

**REPORT OF THE  
FEDERAL JUDICIARY WORKPLACE CONDUCT WORKING GROUP  
ON THE  
JUDICIARY’S 2023 NATIONAL WORKPLACE SURVEY  
March 31, 2025**

I. INTRODUCTION

*Background*

The Federal Judiciary Workplace Conduct Working Group<sup>1</sup> was established in 2018 at the direction of Chief Justice John G. Roberts, Jr., with the purpose of examining “the sufficiency of safeguards currently in place within the Judiciary to protect all court employees from inappropriate conduct in the workplace.” In its first report,<sup>2</sup> the Working Group said, “The Judiciary should set as its goal the creation of an exemplary workplace in which every employee is not only free from harassment or inappropriate behavior, but works in an atmosphere of civility and respect.”

The Working Group’s 2018 Report made recommendations across three areas: “(1) substantive standards; (2) procedures for seeking advice, assistance, or redress; and (3) educational efforts.” Those recommendations have since been adopted and implemented by the Judicial Conference of the United States (Judicial Conference), individual circuits and courts, the Administrative Office of the United States (AO), and the Federal Judicial Center (FJC).<sup>3</sup> Other steps, such as employee (including law clerk-specific) advisory groups, exit interviews, and communications with law schools, were taken at the national, circuit, and local levels as well.

Among the improvements made following the Working Group’s 2018 Report, the Judicial Conference revised the Codes of Conduct for Judges, Judiciary Employees, and Federal Defenders,<sup>4</sup> as well as the Judicial Conduct and Disability (JC&D) Rules.<sup>5</sup> These included adding a prohibition against abusive conduct (discussed further below) in addition to existing protections against discriminatory harassment, employment discrimination, and retaliation. Also added was an express duty on judges and others to take appropriate action upon receipt of reliable information that a judge or other person has contravened the Judiciary’s Codes of Conduct.

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<sup>1</sup> *Workplace Conduct in the Federal Judiciary*, <http://www.uscourts.gov/administration-policies/workplace-conduct-federal-judiciary>.

<sup>2</sup> Report of the Working Group, June 1, 2018, [https://www.uscourts.gov/sites/default/files/workplace\\_conduct\\_working\\_group\\_final\\_report\\_0.pdf](https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf).

<sup>3</sup> We described the adoption and implementation of these recommendations in our reports in 2019 and 2022. See [http://www.uscourts.gov/sites/default/files/working\\_group\\_status\\_report\\_to\\_jcus\\_september\\_2019.pdf](http://www.uscourts.gov/sites/default/files/working_group_status_report_to_jcus_september_2019.pdf) and [https://www.uscourts.gov/sites/default/files/report\\_of\\_the\\_workplace\\_conduct\\_working\\_group\\_-\\_march\\_2022\\_0.pdf](https://www.uscourts.gov/sites/default/files/report_of_the_workplace_conduct_working_group_-_march_2022_0.pdf).

<sup>4</sup> Guide to Judiciary Policy, Vol. 2, Part A, Chs. 2, 3, 4. Under the Criminal Justice Act, 28 U.S.C. § 3006A(g)(2)(A), federal public defender offices and their employees are part of the Judiciary for administrative and personnel purposes.

<sup>5</sup> Guide to Judiciary Policy, Vol. 2E, Ch. 3. The JC&D rules implement 28 U.S. Code §§ 351-364.

In 2019, the Judicial Conference adopted an updated Model Employment Dispute Resolution (EDR) Plan.<sup>6</sup> The updated Plan provides Judiciary employees with expanded procedural options and additional avenues to seek confidential advice and guidance outside one’s supervisory chain. The Model EDR Plan offers three “Options for Resolution” for addressing wrongful conduct. First, employees have the ability to seek confidential “Informal Advice” from an EDR Coordinator, a circuit Director of Workplace Relations (DWR), or the national Office of Judicial Integrity (OJI). Second, employees may initiate an EDR matter by filing a request for “Assisted Resolution,” a less formal, more flexible, and interactive process that seeks a mutually agreeable resolution to reported concerns. Finally, employees may file a “Formal Complaint,” a process governed by specific timelines and overseen and adjudicated by a federal judge (termed the “Presiding Judicial Officer”).

The Working Group made nine additional recommendations in its 2022 report, one of which was to conduct periodic national workplace surveys. This Report addresses the first such survey.

In preparing this report we also considered two reports issued in July 2024: *Enhancing Efforts to Coordinate Best Workplace Practices Across the Federal Judiciary*, Federal Judicial Center and National Academy of Public Administration, July 2024 (FJC/NAPA Report), and *Federal Judiciary: Additional Actions Would Strengthen Efforts to Prevent and Address Workplace Misconduct*, GAO-24-105638, July 2024 (GAO Report). Additionally, in November 2024, the Judiciary released its first-ever *Annual Report on the Judiciary Workplace*,<sup>7</sup> a product of one of the Working Group’s recommendations in its March 2022 Report. The 2023 Annual Report provides, among other things, data on the use of the Judiciary’s employment dispute resolution processes, and details steps the Judiciary has taken since 2019 to implement the Working Group’s recommendations. Given the timing of their release, each of these reports has informed the Working Group in our evaluation of the survey results and our recommendations in this Report.

### *The Judiciary’s 2023 National Workplace Survey*

In 2023, at the request of the Working Group and with the approval of the Judicial Conference, the FJC conducted a national survey of Judiciary employees.<sup>8</sup> The purpose of the survey was to assess the effectiveness of the measures the Judiciary has taken toward its goal of an exemplary workplace, to identify areas for possible improvement, and to provide a benchmark for future surveys.

The survey addressed overall employee satisfaction levels, incidence of inappropriate behaviors and wrongful conduct, effectiveness of avenues and procedures for addressing possible

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<sup>6</sup> In 2021 the Judicial Conference approved a very similar revised Model Employment Dispute Resolution Plan for Federal Defenders.

<sup>7</sup> <https://www.uscourts.gov/sites/default/files/2024-12/2023-annual-report-on-the-judiciary-workplace.pdf>.

<sup>8</sup> In September 2022, the Judicial Conference approved the recommendation that the Judiciary conduct “periodic national workplace surveys of all court and federal public defender organization employees, administered by the Federal Judicial Center.” The Working Group intends to consult with the FJC about conducting such surveys on a regular cycle. These surveys will help address Recommendations 6 and 8 in and *Federal Judiciary: Additional Actions Would Strengthen Efforts to Prevent and Address Workplace Misconduct*, GAO-24-105638, July 2024, <https://www.gao.gov/products/gao-24-105638>.

inappropriate behaviors or wrongful conduct, and scope and effectiveness of training. Respondents were instructed to address actions and events occurring after January 1, 2020, to capture experiences following adoption of the updated Model EDR Plan.

Recipients of the survey were told that the FJC would prepare a report based on the responses and that the report would be “confidential and would not be shared beyond the Working Group.” The FJC provided its confidential report to the Working Group in April 2024. Recipients of the survey were also told that the Working Group would report publicly with its recommendations. To keep the promise of confidentiality and still provide background and context for the Working Group’s report and recommendations, at the Working Group’s request, the FJC prepared a condensed—albeit extensive—report for publication.<sup>9</sup>

This is the Working Group’s report and recommendations. We reference the FJC Condensed Report, which contains more detailed information than we can cover in this report. We address matters that we believe should be given highest priority. We encourage all judicial branch personnel, and particularly judges, court unit executives, and others in leadership positions, to review not only our report and recommendations, but also the entire FJC Condensed Report for a better understanding of the Judiciary’s workplace and ways we can contribute to achieving an exemplary workplace for all.

### *Response rate*

The survey was sent to 27,904 Judiciary employees<sup>10</sup> and 13,895 completed the survey, for a 50% response rate.<sup>11</sup> Response rates across the major types of courts were: courts of appeals

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<sup>9</sup> That FJC Condensed Report is at <https://fjc.gov/content/392606/condensed-report-2023-federal-judiciary-workplace-survey>. The Working Group thanks the FJC for conducting and reporting on the survey and for preparing the Condensed Report for public release.

<sup>10</sup> The survey was sent in January 2023 to nearly all then-current Judiciary employees except judges. Employees of the Supreme Court, Administrative Office of the United States, United State Sentencing Commission, Joint Panel on Multidistrict Litigation, and Federal Judicial Center were not included in the survey.

<sup>11</sup> Exact comparisons are precluded by differences in survey instruments, purposes, and methods, but the overall response rate compares favorably with other surveys of this nature. OPM administers an annual federal employee viewpoint survey to all executive branch employees. In 2023, the overall response rate for the Office of Personnel Management (OPM) employee viewpoint survey was 39%. See *Governmentwide Management Report: Results from the 2023 OPM Federal Employee Viewpoint Survey*, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-management-report/2023/2023-governmentwide-management-report.pdf>. Similarly, in 2016, the Merit Systems Protection Board (MSPB) issued its report, *Sexual Harassment in Federal Workplaces: Understanding and Addressing the Problem*, which included data from the 2016 Merit Principles Survey with an overall response rate across the executive branch of 39.1%. See MSPB Sexual Harassment Study 2022 Update, [https://www.mspb.gov/studies/studies/Sexual\\_Harassment\\_in\\_Federal\\_Workplaces\\_Understanding\\_and\\_Addressing\\_the\\_Problem\\_1987037.pdf](https://www.mspb.gov/studies/studies/Sexual_Harassment_in_Federal_Workplaces_Understanding_and_Addressing_the_Problem_1987037.pdf). Additionally, in 2019, the Rand Corporation conducted a study of the prevalence of harassment and discrimination on the basis of gender and race/ethnicity in the Federal Emergency Management Administration (FEMA), using survey data with a response rate of approximately 45%. *Harassment and Discrimination on the Basis of Gender and Race/Ethnicity in the FEMA Workforce*, [https://www.rand.org/pubs/research\\_reports/RRA383-1.html](https://www.rand.org/pubs/research_reports/RRA383-1.html). In the legislative branch, the Office of Congressional Workplace Rights (OCWR) reported that 10% of members and employees of the House of Representatives responded to its 2023 workplace survey. See *Congressional Climate Survey Results for the U.S. House of Representatives, 117th Congress*, <https://www.ocwr.gov/publications/reports/other-reports/congressional-climate-survey-results-for-the-u-s-house-of-representatives-117th-congress>.

(1,290, 44%); district courts (8,584, 47%); and bankruptcy courts (1,722, 56%). The response rate for federal public defender offices (FDO) was 1,338, or 41%.<sup>12</sup> Estimated response rates for major units within courts were: chambers personnel (law clerks and judicial assistants) (2,325, 39%); clerk's office and other personnel (5,033, 45%), and probation and pretrial services offices (PPSO) (3,625, 47%).<sup>13</sup>

The Working Group thanks the respondents for their time and thoughtful input.<sup>14</sup>

## II. KEY TAKEAWAYS

### A. Employee Satisfaction Levels

Respondents indicated a high degree of pride and satisfaction in their work. Eighty-four percent of respondents said they are satisfied or very satisfied with their jobs, and 80% agreed or strongly agreed that they would recommend their court or employing office as a place to work. Responses varied somewhat across court unit types.<sup>15</sup> Ninety-three percent said they take pride in working for their court or employing office.<sup>16</sup> Recognizing that differences in survey instruments and methodology, response rates, and other factors preclude exact comparisons, we note that the overall positive ratings reported by Judiciary employees appear to exceed those recently reported for the executive and legislative branches.<sup>17</sup>

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<sup>12</sup> FJC Condensed Report, Table 1, p. 9.

<sup>13</sup> *Id.*, Table 5, p. 11. Some respondents did not indicate their employing unit or office. The number of respondents for clerk's offices shown here (5,033) also includes respondents who indicated they worked in circuit executive's offices, circuit libraries, staff attorney offices, mediation offices, bankruptcy administrator offices, and other offices listed in the footnote to Table 5.

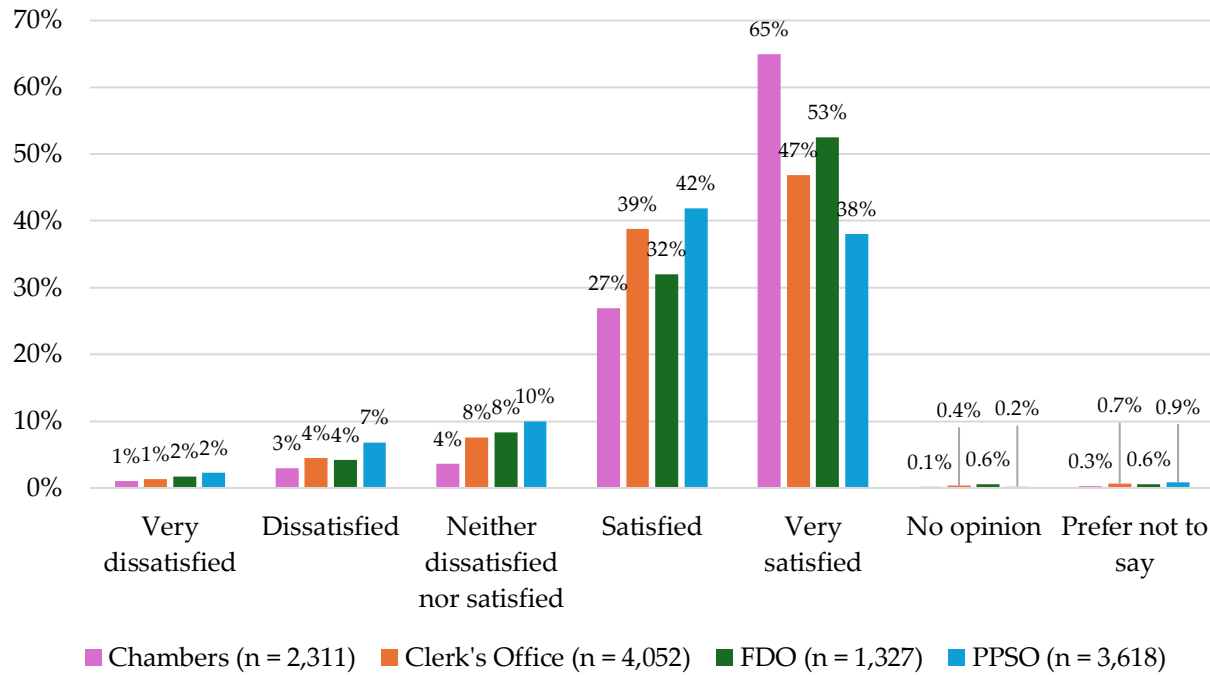
<sup>14</sup> The FJC advised us that in addition to answering the closed-ended questions in the survey, employees provided approximately 30,000 comments in response to open-ended questions. Four FJC researchers were the only people who had access to the survey responses and who saw the comments responding to open-ended questions; these researchers summarized the comments in detail for the Working Group, excluding information that could identify commenters or their court or office. The Working Group found these summaries helpful in adding context to the survey results.

<sup>15</sup> FJC Condensed Report, Tables 18, 19, Figures 2-7, pp. 22-27.

<sup>16</sup> *Id.*, Table 16, p. 18.

<sup>17</sup> See survey conducted by the Office of Personnel Management (OPM) (68% global index for job satisfaction in the executive branch), *Governmentwide Management Report: Results from the 2023 OPM Federal Employee Viewpoint Survey*, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-management-report/2023/2023-governmentwide-management-report.pdf>, page 11; similar survey data reported (78%) for the legislative branch, published by the Office of Congressional Workplace Rights (OCWR), *Congressional Climate Survey Results for the U.S. House of Representatives, 117th Congress*, <https://www.ocwr.gov/publications/reports/other-reports/congressional-climate-survey-results-for-the-u-s-house-of-representatives-117th-congress>.

Figure 5: Respondents' Overall Satisfaction with Their Job by Office Type.



Most respondents rated their relationships with management positively. Ninety-three percent rated their working relationship and interactions with their direct supervisor as excellent (60%), good (24%), or satisfactory (9%). Eighty-five percent of respondents rated their working relationships with high-level management other than a judge as excellent (39%), good (32%), or satisfactory (14%) (8% said this was not applicable to them). Eighty-four percent said their working relationship with judges was excellent (42%), good (31%), or satisfactory (11%) (12% said this was not applicable to them).<sup>18</sup>

Although still positive, only 67% agreed or strongly agreed that management encourages staff to speak up about questions or concerns, and 64% agreed or strongly agreed that employees are comfortable asking questions and taking suggestions to managers.<sup>19</sup> These matters should be addressed in education and training for court leaders at all levels.

### B. Incidence of Inappropriate Behavior or Wrongful Conduct

The FJC survey took a two-step approach to identifying possible wrongful conduct. It asked all respondents whether they had experienced specific inappropriate behaviors or actions (e.g., offensive jokes or comments). If a respondent answered yes then the respondent was asked one or more follow-up questions to help assess whether the behaviors or actions they experienced were sufficiently serious that they could constitute wrongful conduct as defined in Judiciary polices (see definitions below).<sup>20</sup> Thus, the survey helped the Working Group identify the

<sup>18</sup> FJC Condensed Report, Table 15, pp. 16-17.

<sup>19</sup> *Id.*, Table 16, p. 18.

<sup>20</sup> See FJC Condensed Report at pp. 3-6 for a fuller discussion of this part of the survey design.

incidence of wrongful conduct under Judiciary policies, as well as the incidence of inappropriate behaviors or actions that, while not wrongful conduct, detract from an exemplary workplace.

It is important to keep in mind the terminology used in the survey, the FJC Condensed Report, and this report. “Inappropriate *behavior*” and “inappropriate *action*” should be distinguished from wrongful *conduct*. The former, while not condoned and potentially subject to corrective action (such as counseling or reprimand), are not so serious that they constitute wrongful conduct.<sup>21</sup>

Almost two-thirds of respondents (65.3%) indicated that they had not experienced any of the listed inappropriate behaviors or actions, across all categories of conduct. More than nine-tenths of respondents (91.7%) indicated that they had not experienced wrongful conduct (i.e., discriminatory harassment, employment discrimination, or abusive conduct).<sup>22</sup>

### *Wrongful conduct*

The Judiciary’s codes of conduct establish standards of behavior for the workplace, and the EDR plans for each court and employing office provide enforceable protections against defined forms of wrongful conduct. The survey looked at four types of wrongful conduct in the workplace, as defined by Judiciary policy:

- Discriminatory harassment: “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.”<sup>23</sup>
- Employment discrimination: “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 identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability.”<sup>24</sup>
- Abusive conduct: “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.”<sup>25</sup>

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<sup>21</sup> Model EDR Plan, Section II.A (“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.”).

<sup>22</sup> FJC Condensed Report, Appendix B, p. 188.

<sup>23</sup> Guide to Judiciary Policy, Vol 12, Ch 2. §220.10.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

- Retaliation: “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.”<sup>26</sup>

The prohibitions on discriminatory harassment, employment discrimination, and retaliation are consistent with the statutory standards applicable to other government (and private sector) organizations.<sup>27</sup> The Judiciary’s prohibition against abusive conduct is an additional protection and is still relatively new. This protection for Judiciary employees applies without regard to protected categories (that is, without regard for or motivated by certain characteristics, such as race, sex, age, or disability). Thus, it extends well beyond the statutory prohibitions against harassment and discrimination.

Abusive conduct is addressed in the Codes of Conduct, the JC&D Rules, and the Model EDR Plans, each of which describes or defines abusive conduct somewhat differently because of the different purpose each of these policies serves.<sup>28</sup>

As a still new standard, there is some uncertainty about what constitutes abusive conduct.<sup>29</sup> Our recommendations include steps intended to reduce this uncertainty, including through additional training that uses examples from the FJC Condensed Report and from EDR, JC&D, and other data compilations.

Of the 13,895 respondents, 1,157 (8.3%) indicated experiencing discriminatory harassment, employment discrimination, or abusive conduct. Of the 1,157 respondents who indicated experiencing wrongful conduct, 259 indicated experiencing more than one type.<sup>30</sup> The greatest number of respondents (922, 6.6% of all respondents) indicated experiencing abusive conduct.

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<sup>26</sup> *Id.* The prohibition on retaliation extends to retaliation relating to abusive conduct allegations, as well as discriminatory harassment and employment discrimination. Because of how the survey was constructed, retaliation is addressed separately from the other three forms of wrongful conduct (discriminatory harassment, employment discrimination, and abusive conduct) in the FJC Condensed Report and in this report.

<sup>27</sup> The Judiciary’s protections against employment discrimination and discriminatory harassment are consistent with those found in Title VII of the Civil Rights Act of 1964 (prohibiting discrimination based on race, color, religion, sex, and national origin, including failure to provide a reasonable accommodation for a religious observance or practice); the Age Discrimination in Employment Act of 1967 (ADEA) (prohibiting discrimination based on age 40 and older, except as to the initial hiring, retirement, or separation of U.S. Probation and Pretrial Services officers); and the Americans with Disabilities Act of 1990 (ADA) (prohibiting discrimination based on a qualified disability, including failure to provide a reasonable accommodation for that disability). Retaliation is prohibited under 5 U.S.C. § 2302(b)(8).

<sup>28</sup> The Code of Conduct is an aspirational set of principles, and not all deviations from its prescriptions necessarily constitute sanctionable conduct. The JC&D Rules provide definitions or descriptions of judicial conduct that may result in sanctions against judges. The Model EDR plan is designed to provide employees with grounds and procedures for seeking redress from their employing court or office, and not as a process to sanction or punish individual offenders.

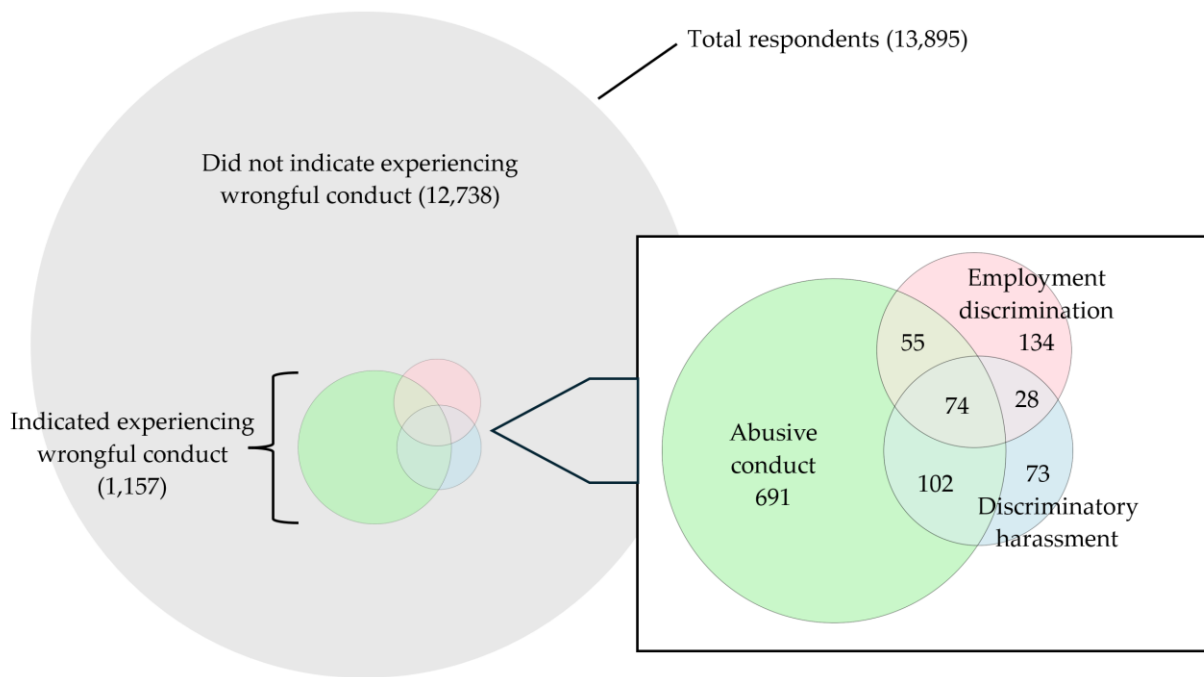
<sup>29</sup> FJC/NAPA Report, pp. 69-70.

<sup>30</sup> For example, 691 respondents indicated experiencing only abusive conduct, while 231 indicated experiencing abusive conduct **and** employment discrimination, discriminatory harassment, or both. Although survey respondents were instructed not to report abusive conduct they had reported elsewhere, it cannot be determined whether a respondent who indicated experiencing more than one form of wrongful conduct was describing the same (e.g., conduct that could be both abusive and harassing) or separate conduct. *See* FJC Condensed Report, Figure 28, p. 96.

A total of 277 respondents (2% of all respondents) indicated experiencing some form of discriminatory harassment. The highest incidence of discriminatory harassment is that based on race, color, or national origin (105, or 0.8% of respondents), followed by discriminatory harassment based on gender or gender identity (80, or 0.6%), and sexual harassment (67, or 0.5% of all respondents).<sup>31</sup>

A total of 291 respondents (2.1% of all respondents) indicated experiencing employment discrimination. Employment discrimination based on sex, gender, or gender identity had the highest incidence (111, or 0.8% of all respondents), followed by employment discrimination based on race, color, or national origin (106, or 0.8% of all respondents), and age (86, or 0.6% of all respondents).<sup>32</sup>

Figure 28: Venn diagram of respondents who indicate experiencing wrongful conduct across Parts II, III, IV.



<sup>31</sup> FJC Condensed Report, pp. 32-33. Rates for other protected categories were: age (57, or 0.4% of all respondents), disability (49, or 0.4% of all respondents), pregnancy (31, or 0.2% of all respondents), religion (29, or 0.2% of all respondents), and sexual orientation (28, or 0.2% of all respondents).

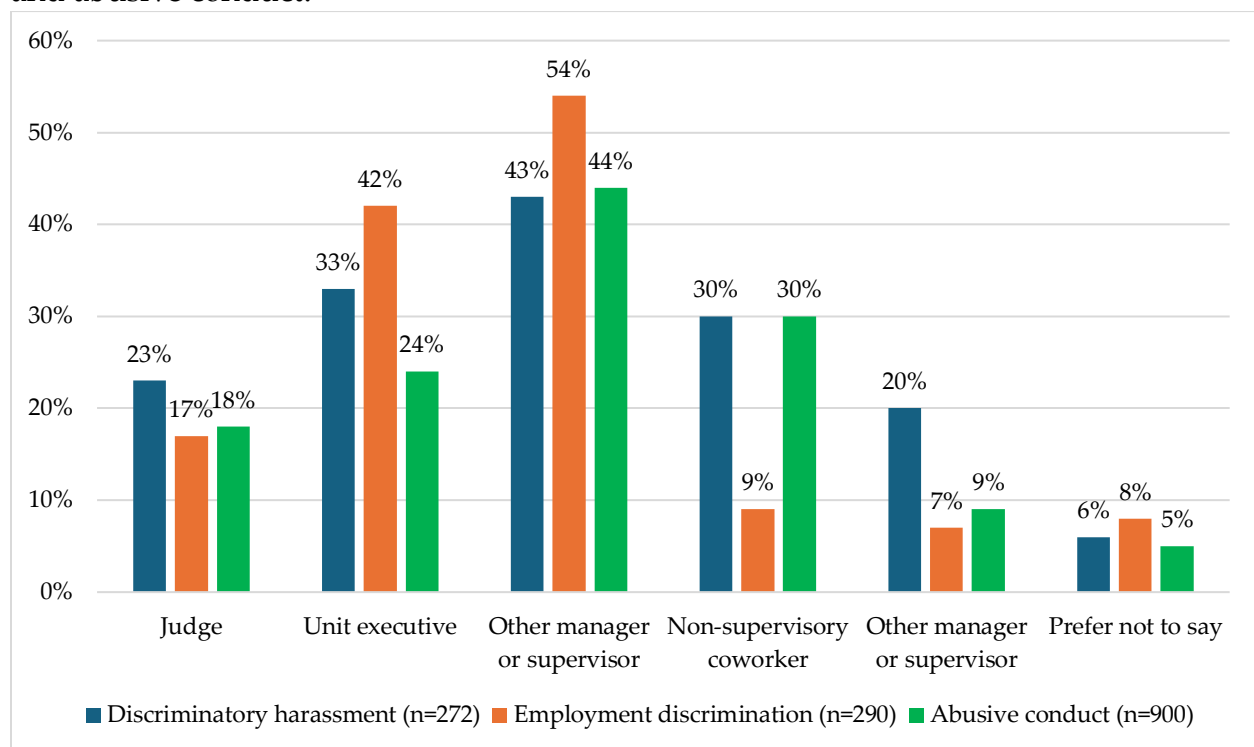
<sup>32</sup> FJC Condensed Report, pp. 61-62. Rates for other protected categories were: pregnancy (22, or 0.2% of all respondents), disability (34, or 0.2% of all respondents), religion (9, or 0.07% of all respondents), and sexual orientation (7, or 0.05% of all respondents).



The number and percentages of respondents who indicated experiencing wrongful conduct varied between different court units and offices. Percentages ranged from chambers staff, 4.6% (106 out of 2,325 respondents), to clerks’ offices, 8.1% (330 out of 4,070 respondents), to probation and pretrial services offices, 8.9% (322 out of 3,625 respondents), to federal defender offices, 10.4% (139 out of 1,338 respondents). Considering the 106 chambers respondents who indicated experiencing wrongful conduct, the greatest number (90) indicated experiencing abusive conduct; 29 indicated experiencing some form of discriminatory harassment, and 21 indicated experiencing some form of employment discrimination.<sup>33</sup> Abusive conduct was the most prevalent form of wrongful conduct in clerks’ offices, probation and pretrial services offices, and federal defender offices, as well.<sup>34</sup>

Who committed the wrongful conduct varied by the three types of wrongful conduct, but for all three types, the most frequent answer was a manager or supervisor other than a judge or unit executive, followed by a unit executive for discriminatory harassment and employment discrimination, and by a non-supervisory co-worker for abusive conduct.<sup>35</sup>

Figure 30: Who committed the discriminatory harassment, employment discrimination, and abusive conduct.



<sup>33</sup> FJC Condensed Report, Appendix B, Figure B-2, p. 189. Chambers staff includes career and term law clerks, paralegals, and judicial assistants. Respondents could report experiencing more than one type of misconduct, so the numbers sum to more than 106. That a respondent who works in chambers indicated experiencing wrongful conduct does not necessarily mean that misconduct was committed by the employing judge. Conversely, some respondents who do not work in chambers indicated wrongful conduct by a judge.

<sup>34</sup> FJC Condensed Report, Appendix B, Figures B-3, B-4, B-5, pp. 190-92.

<sup>35</sup> See *id.*, Tables 41, 60, 67, pp. 54, 79, 92.

Retaliation is also wrongful conduct under Judiciary policies. A total of 292 respondents (2.1% of all respondents) indicated experiencing some form of retaliation.<sup>36</sup>

For perspective, the Working Group compared the numbers and rates of wrongful conduct in the survey with those of other organizations: 16% of responding legislative branch employees indicated on their most recent workplace survey that they had experienced some form of discrimination within the two-year survey period.<sup>37</sup> In the executive branch, 20% of executive branch employees indicated in a workplace survey in 2021 that “they either observed or experienced at least one form of discrimination.”<sup>38</sup> Rates of wrongful conduct in the Judiciary, even with abusive conduct included, appear to be lower than in these organizations, but exact comparisons are precluded by differences in survey instruments and methodology, and response rates.

Comparing favorably with other organizations is not our goal, however. Any wrongful conduct is unacceptable. As discussed in this report, there are additional steps the Judiciary should consider to address wrongful conduct.

### *Inappropriate behavior*

The Judiciary seeks not only to avoid wrongful conduct, but also to provide an exemplary workplace for all employees. Consequently, the Working Group was also interested in the incidence of inappropriate behaviors that, while not rising to the level of wrongful conduct, can detract from an exemplary workplace. The survey provides information about the prevalence of inappropriate behaviors and their nature. Given the duty of civility in the Codes of Conduct and the Judiciary’s goal of an exemplary workplace for all, corrective action is appropriate to address inappropriate behavior even if it does not reach the threshold of wrongful conduct.

The survey indicates that inappropriate behavior occurs more often than wrongful conduct: about one-third (4,823) of the survey respondents indicated experiencing at least one instance of inappropriate behavior or action.<sup>39</sup>

The survey provides information about which types of inappropriate behaviors are more prevalent. Offensive jokes, disparate scrutiny, and being condescended to are among the most common forms of inappropriate behaviors.<sup>40</sup> The FJC Condensed Report contains lists of these behaviors and their prevalence.<sup>41</sup> These examples should be featured in workplace conduct training.

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<sup>36</sup> FJC Condensed Report, p. 160.

<sup>37</sup> [https://www.ocwr.gov/wp-content/uploads/2023/04/CCS-Summary-117th-Congress\\_House.pdf](https://www.ocwr.gov/wp-content/uploads/2023/04/CCS-Summary-117th-Congress_House.pdf).

<sup>38</sup> [https://mspbpublic.azurewebsites.net/studies/studies/Perceptions\\_of\\_Prohibited\\_Personnel\\_Practices\\_An\\_Update\\_2007022.pdf](https://mspbpublic.azurewebsites.net/studies/studies/Perceptions_of_Prohibited_Personnel_Practices_An_Update_2007022.pdf). See also a 2016 Merit Systems Protection Board (MSPB) survey, which included 24 participating Executive Branch agencies, wherein 14% of respondents reported experiencing some form of sexually harassing behavior over a two-year period.

<sup>39</sup> See FJC Condensed Report, Figure 27, p. 95.

<sup>40</sup> See *id.*, Tables 21, 24, 27, 44, and 63, pp. 38, 40, 43, 67, 85; and Figures 13 and 21, pp. 45, 69.

<sup>41</sup> See *id.*

### C. Avenues and Procedures for Addressing Inappropriate Behaviors and Wrongful Conduct

Almost all respondents are at least aware of key standards and procedures for addressing possible wrongful conduct: 97% said they are aware of the Code of Conduct for Judiciary Employees and 96% said they are at least aware of their court's EDR Plan.<sup>42</sup>

Encouraging employees to seek advice or assistance and, when appropriate, to report alleged wrongful conduct is a recognized challenge in most organizations.<sup>43</sup> Many of the Working Group's 2018 recommendations aimed to address this challenge, including revisions to the Model EDR Plan described above. These revisions provide options for addressing possible wrongful conduct, in and outside an employee's chain of supervision. Options for seeking assistance or reporting outside the EDR process include going to one's supervisory chain or Human Resources office. Alternatively, employees may seek information and advice from their local EDR Coordinator and from offices established in response to our 2018 Report: the OJI at the national level and DWRs in each circuit.

All circuits, district and bankruptcy courts, and federal defender offices have adopted versions of the Model EDR Plan. Judiciary policy provides that those locally adopted plans "may expand, but should not diminish or curtail rights and remedies" afforded in the Model Plans.<sup>44</sup> The FJC/NAPA Report found deviations in some local plans that might diminish rights under the Model Plans.<sup>45</sup> Our recommendations address this point.

The survey results indicate that providing more options for seeking assistance has had positive effects.<sup>46</sup> Most respondents (11,630, or 84%) said they would feel somewhat or very comfortable speaking with one or more of the listed persons about possible wrongful conduct.<sup>47</sup> Respondents varied considerably in whom they would be comfortable with, reinforcing the importance of providing multiple options. The survey indicates employees tend to choose to address potential issues locally and to speak about them with someone they already know.<sup>48</sup> This suggests the need for more resources and training at the local level.

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<sup>42</sup> *Id.*, Table 101, pp. 164-65.

<sup>43</sup> 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 and Victoria A. Lipnic, at 15 (2016), <https://www.eeoc.gov/select-task-force-study-harassment-workplace>; *Sexual Harassment in Federal Workplaces*, *supra* note 11, at 25-39 (2022). *See also* Congressional Climate Survey Results for the U.S. House of Representatives, 117th Congress, <https://www.ocwr.gov/publications/reports/other-reports/congressional-climate-survey-results-for-the-u-s-house-of-representatives-117th-congress> (among employees in the legislative branch who experienced, witnessed, or heard about incidents of sexual harassment, non-sexual based harassment, or discrimination, 40% reported it).

<sup>44</sup> Guide to Judiciary Policy, Vol. 12, Ch. 2, §225(c)(1).

<sup>45</sup> FJC/NAPA Report, pp. 26-48.

<sup>46</sup> *See id.* p. 48.

<sup>47</sup> The thirteen types of persons (e.g., supervisor, HR manager or staff, Director of Workplace Relations, judge) are listed and comfort levels shown at FJC Condensed Report, Table 106, pp. 171-72.

<sup>48</sup> *Id.* More than 50% of respondents identified only three categories of people with whom they would feel somewhat or very comfortable turning to address possible wrongful conduct: their Human Resources manager or staff (66%); a supervisor or manager (59%); and their EDR Coordinator (54%). Similarly, when asked with whom they discussed or reported a behavior or action, the most frequent response was with a supervisor or manager, followed by a colleague or friend, and Human Resources manager or staff. FJC Condensed Report, Tables 76, 83, and 90, pp. 124, 134, 144; Figure 33, p. 100.

The results also show that there is still work to be done to address the reluctance of employees to seek help or report wrongful conduct. Only 42% of respondents agreed that employees are willing or very willing to report wrongful conduct.<sup>49</sup> Only 65% of respondents said their court or employing office encourages employees to report wrongful conduct.<sup>50</sup> Nearly half of respondents expressed low (21-24%, depending on specific procedure) or moderate (22-27%, depending on specific procedure) confidence in various EDR and non-EDR procedures.<sup>51</sup>

Employees can use EDR options to seek assistance with workplace issues, but they may also report to or discuss concerns with someone in their court outside the EDR process. Roughly half of respondents who indicated they experienced wrongful conduct said they discussed it with or reported it to someone in their court outside the EDR process (39-53%, depending on type of wrongful conduct).<sup>52</sup>

Between 64% and 73% of respondents who indicated experiencing wrongful conduct did not use EDR procedures (informal advice, assisted resolution, or formal complaint).<sup>53</sup> Of the three procedures, informal advice was used the most frequently (13-23%, depending on type of wrongful conduct).<sup>54</sup> Those who used informal advice most often sought it from their EDR Coordinator.<sup>55</sup>

More respondents were satisfied than not with informal advice,<sup>56</sup> whereas respondents were more dissatisfied than satisfied with assisted resolution and formal complaint procedures.<sup>57</sup> Depending on type of behavior, no more than 20% of respondents who invoked the formal complaint process agreed or strongly agreed that the behavior or action was thoroughly and impartially investigated.<sup>58</sup> Overall, whether or not they utilized EDR to address their concerns, more respondents were dissatisfied than satisfied with the outcome.<sup>59</sup> We address these issues, particularly the perception about investigations, in our recommendations.

When asked the outcome of discussing or reporting inappropriate behaviors, the most common response (26-34%) was that no action was taken.<sup>60</sup> The third or fourth most common response (14-19%) was “I don’t know what was done.”<sup>61</sup> The FJC/NAPA Report indicated that uncertainty about confidentiality requirements sometimes limits reporting and feedback.<sup>62</sup> We address the need for more information and feedback in our recommendations.

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<sup>49</sup> FJC Condensed Report, Table 112, p. 184.

<sup>50</sup> *Id.*, Table 111, p. 183.

<sup>51</sup> *Id.*, Table 108, p. 175. *See also id.*, Tables 109, 110, Figures 56a-e, 57a-d, pp. 176-82.

<sup>52</sup> *Id.*, Figure 32, p. 99.

<sup>53</sup> *Id.*, Figure 36, p. 109.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*, Figure 37, p. 110.

<sup>56</sup> *Id.*, Tables 72-74, pp. 111-13.

<sup>57</sup> *Id.*, Figures 38a-d, 39a-d, pp. 114-18.

<sup>58</sup> *Id.*, Figure 39b, p. 117. Note that the numbers of respondents who invoked the formal complaint process are low.

<sup>59</sup> *Id.*, Figure 41, p. 120.

<sup>60</sup> *Id.*, Figure 40, p. 119.

<sup>61</sup> *Id.*

<sup>62</sup> FJC/NAPA Report, pp. 56-57, 88.

Respondents who indicated that they did not report or discuss possible wrongful conduct with anyone were asked why they did not report or discuss it. Common reasons included that they didn't think anything would be done, that they "didn't trust that the process would be fair," and that they feared retaliation or adverse impacts on job or career opportunities.<sup>63</sup>

We make several recommendations to enhance confidence in procedures to address possible wrongful conduct and inappropriate behavior.

#### D. Education and Training

A majority (9,821, or 71%) of all respondents said they received EDR training in the previous year.<sup>64</sup> Of those who received training, 8,983 (93%) found it at least moderately effective.<sup>65</sup> A slight majority of respondents indicated they received their training from their court's EDR Coordinator (28%) or Human Resources Office (24%), again reflecting the need for resources at the local level.<sup>66</sup> Our recommendations address training in several ways.

### III. DISCUSSION

We start with an overall positive report. Most respondents expressed satisfaction with their jobs. Most respondents indicated positive relationships with their supervisors, executives, and judges. Most respondents indicated that they had not experienced wrongful conduct, and a majority of respondents indicated that they had not experienced any of the listed inappropriate behaviors or actions.

As we did in our initial report in 2018, we focus on the five keys<sup>67</sup> to achieving an exemplary workplace:

- Demonstrate Committed and Engaged Leadership
- Require Consistent and Demonstrated Accountability
- Issue Strong and Comprehensive Policies
- Offer Trusted and Accessible Complaint Procedures
- Provide Regular, Interactive Training Tailored to the Organization

We know from experience and from the overall satisfaction responses that most Judiciary leaders are committed to ensuring an exemplary workplace and positive working environment. But the survey also indicates that we need to continue to address all forms of inappropriate behavior and wrongful conduct, further refine avenues for assistance, and generally do more to communicate with employees, demonstrate accountability, and build trust in policies and procedures.

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<sup>63</sup> FJC Condensed Report, Figures 42, 43, pp. 121-22.

<sup>64</sup> *Id.*, Table 102, p. 166.

<sup>65</sup> *Id.*, Table 105, p. 168.

<sup>66</sup> *Id.*, Table 104, p. 168.

<sup>67</sup> These were drawn from an EEOC study the Working Group relied on, *supra* note 43.

Again, as we did in our initial report in 2018, we divide our discussion and our recommendations (see Part IV) into three areas: (1) substantive standards; (2) procedures for seeking advice, assistance, or redress; and (3) educational efforts.

#### A. Substantive Standards

Overall, the Working Group believes the current substantive standards are appropriate. The Codes of Conduct for judges, Judiciary employees, and federal defenders each state a duty of respect and civility.<sup>68</sup> In addition, each makes clear, as do the Model EDR Plan and the JC&D Rules, that behavior that meets the definition of discriminatory harassment, employment discrimination, abusive conduct, or retaliation is wrongful and can carry adverse consequences.<sup>69</sup> Except for abusive conduct, these standards are well established and need no clarification. The Codes expressly impose an obligation on judges and Judiciary employees to take appropriate action when reasonably aware of wrongful conduct by another.<sup>70</sup> Under the JC&D Rules, a judge's failure to report information reasonably likely to constitute judicial misconduct can rise to the level of cognizable misconduct.<sup>71</sup>

As noted above, the guidance for abusive conduct could be enhanced for better clarity and consistency. This is especially important because abusive conduct was more frequent than other forms of wrongful conduct.<sup>72</sup>

#### B. Procedures

Employees appear to be generally aware of applicable workplace conduct standards and of procedures for addressing possible wrongful conduct. However, reluctance to use available procedures, which exists in workplaces everywhere, remains a concern in the Judiciary.

We make several recommendations designed to increase employees' willingness to use available procedures. These include: clarifying procedural rights, remedies, and obligations under the Model EDR Plan; additional training and resources for EDR Coordinators; promoting greater use of trained investigators; ensuring Presiding Judicial Officers are free from even the appearance of

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<sup>68</sup> "A judge should practice civility, by being patient, dignified, respectful, and courteous in dealings with court personnel, including chambers staff." Code of Conduct for Judges, Canon 3B(4). The codes of conduct for Judiciary employees and federal defenders include similar language.

<sup>69</sup> See, e.g., Judicial Conduct and Disability Rule 4(a)(2): "Cognizable misconduct includes: (A) Engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees."

<sup>70</sup> "A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct." Code of Conduct for Judges, Canon 3B(6). Canon 3C(1) of the Code of Conduct for Judicial Employee imposes a similar obligation, as does the same canon in the Code of Conduct for Federal Defenders.

<sup>71</sup> JC&D Rule 4(a)(6).

<sup>72</sup> The 2023 Annual Report on the Judiciary Workplace, <https://www.uscourts.gov/sites/default/files/2024-12/2023-annual-report-on-the-judiciary-workplace.pdf>, also indicates abusive conduct is the most common claim raised in EDR matters.

partiality; providing more resources to Presiding Judicial Officers; and providing more information and transparency about actions taken either under the EDR process or outside it.

### C. Education and Training

The survey indicates that the Judiciary’s educational efforts have been extensive and are generally effective. The survey also suggests ways that education could be broadened and enhanced.

Our recommendations emphasize the continuing importance of workplace conduct education and training for all Judiciary personnel, including judges, and in particular chief judges, executives, and others in leadership and management positions. Workplace conduct education and training should also aim to ensure that all Judiciary personnel understand avenues available to address wrongful conduct and inappropriate behavior, and it should seek to build trust in those procedures by demonstrating—and communicating—actions taken to uphold standards and provide accountability.

Courts should include workplace conduct training at meetings and gatherings attended by judges and/or employees (e.g., circuit judicial conferences). All orientation programs, nationally and locally, should include a workplace conduct component.

## IV. RECOMMENDATIONS<sup>73</sup>

### A. Substantive Standards

**Recommendation 1:** Review current definitions and guidance on abusive conduct and assess whether greater clarity can be provided on the distinctions between what constitutes inappropriate behavior versus what constitutes abusive (wrongful) conduct. (Codes of Conduct, JC&D, JRC)

### B. Procedures

**Recommendation 2:** Extend and clarify procedural rights, remedies, and obligations under the Model EDR Plans:

- a. Clarify policy to ensure that modifications of the Model EDR Plans at the circuit or local level do not diminish or curtail any rights or remedies afforded under the Models. (JRC)
- b. Clarify in the Model EDR Plans that consideration of interim relief should occur at the outset while allegations of wrongful conduct are being investigated and addressed, whether or not requested by an employee. (JRC)

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<sup>73</sup> Parenthetical references in this section are to entities that may consider or execute Working Group recommendations. This includes three committees of the Judicial Conference: Codes of Conduct, Judicial Conduct and Disability (JC&D), and Committee on Judicial Resources (JRC). It also includes the Administrative Office of the United States Courts (AO) and two offices within it: the Office of Judicial Integrity (OJI) and the Office of General Counsel (OGC). The Federal Judicial Center (FJC) is also included.

- c. Revise the Model EDR Plans to remove the requirement that employees first use Assisted Resolution prior to filing a Formal Complaint for allegations of abusive conduct. (JRC)
- d. Incorporate additional monetary remedies as part of the EDR complaint process. (JRC)

**Recommendation 3:** Establish standards for the qualification and selection of EDR Coordinators and enhance existing training and available resources. (JRC, OJI)

**Recommendation 4:** Clarify the Model EDR Plans and other guidance to promote the use of trained investigators in EDR Assisted Resolutions and in informal investigations at the local level. (JRC)

**Recommendation 5:** Ensure the appearance of impartiality of Presiding Judicial Officers and provide additional resources:

- a. Revise the Model EDR Plans to specify that formal complaint proceedings must be overseen by a Presiding Judicial Officer from outside the district or circuit from which the complaint originated. (JRC)
- b. Clarify Model EDR Plan procedures to ensure that Presiding Judicial Officers appoint trained investigators in formal complaint proceedings. (JRC)
- c. Provide additional guidance for Presiding Judicial Officers in the form of a manual or bench book. (OJI)

**Recommendation 6:** Expand feedback and information about EDR and other actions:

- a. Ensure follow-up occurs with employees who report wrongful conduct by providing clear guidance and training to managers on the application of personnel privacy protections. (JRC, OJI, OGC)
- b. Develop uniform standards for redaction and publication of EDR decisions in formal complaint proceedings, to include reviews of decision (appeals). (JRC, OJI)
- c. Develop a publicly available database or compendium of published EDR decisions (appropriately redacted) and relevant JC&D opinions relating to workplace conduct. (OJI)
- d. Augment annual EDR-related data collection and publish the results. (OJI)

### C. Education and Training

**Recommendation 7:** Continue to include workplace conduct in orientation programs for new judges; incorporate workplace conduct into orientation for all employees; and include workplace



conduct as part of regularly conducted programs for judges and employees. (FJC, AO, circuits, courts)

**Recommendation 8:** Give particular attention to clarifying the distinctions between inappropriate behaviors and abusive conduct in training programs for judges and employees. Use examples from the FJC Condensed Report and other data. (FJC, AO, circuits, courts)

**Recommendation 9:** Provide initial and continuing education for leaders at all levels of the Judiciary, including management training on listening, communication, building trust, and effective response to both inappropriate workplace behavior and allegations of wrongful conduct. (FJC, AO, circuits, courts)

## V. CONCLUSION

We conclude by reiterating our gratitude to the 13,895 Judiciary employees who took the time to complete the survey. By completing the survey and providing follow-up responses to questions, you have reinforced the pride and commitment to excellence that extends throughout our branch. Just as importantly, you have provided valuable information and insights the Judiciary can use to improve and build on its strong commitment to an exemplary workplace.

The goal of an exemplary workplace for everyone demands continuing attention and effort. The survey results and our recommendations based on those results reflect another significant step toward achieving this goal.