THE JUDICIARY STEPS UP TO THE WORKPLACE CHALLENGE

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ABSTRACT—As the #MeToo movement swept the country, the federal judiciary faced its reckoning in light of allegations against several judges. In short order, with the backing of Chief Justice Roberts, workplace issues took center stage. This Essay highlights workplace risks relevant to the judiciary, then details the significant changes adopted by the federal judiciary to foster a healthy, harassment-free, and productive work environment. Major undertakings include the establishment of a national Office of Judicial Integrity; circuit-wide Directors of Workplace Relations; multiple avenues to report misconduct, including anonymous reporting; revamped employment dispute policies; revised ethics, reporting, and discipline rules; and targeted workshops and trainings. While realizing the full potential of these reforms will require continued focus and deliberate attention across our workplace of 30,000 employees nationwide, the federal judiciary—with the backing of Chief Justice Roberts—remains committed to a workplace that treats everyone with respect and dignity.

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INTRODUCTION

In October 2017, more than a decade after activist and sexual violence survivor Tarana Burke began using the phrase “me too,” the hashtag “#MeToo” went viral on Twitter.¹ Revelations of sexual harassment, violence, bullying, and other misconduct flooded social media and the press as survivors shared stories and support.²

As the #MeToo movement gained momentum, stories of harassment and assault surfaced across industries, implicating some of the most powerful


individuals in sectors as varied as entertainment, banking, fashion, food, and technology. Hollywood became front and center with accusations against influential film producer Harvey Weinstein. Once allegations of misconduct became ubiquitous, these industries and others were forced to grapple with pervasive sexual misconduct.

The federal judiciary was not immune. In December 2017, the United States Court of Appeals for the Ninth Circuit learned of multiple allegations of sexual misconduct against then-Judge Alex Kozinski. He resigned ten days later.

As an independent branch of the United States government, the judiciary is tasked with making decisions and taking actions that affect everyone in the country. The judiciary’s effectiveness is dependent on its highly accomplished judges and the respect and regard citizens have for the institution. With approximately 2,300 judges, the federal judiciary includes the United States Supreme Court, circuit courts of appeals, district courts, bankruptcy courts, other specialized courts, and federal defenders, and it

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8 See generally Kantor & Twohey, supra note 3 (documenting allegations against Weinstein by employees and members of the film industry).


operates clerks’ offices, libraries, pretrial services, probation departments, and administrative units. With over 30,000 employees nationwide in workplaces of different sizes, the judiciary is committed to a workplace that treats everyone with respect, recognizes everyone’s dignity, and fosters inclusivity. As an institution, the judiciary has the responsibility to address workplace misconduct and recognizes that a sea change in approach is in order.

In response to the allegations against Kozinski, the federal judiciary recognized the need to do more to prevent and combat harassment, and it took action. Even before Kozinski’s swift resignation following the allegations, Ninth Circuit Chief Judge Sidney R. Thomas appointed the Ad Hoc Committee on Workplace Environment (Ninth Circuit Committee), which was charged with conducting a comprehensive review of workplace practices and policies in the Ninth Circuit and making recommendations for improvement. Other circuits followed suit. And in his 2017 Year-End Report on the Federal Judiciary, Chief Justice John G. Roberts of the United States Supreme Court tasked the Director of the Administrative Office of the U.S. Courts (the AO) with forming a working group to undertake “a careful evaluation of whether [the federal judiciary’s] standards of conduct and its procedures for investigating and correcting inappropriate behavior [were]...
adequate to ensure an exemplary workplace for every judge and every court
employee.” The following month, in January 2018, the federal courts
established the Federal Judiciary Workplace Conduct Working Group
(National Working Group), a national counterpart to the Ninth Circuit
Committee.16

Now, more than three years later, there have been substantial changes
in workplace policies and visible improvements in the workplace
environment. Ethics and discipline rules have been significantly revised, the
national Office of Judicial Integrity and circuit Directors of Workplace
Relations were established, and employees now have new avenues to seek
confidential advice and guidance with multiple formal, informal, and
anonymous reporting options and a judiciary that is more prepared to take
prompt, fair action. This Essay catalogues many of these procedural and
process improvements while recognizing that transforming workplace
conduct is not instantaneous or simply a matter of revising policies. Most
importantly, with the backing of Chief Justice Roberts, the issue has taken
center stage in the judiciary, which is mindful that fostering an exemplary
workplace is an ongoing process and that the judiciary must be vigilant about
addressing continuing and novel challenges.

This Essay begins with a description of the EEOC’s research on sexual
harassment, which provides a foundation to explore the risk factors that are
present in an institution such as the judiciary. The most salient factor is the
power disparity that exists between judges and their clerks and staff, coupled
with an often-isolated workplace. By leveraging that research, plus surveys
and outreach to relevant stakeholders including current and former law
clerks, court employees, and law schools, the past three years have resulted
in major institutional changes. Though allegations of sexual harassment
catalyzed the initial action, the changes extend more broadly to include proactive improvements to the workplace climate. And although the initial
allegations stemmed from law clerks, the judiciary’s response embraced the
voices of the entire 30,000-plus employee workforce.

This Essay then surveys the key structural changes in workplace
policies, procedures, and practices, ranging from the appointment of a
national Judicial Integrity Officer and circuit Directors of Workplace
Relations to revision of confidentiality policies, the ethics and disciplinary

[https://perma.cc/YL57-ELL5].

16 See Federal Judiciary Workplace Conduct Working Group Formed, U.S. CTS. (Jan. 12, 2018),
https://www.uscourts.gov/news/2018/01/12/federal-judiciary-workplace-conduct-working-group-
formed [https://perma.cc/P6GB-MF36].
codes, and employment dispute resolution policies. These changes seek to address the calls to interrogate the institutional structures that led to this moment, such as those made by Professor Leah Litman and Deeva Shah in their Essay, *On Sexual Harassment in the Judiciary.*

Finally, while this Essay reflects on the strides the judiciary has made over the past three years, it also recognizes that there is no such thing as “victory.” The policies and practices, the people who implement them, and the leaders who insist upon them must constantly assess performance, listen to constructive feedback on our efforts, and address new and remaining challenges.

This Essay does not attempt to distance the federal judiciary from the harassment events that have been publicly debated or from the genuine risk factors present. Rather, it endeavors to highlight in considerable detail the ways in which the judiciary has systematically evaluated, identified, and responded to workplace misconduct, including sexual harassment and bullying.

I. LINKING THE NATURE OF HARASSMENT IN EMPLOYMENT GENERALLY WITH EMPLOYMENT IN THE JUDICIARY

A. EEOC Report on Risk Factors for Harassment in the Workplace

Five years ago, in the face of rising claims of sexual harassment nationwide and before the Kozinski allegations surfaced, the Co-Chairs of the EEOC’s Select Task Force on the Study of Harassment in the Workplace (the Select Task Force) published a report documenting the persistence of workplace harassment and offering potential solutions (EEOC Report). This report was the culmination of eighteen months spent examining the complex issues associated with harassment in the workplace. During that time, the Select Task Force examined tens of thousands of charges and complaints received by the EEOC; reviewed research; and convened experts

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19 The COVID-19 pandemic intervened during the period following the adoption of the structural and policy changes. While most court proceedings went remote and employees worked from home, the courts took the opportunity to solidify the structural changes adopted earlier and enhance training and education on workplace policies and procedures.
21 Id. at iv.
from law, sociology, psychology, employment, and more to better understand workplace harassment and how to prevent it.22

It is well understood that harassment harms its targets and, when mishandled or overly cumbersome, reporting can cause additional harm, as these individuals may experience psychological distress from the reporting process itself and from the fear and reality of adverse job repercussions.23 It is therefore important to emphasize prevention and to develop systems that will minimize these harms.

The Select Task Force thus endeavored to identify risk factors—“elements in a workplace that might put a workplace more at risk for harassment”—in order to “give employers a roadmap for taking proactive measures to reduce harassment in their workplaces.”24

The EEOC Report catalogued a nonexhaustive, nonexclusive list of organizational conditions that are risk factors, including: “homogenous workforces,” “workplaces where some workers do not conform to workplace norms,” “cultural and language differences in the workplace,” “coarsened social discourse outside the workplace,” “workforces with many young workers,” “workplaces with ‘high value’ employees,” “workplaces with significant power disparities,” “workplaces that rely on customer service or client satisfaction,” “workplaces where work is monotonous or consists of low-intensity tasks,” “isolated workspaces,” “workplace cultures that tolerate or encourage alcohol consumption,” and “decentralized workplaces.”25 The EEOC Report explains that most workplaces will contain some of these factors, and the presence of risk factors alone does not guarantee that harassment is occurring in that workplace.26 But the presence of risk factors—especially multiple risk factors—does suggest that a workplace “may be fertile ground for harassment.”27

B. Understanding the Risk Factors for the Judiciary

The nature of the federal judiciary informs how these risk factors map onto the judicial environment. Judicial independence is a foundational tenet of the judiciary as the third branch of government.28 Judicial decision-

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22 See id. at iv, 3, 6–8.
23 See id. at 16–17.
24 Id. at 25.
25 Id. at 26–30 (capitalization altered).
26 See id. at 25.
27 Id.
making is, and must be, independent of the executive and legislative branches and from political or other outside influences. This independence is essential to ensure that judicial decisions remain legitimate, impartial, and transparent.

Stemming from the need to protect and ensure judicial independence, the federal judiciary has several unique features. First, under the Constitution, federal judges have lifetime tenure, or more accurately, “hold their Offices during good Behaviour.” The life tenure of federal judges is intended to insulate them from shifting political winds and outside pressures in reaching their decisions and to further support their independence.

Second, federal courts operate under a regionalized governance structure developed to support the core tenet of judicial independence and maintain a certain level of autonomy within the courts at the district and circuit levels. While the Judicial Conference of the United States makes national policy for the federal courts, district courts and circuit courts manage their own employees, and individual judges have significant autonomy in how they organize and manage their personal staff and interact with other court employees. In addition, the judiciary is distributed across a wide variety of geographic regions serving vastly different communities across the country.

Although the unique features of the federal judiciary provide important benefits, they also create several risk factors for harassment as described by the EEOC and others. While life tenure guards the integrity of the judiciary, it nonetheless contributes to a power disparity between judges and employees—particularly law clerks and others who work in the judges’ chambers. Research conducted in university settings has shown that “[h]ierarchical work environments . . . where there is a large power differential between organizational levels and an expectation [] not to question those higher up, tend to have higher rates of sexual harassment than

29 See id.
30 See id.
31 U.S. CONST. art. III, § 1.
32 See JUDICIAL CONFERENCE REPORT, supra note 28, at 4.
33 See id. (“The judiciary’s internal governance system is a necessary corollary to judicial independence.”).
34 See id. (“From the beginning of the federal court system, the hallmarks of judicial branch governance have been local court management and individual judge autonomy, coupled with mechanisms for ensuring accountability . . . .”).
organizations that have less power differential between the organizational levels.” 36 Sexual harassment is more pervasive in these environments because high-status employees may be more likely to exploit lower status employees, who may not understand the complaint mechanisms or may fear retaliation in response to reporting.37

This research informs potential areas of concern within the federal judiciary. Though the individual workplace environments of the 30,000 judiciary employees have widely diverse characteristics, judicial chambers (which employ about one-fifth of these individuals)38 are a focal point for power disparity. Federal judges oversee their chambers, often with one judicial assistant and several law clerks. Law clerks, many at the beginning of their legal careers and typically in one- or two-year positions, depend on judges for future job opportunities, recommendations, and networking connections.39 Other chambers employees, like judicial assistants, often work for a single judge during their career and are thus dependent on that judge for their livelihood and for recommendations for future job opportunities. Judges thus have expansive power over their chambers and the employees who work there.

In addition to having a potential power disparity between their employees, some judicial chambers can be relatively isolated workplaces. This is a byproduct of a geographically dispersed judiciary and judges’ autonomy in managing their chambers.40 As the EEOC noted, harassment is more likely to occur in situations where employees may be physically isolated from their colleagues or where coworkers are less likely to report harassment.41

Understanding the unique facets of the judiciary and how they relate to the EEOC Report risk factors was, and remains, central in the work of the National Working Group and the Ninth Circuit Committee tasked with improving the workplace. These risk factors served as a road map for the judiciary’s efforts, discussed next, to implement reforms designed to respond to harassment in the workplace.

36 NATIONAL ACADEMIES REPORT, supra note 35, at 48.
37 See EEOC REPORT, supra note 20, at 28.
38 This information is drawn from an internal judiciary human resources database.
39 See, e.g., Litman & Shah, supra note 17, at 616 (“A judge can both help a clerk find a job and tank a clerk’s prospects with just one call.”).
40 See EEOC REPORT, supra note 20, at 29.
41 See id.
II. REFORM IN THE FEDERAL JUDICIARY

A. Benchmarking the Need for Reform

Though some academics and former employees have expressed concern that the legal profession has not examined and reformed the structures that have allowed for harassment in the past, the first step in the judiciary’s process was a top-to-bottom review of its employment structure and policies. Responding to Chief Justice Roberts’s push to address workplace conduct, the judiciary’s priority was “to examine the sufficiency of the safeguards currently in place within the Judiciary to protect all court employees from inappropriate conduct in the workplace” and to recommend any necessary changes and reforms. As a complement to this review, beginning in early 2018 and still ongoing, the judiciary conducted extensive outreach and consultation with judges, employees (including court unit executives, managers, and supervisors), advisory committees within the judicial branch, law clerks, interns, externs, and volunteers to obtain valuable feedback from an employee perspective.

This outreach included expansive efforts to reach current and former law clerks and employees through focus groups, surveys, and anonymous email reporting. Additionally, the judiciary solicited reviews from other stakeholders and interested constituencies including law schools, the EEOC, Law Clerks for Workplace Accountability, and employment experts from outside of the judiciary.

The results of these research and outreach efforts reflected some common themes. While the vast majority of employees were satisfied with their workplace and did not report pervasive inappropriate conduct, three key areas emerged as opportunities for improvement:

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42 See Litman & Shah, supra note 17, at 601; Warren, supra note 18, at 453.
44 Id. at 1.
46 Ninth Circuit Committee Report, supra note 45, at 1, 6–10.
47 Id. at 6; Working Group Report, supra note 43, at 4. Law Clerks for Workplace Accountability is an organization comprised of “current and former law clerks” who “believe that significant changes are necessary to address the potential for harassment of employees who work in the federal court system.” @ClerksForChange, Twitter (July 20, 2018, 12:01 PM), https://twitter.com/ClerksForChange/status/1020171891003162624 [https://perma.cc/K8V3-SMD3].
• Multiple options for discussing and reporting workplace concerns;
• Coverage and clarity of workplace policies and procedures; and
• Training on workplace conduct issues.48

More specifically, some employees articulated their reluctance to report workplace concerns through then-available channels, the lack of information about policies or work expectations, the need for more specific training and education, and a desire for a more collegial and interactive workplace environment to counteract feelings of isolation.49 Others indicated a need for establishing, improving, and communicating policies related to antibullying and sexual harassment and a need to change the overall judicial culture to one where judges took more responsibility to stop and prevent inappropriate behavior.50 And other stakeholders raised the desire for informal and confidential avenues outside the local chain of command to address inappropriate conduct.51 In terms of training topics, antibullying, civility, leadership, and bystander intervention were commonly requested.52

This extensive feedback plus additional research served as a blueprint for the judiciary’s approach to changes and improvement in these areas. The National Working Group’s 2018 Report to the Judicial Conference of the United States included recommendations that were based on the EEOC Report and other research, input from several circuits’ workplace conduct working groups, and the feedback from employees, former law clerks, and interest groups.53 Over the fifteen months following this report, the judiciary engaged in an intensive effort to revise policies and implement changes that would improve the workplace by generating confidence in a confidential and fair system to prevent, reduce, and address inevitable workplace issues. The National Working Group issued a 2019 Status Report that summarized the progress and extensive revisions that the judiciary implemented, and the key reforms are outlined in detail below.54 Each structural change, policy amendment, and revision was, of necessity, approved by the appropriate

49 See NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 7–8.
50 See id. at 9.
51 See WORKING GROUP REPORT, supra note 43, at 17; NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 7.
52 See NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 8 (reporting that survey respondents “recommended developing and implementing trainings on harassment, bullying, implicit bias, leadership, and management techniques”); WORKING GROUP REPORT, supra note 43, at 41–42.
governing body, and that process, too, led to wide acceptance and adoption of the reforms.

**B. Judiciary Workplace Reforms**

Judiciary policies regarding workplace conduct live in three places: the Model Employment Dispute Resolution Plan (Model EDR Plan) (procedures for reporting and resolving complaints related to all employees, including judges), the ethics codes for the judiciary (the Code of Conduct for United States Judges and the separate Code of Conduct for Judicial Employees), and the Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) (rules governing misconduct complaints against judges). The different policies are meant to function both independently as well as interdependently, as they complement each other. In response to the findings and recommendations of the National Working Group and the circuit committees, each of these three policy areas has been overhauled. In March 2019, the Judicial Conference of the United States approved revisions to the ethics codes and the JC&D Rules. Individual courts began revising their EDR plans soon after the reports of sexual harassment, and the revised Model EDR Plan was approved in September 2019.

1. **Revamped Confidentiality Policy**

Considering the sensitive and confidential nature of information entrusted to the judiciary, it is a given that employees are bound by various confidentiality obligations. Through law clerk and employee feedback, the National Working Group and circuit committees learned, however, that there was confusion and ambiguity about whether those obligations impeded the reporting of harassment. The National Working Group stressed that the “confidentiality obligations of judiciary employees must be clear so both judges and judicial employees understand these obligations never prevent

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55 Although titled a model plan, the Model EDR Plan, with certain modifications, is the actual plan of the individual courts.


any employee—including a law clerk—from revealing abuse or misconduct by any person.”60 Not surprisingly, research demonstrates that “[d]eveloping and disseminating clear anti-harassment policies is crucial”61 because lack of clarity in these policies can stymie reporting.62

To dispel any ambiguity, policies were immediately revised to make clear that, although information received in the course of judicial business remains confidential, reports of workplace harassment and misconduct are not subject to confidentiality restrictions.63 The Code of Conduct for Judicial Employees was revised to clarify that the “general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.”64 The law clerk handbook was similarly revised, the JC&D complaint process was amended to include a new provision, and related commentary emphasizing that nothing in the confidentiality provisions in the JC&D Rules or the Code of Conduct for Judicial Employees prevents a judicial employee from reporting or disclosing misconduct or disability.65

2. Creation of the Office of Judicial Integrity and Directors of Workplace Relations

The most frequent recommendation from current and former employees “was for a clearly identifiable and independent person of high stature to whom they could report misconduct and discuss other workplace concerns.”66 Key to this position, employees noted, was that it be outside of the supervisory chain of command.67 And yet, employees did not favor reporting to an entity or person outside the judiciary. Two of the most significant changes in response to these comments were the AO’s establishment of the Office of Judicial Integrity, and the Ninth Circuit Committee’s appointment of the first Director of Workplace Relations.68

60 2019 STATUS REPORT, supra note 54, at 6.
61 See id. at 7.
62 See NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 2.
63 See id. at 7.
64 2019 STATUS REPORT, supra note 54, at 6 (quoting CODE OF CONDUCT FOR JUD. EMPS. Canon 3D(3) (JUD. CONF. OF THE U.S. 2019)).
65 See 2019 STATUS REPORT, supra note 54, at 2, 9 (citing JC&D RULES, supra note 56, at r. 23(c)); see also id. at 7.
Other circuits soon adopted this approach, and now there is a director (or analogous role) for every circuit.69

The national Office of Judicial Integrity, headed by the national Judicial Integrity Officer, serves as an independent resource outside of the courts’ traditional chain of command.70 It provides confidential help, information, referral, and guidance in complaint options to address workplace harassment, abusive conduct, or other misconduct. This office also monitors recurring workplace issues to identify trends and conduct systemic reviews.

Modeled in part after an organizational ombudsman, each Director of Workplace Relations is an independent circuit-wide position that acts as a confidential resource within the circuit. They confidentially talk through issues with employees (including clerks, supervisors, managers, court unit executives, and judges), provide information about policies and procedures, set out options for early-stage resolution and the complaint process, offer guidance, receive reports of workplace issues, and monitor the workplace environment for trends and patterns.71

Directors serve all court units within a circuit—court of appeals, district and bankruptcy courts, probation and pretrial offices, and federal public defender offices. They do not report directly to any chief judges or judges, nor do they report to other court unit supervisory personnel such as the clerk of court, chief probation or pretrial officer, or chief federal public defender. Instead, directors report to the Circuit Executive yet maintain considerable autonomy.72

The Directors of Workplace Relations and the Judicial Integrity Officer bring relevant and wide-ranging experience to their roles with backgrounds as former federal circuit court law clerks, Title IX officers, mediators, and

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69 The D.C. Circuit has two Workplace Relations Coordinators rather than one director, but the positions are considered analogous. See Director of Workplace Relations Contacts by Circuit, supra note 14 (providing contact information for the directors and including the D.C. Circuit’s Workplace Relations Coordinators).


EEOC attorneys. One of the benefits of this diverse collective experience is that it provides the judiciary with an internal group of experts who can see the workplace from a bird’s eye view and who are well-positioned to collaboratively assess trends and feedback for additional improvements to the judiciary’s policies, processes, and structures for addressing workplace issues. The Judicial Integrity Officer and directors from across the nation serve on the national Directors of Workplace Relations Advisory Group and meet frequently to discuss emerging issues, share information, and develop best practices. They draw on direct and indirect feedback to continue improving: it is an iterative process of making changes, assessing their effectiveness, adjusting as necessary, and disseminating information to national, circuit, and local court unit leadership as appropriate.

The creation of these new positions not only addresses one of the top employee requests, but it also serves to mitigate at least two other risk factors identified by the EEOC—decentralization and isolation. Because these individuals are available to employees in all court units, they function as centralized and uniform resources for employees to learn about their rights and options without fear that their local leadership will be informed of their confidential conversations. And, importantly, the directors look beyond individual employees and workplaces to identify institutional trends.

3. Multiple Avenues for Advice, Reporting, and Resolution

Another key change was the development of multiple avenues to report, discuss, and resolve workplace concerns. The EEOC recommends that an anti-harassment policy include a “clearly described complaint process that provides multiple, accessible avenues of complaint.” This recommendation is supported by research that demonstrates the efficacy of providing both

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73 See, e.g., Press Release, U.S. Ct. of Appeals for the First Cir., supra note 14 (appointing Christine Guthery as Director of Workplace Relations, who had been the Assistant Director of the First Circuit Gender, Race, and Ethnic Bias Task Force); Press Release, U.S. Ct. of Appeals for the Third Cir., Third Circuit Forms Workplace Conduct Committee and Announces Appointment of First Director of Workplace Relations (Sept. 10, 2019), https://www.ca3.uscourts.gov/sites/ca3/files/DWR_Announcement.pdf [https://perma.cc/5CRV-T6GB] (appointing Julie Todd as Director of Workplace Relations, who was an Administrative Judge for the EEOC); Press Release, U.S. Ct. of Appeals for the Sixth Cir., supra note 72 (appointing Kelly Roseberry as Director of Workplace Relations, who had served in the Wyoming government including as Interim Administrator for the Workforce Standards Division, the Deputy Administrator for Labor Standards, and the Executive Secretary for the Wyoming Medical Commission); Press Release, U.S. Cts. for the Ninth Cir., Ninth Circuit Announces Appointment of First Director of Workplace Relations (Nov. 13, 2018), http://cdn.ca9.uscourts.gov/datastore/general/2019/02/15/PR_11132018.pdf [https://perma.cc/FL9D-GVDN] (appointing Yohance Edwards as Director of Workplace Relations, who was the associate director and deputy Title IX officer at the University of California, Berkeley).

74 See EEOC REPORT, supra note 20, at 87–88.

75 Id. at 38.
formal and informal dispute resolution options in combatting workplace harassment. 76 “Increasing informal, confidential options within the complaint–response system is important... to create more supportive environments for those who have experienced sexual harassment.” 77 Employees feel more confident pursuing grievances when informal advice and multiple communication channels are available to them. 78 In accordance with these recommendations and the supporting research, the judiciary undertook significant reforms to its complaint processes in 2019.

Prior to the 2019 reforms, a clerk or other employee seeking to report a judge’s misconduct primarily had two formal options: to file a complaint via an EDR Coordinator or file a formal JC&D complaint with the clerk’s office or the Chief Circuit Judge. 79 EDR Coordinators are locally designated employees within each court unit who, in addition to their full-time jobs, provide guidance and administrative support for individuals and employing offices participating in the judiciary’s internal employment dispute resolution process. 80

While nothing prevented a law clerk or other employee from reporting to another judge or supervisor, some employees did not see that as a realistic option. 81 Outside of chambers, other judicial employees who wanted to report misconduct of judges or other employees had the options of reporting directly to a supervisor or manager, to human resources, or to EDR Coordinators.

Having only formal options hindered reporting. Employee feedback reflected a reluctance to report workplace concerns out of fear of retaliation from superiors and harm to their future career prospects. 82 Employees further expressed concerns about “whether details of their complaint would be kept private, reported misconduct would be adequately investigated, and


77 NATIONAL ACADEMIES REPORT, supra note 35, at 141. Tarana Burke’s personal story also serves to emphasize the importance of ensuring that informal support and resources are available for those who have experienced abuse. See BURKE, supra note 1, at 153–59, 214–17.

78 McDonald et al., supra note 76, at 44.


80 WORKING GROUP REPORT, supra note 43, at app. 8; MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN, supra note 58, at app. 1.


82 NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 7.
reporting would lead to a satisfactory resolution.”83 Employees likewise expressed a desire for a confidential reporting avenue outside of the direct chain of command.84

The changes were tailored to all of these concerns. Now employees can explicitly pursue multiple options: confidential informal advice, assisted resolution, and formal complaint.85 To further assure that employees understand the reporting routes available, materials were developed to communicate the procedures. One such example is the following chart, created internally—a graphic outline of these options:

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83 Id.
84 Id.
85 2019 STATUS REPORT, supra note 54, at 13–14.
“Informal Advice” is an option that allows an employee to receive confidential advice and guidance from a local EDR Coordinator, a circuit Director of Workplace Relations, or the national Judicial Integrity Officer. This confidential guidance may include providing information on the employee’s rights, providing perspective on the conduct, discussing ways to respond to the conduct, and providing an outline of potential options for resolution. A primary purpose of informal advice is to confidentially provide employees with relevant information so they can make informed decisions about how to proceed with their concerns. As explained by the

86 Id. at 14.
87 MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN, supra note 58, at app. 5.
EEOC, engaging in a reporting process can cause psychological distress.\footnote{EEOC REPORT, supra note 20, at 16–17; cf. BURKE, supra note 1, at 156–59, 218–24 (describing the psychological difficulties experienced by the author in articulating the abuse she had suffered).} The aim of the informal advice channel is to reduce the psychological distress of reporting. Accordingly, the conversations remain confidential unless the employee seeks or requests further action.\footnote{MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN, supra note 58, at 4.} In this way, employees pursuing the “Informal Advice” option generally control the level of confidentiality that attaches to their conversations.\footnote{The only time a conversation cannot be kept completely confidential is when the employee raises an issue that indicates reliable information of a threat to an individual’s safety or security, or of a threat to the integrity of the judiciary. Id. Materials are provided to employees alerting them to the level of confidentiality they can expect according to their circumstances. See id. at 4, app. 2 at 3.} The “Assisted Resolution” avenue available under the EDR is an interactive and flexible process that may include discussions with the source of the conduct, preliminary investigations including interviewing the witness, and resolution by agreement.\footnote{Model Employment Dispute Resolution Plan, supra note 58, at 10–11. Back pay and associated benefits are available when the statutory criteria of the Back Pay Act are satisfied. Those criteria “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.” See id. at 11 & n.2 (citing 5 U.S.C. § 5596(b)(1)).} Consistent with the EEOC Report, this option gives employees an informal method to resolve a workplace matter, typically at an early stage.

Finally, filing a formal complaint remains an option as well. The conduct of a judge or an employee may be the subject of an EDR complaint, while a complaint under the JC&D process is limited to complaints against judges.\footnote{Model Employment Dispute Resolution Plan, supra note 58, at 10–11. Back pay and associated benefits are available when the statutory criteria of the Back Pay Act are satisfied. Those criteria “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.” See id. at 11 & n.2 (citing 5 U.S.C. § 5596(b)(1)).} Through formal resolution, a complainant may pursue remedies such as back pay, reinstatement, promotion, records modification, granting of family and medical leave, any reasonable accommodations, and any other appropriate remedy to address the wrongful conduct.\footnote{2019 STATUS REPORT, supra note 54, at 15–16.}

The Office of Judicial Integrity and Directors of Workplace Relations are key channels in the multiple avenues of reporting and receiving confidential guidance now available to judiciary employees. In addition to these newly created roles, the judiciary has also retained and revamped the EDR Coordinator role as a point of contact for employees who wish to report and resolve workplace concerns at a local level.\footnote{2019 STATUS REPORT, supra note 54, at 15–16.}

Early evidence indicates that the creation of multiple and confidential informal avenues for reporting has been successful in removing barriers to
reporting. Multiple Directors of Workplace Relations have reported that they spend more of their time on confidential informal advice than anything else—albeit on a range of workplace issues, not only harassment.\footnote{This observation is drawn from conversations between the author and circuit Directors of Workplace Relations and representatives of the Office of Judicial Integrity.} Those confidential conversations have provided opportunities for a variety of interventions that would not have been possible if employees were not comfortable coming forward. The interventions have included informal actions to stop the inappropriate behavior, targeted trainings, policy revisions, mediations and facilitated conversations, and investigations.\footnote{This observation is likewise drawn from conversations between the author and circuit Directors of Workplace Relations and representatives of the Office of Judicial Integrity.} These informal, confidential, and flexible options mitigate some of the impacts of the power disparities inherent in the judiciary.

These reporting avenues are not mutually exclusive and can be pursued simultaneously. And pursuing these options does not preclude the filing of a formal complaint. The net result is that structural barriers are removed, confidentiality is protected to the greatest extent possible, and it is anticipated that employees will gain confidence in the system.

4. **Major Revision of Harassment-Related Policies**

   a. **Promoting Civility and Prohibiting Abusive Conduct**

   The Codes of Conduct and JC&D Rules now make clear that all judiciary employees, including judges, have an affirmative duty to promote civility both in the courtroom and throughout the courthouse. The Code of Conduct for judges emphasizes that its canons regarding civility—requiring that judges be patient, dignified, respectful, and courteous—extend not just to those coming before the court but also to all court personnel including chambers employees.\footnote{2019 STATUS REPORT, supra note 54, at 5 (citing CODE OF CONDUCT FOR U.S. JUDGES Canons 2A cmt., 3 intro., 3B(4), 3B(4) cmt. (JUD. CONF. OF THE U.S. 2019))).} In a similar vein, the JC&D Rules now expressly protect judicial employees from “demonstrably egregious and hostile” treatment.\footnote{JC&D RULES, supra note 56, at r. 4(a)(2)(B).}

   The codes of conduct for both judges and judiciary employees now expressly cover sexual harassment, discrimination, abusive behavior, and retaliation for reporting or disclosing judicial misconduct. A new section in the JC&D Rules, entitled “Abusive or Harassing Behavior,” provides that cognizable misconduct includes “engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault” as well as
creating a hostile work environment. These changes expand the workplace-conduct obligations for federal judges and employees.

The judiciary’s policies have long protected against “discrimination and harassment based on race, color, national origin, sex, gender, pregnancy, religion, and age (40 years and over),” but they were expanded in 2019 to include gender identity and sexual orientation within the definition of “protected categories.” As a consequence of employee feedback and consistent with the reality of today’s workplace, the Model EDR Plan also added “[a]busive conduct” as a form of wrongful conduct, defined as “a pattern of demonstrably egregious and hostile conduct not based on a [p]rotected [c]ategory that unreasonably interferes with an [e]mployee’s work and creates an abusive working environment.”

Judiciary employees are thus now protected not only from discriminatory harassment but also from any form of harassment that unreasonably interferes with the work environment, regardless of motivation. Indeed, the revised Model EDR Plan includes a clear policy statement setting forth “wrongful conduct” prohibited in the workplace, including discrimination; “sexual, racial, and other discriminatory harassment;” abusive conduct; retaliation; and violations of specific employment laws.

b. Retaliation Protection and Bystander Reporting Obligation

The concern about “closed-door” interactions and a victim’s reluctance to report misconduct is understandable, so the Working Group recommended that the JC&D Committee “provide additional guidance . . . on a judge’s obligations to report or disclose misconduct and to safeguard complainants from retaliation” and “reinforce the principle that retaliation for reporting or disclosing judicial misconduct constitutes misconduct.” In response, the Judicial Conference expanded the JC&D Rules to define judicial misconduct “to include retaliation for reporting or disclosing judicial misconduct or disability.” It “also added a new provision that includes a judge’s failure to bring ‘reliable information reasonably likely to constitute judicial misconduct’ to the attention of the relevant chief district judge or chief circuit judge.”

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99 Id. at r. 4(a)(2).
100 2019 Status Report, supra note 54, at 9, 13 (citing JC&D Rules, supra note 56, at r. 4(a)(2), 4(a)(3)).
101 Model Employment Dispute Resolution Plan, supra note 58, at 2–3 (emphasis omitted); see also Ninth Circuit Committee Report, supra note 45, at 13.
102 Model Employment Dispute Resolution Plan, supra note 58, at 1–2.
104 2019 Status Report, supra note 54, at 8 (citing JC&D Rules, supra note 56, at r. 4(a)(4)).
judge within the definition of cognizable misconduct.”105 Because sexual harassment and abusive behavior fall within such misconduct, judges now have an affirmative obligation in specific circumstances to come forward. This change is significant as the information ultimately must be shared with chief circuit judges who, apart from an individual complainant, have the authority to initiate a complaint against a judge.106

Before recent changes, judges were advised to “take appropriate action” against misconduct.107 The Code of Conduct for judges was amended to put teeth into this standard. As the commentary to the amended Code provision states:

Public confidence in the integrity and impartiality of the Judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence.108 That commentary also clarifies that these provisions are read in conjunction with the JC&D Rules on misconduct.109 The Code of Conduct for employees was correspondingly revised, emphasizing employees’ “duty to promote appropriate workplace conduct, prohibit workplace harassment, take appropriate action to report and disclose misconduct, and prohibit retaliation for reporting or disclosing misconduct.”110 These changes coupled with increased training and widespread dissemination of related information have resulted in judges, law clerks, and employees coming forward to report inappropriate comments and conduct. Virtually all of these have been resolved through informal means, further investigation, mediation, and/or remedial action.

c. Complete Overhaul of Model EDR Plan

Before recent amendments, a reading of the existing Model EDR Plan revealed that it was dense, required exhaustion of mediation before filing a complaint, and was more procedurally complicated.111 A wholesale revision to the plan resulted in a streamlined, easy-to-understand document that

105 2019 STATUS REPORT, supra note 54, at 8–9 (citing JC&D RULES, supra note 56, at r. 4(a)(6) & cmt., 25 cmt.).
106 Judicial Conduct and Disability Act, 28 U.S.C. § 351(b); JC&D RULES, supra note 56, at r. 5.
107 2019 STATUS REPORT, supra note 54, at 5.
108 Id. at 6 (quoting CODE OF CONDUCT FOR U.S. JUDGES, supra note 97, at Canons 3B(6) & cmt.).
109 CODE OF CONDUCT FOR U.S. JUDGES, supra note 97, at Canon 3B(6) cmt.
110 2019 STATUS REPORT, supra note 54, at 6–7 (citing CODE OF CONDUCT FOR JUD. EMPS., supra note 64, at Canons 3C, 3D).
encourages the reporting of workplace misconduct and provides multiple, more flexible options for resolving claims. As discussed above, the revised Model EDR Plan encourages reports of wrongful conduct by making clear that confidentiality requirements do not prohibit reporting workplace misconduct. Revisions made to the Model EDR Plan increased the time to file a formal EDR complaint from 30 to 180 days from the alleged wrongful conduct or the time an employee becomes aware of such wrongful conduct and extended “EDR coverage to all paid and unpaid interns and externs.”

The revised Model EDR Plan provides that the appropriate chief judge be notified of claims against a judge and that the chief judge oversees a request for assisted resolution or a formal complaint process that includes allegations against a judge or court unit executive.

Importantly, the revised Model EDR Plan offers a process that is impartial and free of conflicts of interest. It provides that those managing or presiding over an EDR process must recuse if they participated, witnessed, or were otherwise involved in the conduct giving rise to the claim. It also requires recusal if the matter creates an actual or perceived conflict of interest. Where appropriate, it allows for a judge from a different court to be brought in to preside over a complaint. And, it further prohibits judges and unit executives from serving as EDR Coordinators.

To ensure its efficacy, in January 2020, the Office of Judicial Integrity and EDR Working Group issued an internal EDR interpretive guide and handbook for all employees, managers, and judges, so that EDR claims can be processed in a uniform, conflict-free manner nationwide.

d. Revisions to the JC&D Rules

In addition to the revisions discussed above, the JC&D Rules were further revised to eliminate barriers to reporting and increase accountability

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112 2019 STATUS REPORT, supra note 54, at 12.
113 Id. at 11.
114 This notification process ensures that reporting goes to an individual who is superior in rank to the person about whom the complaint is made. If the complaint relates to the chief judge, then the notice goes to a different judge. MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN, supra note 58, at 7.
115 Id. at 4.
116 Id.
117 Id.
118 Id. at 7.
119 Id. at 12.
for judges, including clarification that confidentiality requirements do not limit disclosure of misconduct.

The National Working Group emphasized the judiciary’s “institutional interest in determining, apart from any disciplinary action, what conditions enabled the misconduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its repetition.”121 By law, Congress has provided that a judge who no longer holds a judicial commission is not subject to disciplinary proceedings under the Judicial Conduct and Disability Act.122 But that does not mean that the judiciary is stymied from a “look back” to learn from a misconduct complaint. To this end, the judicial conduct rules now highlight the authority of both the Judicial Conference and the relevant judicial council to evaluate the underlying circumstances that contributed to the misconduct, thus promoting appropriate review of what precautionary or curative steps need be undertaken to prevent its recurrence.123 In addition, the judiciary may make referrals to law enforcement and licensing authorities even after a judge resigns.124

Finally, the amendments were designed to increase transparency. For example, certain disclosures are allowed for details of a complaint that are already in the public realm (thus minimizing the need for confidentiality during the complaint proceedings), such as when key facts about the matter, such as a judge’s identity, have been publicly released.125

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123 JC&D RULES, supra note 56, at r. 11 cmt. (noting that “the Judicial Conference and the judicial council of the subject judge have ample authority to assess potential institutional issues related to the complaint . . . . Such an assessment might include an analysis of what conditions may have enabled misconduct or prevented its discovery, and what precautionary or curative steps could be undertaken to prevent its recurrence” (citations omitted)). Thus, for example, despite the resignation of then-Judge Carlos Murguia, the Committee on Judicial Conduct and Disability issued a written decision noting “the instructive value of providing guidance regarding the statutory standard for Congressional referral for consideration of impeachment.” In re Complaints Under the Jud. Conduct & Disability Act, C.C.D. No. 19-02, at 8. The Committee concluded that “the underlying misconduct” related to sexual misconduct and harassment was “serious enough to have warranted our deliberations over a referral to Congress for its consideration of impeachment.” Id. at 9. The Committee further observed that despite the former judge’s resignation, “[c]oncluding a misconduct proceeding upon a judge’s resignation serves important institutional and public interests, including prompting subject judges who have committed misconduct to resign their office.” Id. at 10.
124 JC&D RULES, supra note 56, at r. 23 cmt.
125 2019 STATUS REPORT, supra note 54, at 10; JC&D RULES, supra note 56, at r. 23(b)(8) & cmt.; see, e.g., id. at r. 24.
e. Congressional Outreach

Over the last several years, the judiciary has communicated often with various congressional offices and committees regarding its continuing work on workplace environments. This ongoing dialogue has included judiciary representatives providing testimony and documentation for congressional hearings, providing written answers to questions for the record, keeping Congress apprised of the judiciary’s substantial efforts through its 2018 and 2019 reports, and responding to specific inquiries. These responses capture the policy and procedural changes described in this Essay. In addition, the judiciary has acknowledged areas for improvement and reviewed how reported incidents are investigated and resolved.

III. TRAINING AND EDUCATION

Survey responses and other feedback revealed that, prior to 2018, many employees were unaware of policies prohibiting misconduct, their rights under those policies, or to whom they could turn with workplace misconduct concerns. In addition, some judges, managers, and supervisors were unsure of their obligations and responsibilities if they observed or otherwise became aware of misconduct. In response, the judiciary has greatly expanded its training and educational opportunities consistent with the EEOC Report’s recommendation that training is “an essential component of an anti-harassment effort.”

The revised Model EDR Plan now requires annual EDR training to be provided for all employees, including judges and law clerks. That training

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127 See Confronting Sexual Harassment and Other Workplace Misconduct in the Federal Judiciary, supra note 126.


131 EEOC REPORT, supra note 20, at 45.

132 MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN, supra note 58, at 13.
includes “bystander intervention,” which encourages those who recognize or witness misconduct to take action.\textsuperscript{133} This may include reporting through the multiple channels available for assistance.\textsuperscript{134} Judges, in particular, are advised that they are \textit{required} to take appropriate action if they learn of wrongful conduct by any judicial employee, and they are \textit{required} to report a fellow judge’s misconduct to the chief judge.\textsuperscript{135}

The Office of Judicial Integrity has developed a uniform national training and certification curriculum for EDR Coordinators. All EDR Coordinators in the judiciary must now be trained and certified on the information and skills necessary to fulfill their function.\textsuperscript{136} This training is in addition to the annual training required for all employees.

The Federal Judicial Center regularly organizes educational programs for judges, court unit executives, managers and supervisors, and judiciary staff.\textsuperscript{137} It has conducted trainings and programs on respect in the workplace, civility, and implicit bias, and provided trainings and resources on other workplace topics.\textsuperscript{138} Expanded training, such as on bystander intervention and the development of “soft skills” for managers and supervisors, is anticipated to supplement the traditional discrimination and harassment training programs already conducted. This expanded training will focus on broader themes and topics that promote a civil, respectful, and collaborative work environment.\textsuperscript{139}

Because of their unique roles and often short tenure, the Ninth Circuit has developed special initiatives targeting law clerks—expanded law clerk orientation agendas that include sessions on discrimination and harassment policies and employee dispute procedures, and sample chambers checklists on workplace expectations. Both endeavors encourage more transparency and communication about appropriate expectations of law clerks.\textsuperscript{140} Training

\begin{itemize}
\item \textsuperscript{133} \textit{WORKING GROUP REPORT}, supra note 43, at 20, 42.
\item \textsuperscript{134} See id.
\item \textsuperscript{135} JC&D RULES, supra note 56, at r. 4(a)(6).
\item \textsuperscript{136} See EDR WORKING GRP. & OFF. OF JUD. INTEGRITY, supra note 120, at 35; MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN, supra note 58, at 12.
\item \textsuperscript{140} NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 3.
\end{itemize}
for new judges begins at seminars following their confirmation hearings.\footnote{See Programs and Resources for Judges, Fed. Jud. Ctr., https://www.fjc.gov/education/programs-and-resources-judges [https://perma.cc/BNE2-AGBT]; Working Group Report, supra note 43, at 41.} And specialized workplace conduct training is offered for chief judges and others in supervisory roles focusing on their unique responsibilities as court leaders with respect to workplace conduct.\footnote{See 2019 Status Report, supra note 54, at 2; Programs & Resources for Executives, supra note 139.} A number of training and educational opportunities are offered online and through meetings, symposia, conferences, informal sessions with employees, reading clubs, and newsletters.\footnote{For example, workplace issues are addressed in online and in-person training for law clerks, meetings of chief judges (both district and appellate courts), yearly educational meetings with district and bankruptcy court judges, the national symposium for court of appeals judges, targeted training for pretrial and probation units, and individual district meetings with lawyers and judges. Other examples include the Ninth Circuit’s internal newsletter 9th to 5, and law clerk training via the Interactive Orientation for Federal Law Clerks and Maintaining an Exemplary Workplace.} The Judicial Integrity Officer, chief judges, and Directors of Workplace Relations are seeing the impact of increased communications and training through additional inquiries and reports. Indeed, multiple employees have stated that these trainings alerted them to the inappropriate nature of certain behaviors and to the resources available to address them. And Directors of Workplace Relations have reported seeing an increase in the number of misconduct reports after holding trainings.\footnote{This positive relationship between training and reporting should be unsurprising and has been observed in other environments. See Jamie Mansell, Dani M. Moffit, Anne C. Russ & Justin N. Thorpe, Sexual Harassment Training and Reporting in Athletic Training Students, 12 Athletic Training Educ. J. 3, 7 (2017) (“[A]thletic training students who never received any training were 6 times less likely to know what to do in harassing situations.”).}

Increased education about the workplace makes employees aware of their rights, makes judges aware of their obligations and responsibilities, reinforces behavioral expectations, and sends a clear message that these issues matter and are taken seriously. Increased training also reduces the negative impacts of isolated workplaces. When employees, including clerks, are informed—early, clearly, and repeatedly—of their rights and options and of the expectations and obligations placed on judges, the judiciary’s commitment to a fair and transparent workplace is reinforced.

IV. LOOKING TO THE FUTURE

A. Internal Efforts

The judiciary is steadfast in its commitment to enduring improvements. The Office of Judicial Integrity and the network of Directors of Workplace Relations are seeing the impact of increased communications and training through additional inquiries and reports. Indeed, multiple employees have stated that these trainings alerted them to the inappropriate nature of certain behaviors and to the resources available to address them. And Directors of Workplace Relations have reported seeing an increase in the number of misconduct reports after holding trainings. This positive relationship between training and reporting should be unsurprising and has been observed in other environments. See Jamie Mansell, Dani M. Moffit, Anne C. Russ & Justin N. Thorpe, Sexual Harassment Training and Reporting in Athletic Training Students, 12 Athletic Training Educ. J. 3, 7 (2017) (“[A]thletic training students who never received any training were 6 times less likely to know what to do in harassing situations.”).
Relations and EDR Coordinators continue to track and respond to workplace conduct trends, serve as resources for court employees, collaborate on best practices, and increase awareness of the judiciary’s flexible reporting processes. Indeed, direct feedback on these resources has resulted in suggested changes, as recounted in this Essay. The National Working Group continues to meet, review relevant policies and procedures, identify areas for improvement, and aggressively recommend changes to existing structures while working closely with various other judicial committees.

The judiciary also is expanding the ways it collects feedback from employees, from post-training surveys regarding employees’ awareness of available resources to anonymous comment boxes and both court-wide and unit-focused climate surveys. Several circuits have previously conducted either climate surveys or law clerk exit surveys which have provided valuable feedback for the development of workplace initiatives. As Professor Litman and Shah note, and the EEOC recommends, workplace surveys are a means to uncover potential problems, including harassment. Climate surveys and other feedback mechanisms “can alert organizations to the extent of the problem and provide[] them with an opportunity for early intervention.”

At the national level, all judiciary employees can provide information anonymously to the Office of Judicial Integrity through its online reporting mechanism, which allows employees to relay concerns without any attributable or identifying information. The Ninth Circuit implemented a similar tool for conveying anonymous information. While the ability to respond directly is limited with anonymous complaints, information is aggregated and reviewed for patterns, trends, and other information that may provide insight on potential training needs or other interventions.

Several circuits have developed or are developing various types of law clerk and employee engagement groups, facilitating closer engagement and interaction between chambers and court units. These opportunities provide useful assistance to employees and simultaneously serve as a source of feedback to Directors of Workplace Relations about current concerns and the unique needs of each group. For example, the Ninth Circuit launched the Law Clerk Resources Group, comprised of former law clerks, to help current law clerks navigate their clerkships and provide them the opportunity to

145 See 2019 STATUS REPORT, supra note 54, at 18; NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 1, 6–10, 16.
146 Litman & Shah, supra note 17, at 635; see EEOC REPORT, supra note 20, at 67.
147 Buchanan et al., supra note 76, at 697.
148 See NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 1, 9–10.
149 See infra notes 150–152 and accompanying text.
discuss questions and concerns about their chambers experience with peers. Similarly, the D.C. Circuit created a Law Clerk Advisory Group. Expanding on these models, the First Circuit includes law clerks, probation and pretrial services employees, and Clerk’s Office staff on its Workplace Conduct Committee.

B. Partnerships

The Office of Judicial Integrity and Directors of Workplace Relations also serve as conduits and liaisons for outside stakeholders, such as law schools, clerkship programs and associations, and other organizations that interact with the judiciary. Judiciary representatives are collaborating with organizations like the National Association of Law Placement and the Association of American Law Schools and are connecting with law school administrators.

Law school faculty and administrators have a unique window into their students’ and graduates’ experiences. They can be valuable partners to the judiciary in identifying and addressing workplace misconduct during or after clerkships or other assignments. In August 2021, the Director of the Administrative Office reached out to nearly 200 law schools to update them on the judiciary’s efforts and to seek their assistance in “identify[ing] and correct[ing] any workplace conduct that falls short of [the judiciary’s] high standards.” The letter urges law schools to contact the Office of Judicial Integrity or a Circuit Director of Workplace Relations if they “receive a report of or hear about potential workplace misconduct in the Federal


153 For example, the judiciary has been in correspondence with these organizations and a representative participated in national meetings of both groups along with appearing at the American Academy of Appellate Lawyers. Judiciary representatives have also spoken at bar associations and civic groups. See, e.g., NINTH CIRCUIT COMMITTEE REPORT, supra note 45, at 10, 17.


Recent news reports highlight that no industry is immune from workplace harassment. As the EEOC and others have recognized, the institutional structures of some workplaces may increase the likelihood of misconduct while at the same time decreasing the likelihood of its detection. Professor Litman and Shah point out that the federal judiciary possesses several risk factors for harassment, and the surfacing of allegations against federal judges underscores the pressing need to address these institutional structures.

In evaluating the work that needs to be done to combat workplace harassment, Professor Litman and Shah call on the legal profession, including the judiciary, to engage in a “sustained, public reflection about how our words, actions, attitudes, and institutional arrangements allow harassment to happen, and about the many different ways that we can prevent and address harassment.” After more than three years of intensive efforts to change the workplace landscape with respect to harassment and bullying, this Essay reflects on the ways in which the federal judiciary has begun this difficult but necessary work and acknowledges that it will take ongoing vigilance and attentiveness. Leadership will continue reflection and reform with the goal to gain the workforce’s trust and confidence in the fairness of the policies and their implementation.

As one of the EEOC Report’s authors testified to Congress, “two essential components of a successful effort to shape workplace culture are leadership from the top and a focus on the unique needs of a particular

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156 Id.
159 Litman & Shah, supra note 17, at 599.
workplace.” The leadership has come directly from Chief Justice Roberts, chief circuit and district judges, and workplace managers. As efforts to date demonstrate, the federal judiciary appreciates the gravity of the issue and is dedicated to continued reform and innovation tailored to the judicial structure and environment. That effort should be given a fair chance to blossom and take root, while at the same time looking ahead to continued refinements and innovations. Although from 2020 to the present, the pandemic slowed certain court operations and modified in-person interactions, the judiciary’s workplace reforms continued unabated. The focus remains on preventing workplace harassment and providing employees with necessary advice, guidance, and procedures to address harassment and other abusive workplace conduct. This commitment to ensuring an exemplary workplace begins with Chief Justice Roberts and extends to all 30,000 plus people employed by the federal court system who deserve a respectful workplace.

160 Protecting Federal Judiciary Employees from Sexual Harassment Discrimination and Other Workplace Misconduct, supra note 126, at 2 (statement of Chai R. Feldblum, Partner & Dir. of Workplace Culture Consulting, Morgan, Lewis & Bockius LLP).

161 2017 YEAR-END REPORT, supra note 15, at 11 (noting the federal judiciary’s commitment to ensuring “an exemplary workplace for every judge and every court employee”).