, Disability, and Workplace Conduct Issues” (2022)

Leadership Seminar for New Chief Judges
“Organizational Culture” (2023)

National Workshop for District Judges, I and II

“Ethical Issues” (2024)

“The Judiciary as an Employer” (2022)

“Preserving the Trust: Recent Ethics Topics” (2018)

National Workshops for U.S. Magistrate Judges, I and II

“Law Clerk Relations” (2024)

“Breakout Session: Administrative Office and Magistrate Judges Committee Updates/
New Workplace Conduct Rules” (2020, 2022, 2023)

“Plenary: Ethics” (2018)

“Power, Gender, and the Judicial Workplace” (2018)

National Workshop for U.S. Bankruptcy Judges

“Promoting a Respectful Workplace” (2019)

National Conference for Appellate Staff Attorneys

“Workplace Conduct and Post-COVID Return to the Workplace” (2021)

Workshop for Federal Court Mediators

“Workplace Conduct and Mediating EDR Cases” (2019)

Conference for Chief Judges of the United States District Courts

“Civility: Building an Exemplary Workplace” (2019)

Mid-Career Seminar for U.S. District Judges

“Judicial Leadership and Ethics” (2019, 2023)

National Leadership Conference for Court Unit Executives

“Plenary Discussion: Workplace Conduct in the Federal Judiciary” (2018)