

EXECUTIVE SUMMARY
OF
THE REPORT OF THE FEDERAL JUDICIARY WORKPLACE CONDUCT
WORKING GROUP
TO
THE JUDICIAL CONFERENCE OF THE UNITED STATES
JUNE 1, 2018

On December 20, 2017, Chief Justice John G. Roberts, Jr., asked the Director of the Administrative Office of the United States Courts to establish a working group to examine the sufficiency of the safeguards currently in place within the Judiciary to protect court employees from inappropriate conduct in the workplace. The goal of this undertaking is to “ensure an exemplary workplace for every judge and every court employee.” On January 12, 2018, the Director announced formation of the Federal Judiciary Workplace Conduct Working Group (Working Group), consisting of eight experienced judges and court administrators from diverse units within the Judiciary. The Working Group consulted with Administrative Office staff to collect information and formulate recommendations, meeting collectively on four occasions and collaborating continuously through telephonic and electronic means.

The Working Group proceeded from the premise that the Judiciary shares many common features with other public and private workplaces. Accordingly, studies conducted in those environments—most notably, a Select Task Force of the U.S. Equal Employment Opportunity Commission Study of Harassment in the Workplace in 2016 (EEOC Study)—provide pertinent guidance. But the Working Group also recognized that the judicial workplace is different in significant respects that can affect—both positively and negatively—the potential for inappropriate conduct. The Working Group accordingly embraced the guidance contained in the EEOC Study, but additionally focused on those distinguishing factors in evaluating the Judiciary’s current workplace standards, its procedures for addressing inappropriate behavior,

and its educational and training programs. In the course of its review, the Working Group received input from current and former law clerks, court employees, Judicial Branch advisory councils, and individual circuits. It received that input through face-to-face meetings, anonymous and attributable comments from an electronic mailbox, and court surveys.

This Report sets out the findings and the recommendations of the Working Group. Some of the recommendations require action by the Judicial Conference of the United States, which is the national policy-making body for the federal courts. Other recommendations can be instituted by the Administrative Office, which administers judicial policies, or the Federal Judicial Center (FJC), which conducts judicial education. The Report sets out 24 specific recommendations to the Judicial Conference of the United States and its relevant committees for further action. Those recommendations are in addition to numerous actions that have already been initiated by the Administrative Office or the FJC.

I. *Findings*

The Judiciary employs 30,000 individuals in a broad range of occupations, ranging from life-tenured judges to temporary interns. The Working Group sought to assess the quality of the workplace environment across that broad spectrum. Based on the input from the electronic mailbox, the advisory groups, individual interviews, and court surveys, the Working Group believes that inappropriate conduct, although not pervasive within the Judiciary, is not limited to a few isolated instances. Of the inappropriate behavior that does occur, incivility, disrespect, or crude behavior are more common than sexual harassment.

The Working Group assessed the strengths and weaknesses of the Judiciary's current workplace practices through five considerations that the EEOC Study identified as key elements

in preventing inappropriate conduct: leadership; accountability; policies; procedures; and training. In summary, the Working Group found:

- The Judiciary has demonstrated committed leadership in addressing inappropriate conduct, but that leadership is not uniform throughout all court units and supervisory levels. The Judiciary should encourage leadership on workplace conduct and civility throughout the branch through educational programs, performance reviews, and other mechanisms for motivating positive change.
- The Judiciary has also shown a commitment to accountability in its formal processes for receiving and resolving complaints. There is room for improvement in terms of both accessibility and transparency, but the most significant challenge to accountability lies in the understandable reluctance of victims, especially law clerks and other temporary employees, to report misconduct. The Judiciary should reduce barriers to reporting and provide alternative avenues for seeking advice, counseling, and assistance for all employees. Judges have a special responsibility to promote appropriate behavior and report instances of misconduct by others, including other judges.
- The Judiciary has long had in place policies, expressed through codes of judicial and employee conduct, to maintain high standards of behavior while preserving the independence and integrity of the Judicial Branch. Those policies, however, were not developed with the aim of addressing the particular issues of workplace harassment or incivility. The codes should more clearly communicate the rights and responsibilities of employees, including the scope of confidentiality and the availability of remedial procedures.

- The Judiciary has two formal mechanisms for reporting misconduct—the Judicial Conduct and Disability Act (JC&D Act), which sets out statutory procedures for complaints against judges, and the Employment Dispute Resolution Plans (EDR Plans), which are judicially created mechanisms in each of the circuits for making claims against judges and other judicial employees. They are effective when invoked, but they should not be the exclusive avenue for employee recourse. Employees should have other options, apart from filing a formal complaint, for guidance, counseling, assistance, and relief. Those options, calibrated to the nature of the conduct, should exist at the local, regional, and national levels.
- The FJC, as well as the Administrative Office and individual courts, have a broad range of publications, on-line resources, and in-person training programs to promote fair employment practices and workplace civility. These vigorous training programs can be improved through refinements placing more focus on workplace civility, integrating civility principles into other training programs, emphasizing proactive measures to prevent bad conduct, and encouraging “bystanders” who witness misconduct to take action through channels for reporting and response. Educational programs should be continuously evaluated to determine their effectiveness.

II. *Recommendations*

Based on its findings, the Working Group offers recommendations in three discrete areas for achieving the goal of an exemplary workplace. First, the Judiciary should revise its codes and other published guidance in key respects to state clear and consistent standards, delineate responsibilities, and promote appropriate workplace behavior. Second, the Judiciary should improve its procedures for identifying and correcting misconduct, strengthening, streamlining,

and making more uniform existing processes, as well as adding less formal mechanisms for employees to seek advice and register complaints. Third, the Judiciary should supplement its educational and training programs to raise awareness of conduct issues, prevent discrimination and harassment, and promote civility throughout the Judicial Branch.

A. Codes of Conduct and Guidance Documents

The Judicial Conference has adopted codes of conduct for judges and judicial employees that indicate, either expressly or by clear implication, that judges and judicial employees have a duty to refrain from and prevent harassment and other inappropriate workplace conduct. Those codes—and public confidence in the Judiciary—would be strengthened if the Judicial Conference made clear, through express language in the canons or the associated commentary, that judges have an obligation to promote civility and maintain a workplace that is free from harassment. 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:

- 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.
- 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.
- 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:

- Judicial employees, including supervisors, have a duty to promote workplace civility, avoid harassment, and take action when they observe misconduct by others.
- Confidentiality obligations do not prevent any employee—including law clerks—from revealing abuse or reporting misconduct by any person.
- Retaliation against a person who reports misconduct is itself serious misconduct.

The Judiciary has a wide range of guidance documents, policy statements, and instructions issued by the Administrative Office, individual courts, and other Judiciary entities that all need to be revised in parallel fashion to ensure that the Judiciary's substantive standards of workplace conduct are set out and explained in a consistent and cohesive manner. 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. Many of those efforts are already underway.

B. Procedures for Identifying and Correcting Misconduct

The Judiciary enforces its standards of conduct through two procedural mechanisms. Judges are subject to discipline through the statutory procedures set out in the JC&D Act, which the Judicial Conference has implemented through its Rules for Judicial Conduct and Judicial Disability Proceedings (the Conduct Rules). In addition, both judges and employees are subject