



JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE
OF THE UNITED STATES
Presiding

HONORABLE ROSLYNN R. MAUSKOPF
Secretary

August 25, 2021

Honorable Dick Durbin
Chair
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

I write concerning the Judiciary Accountability Act, S. 2553, introduced on July 29, 2021. At the outset, it is disappointing that a bill encompassing such a significant overhaul of the oversight, supervision, and management of the Judicial Branch of government was introduced without input from the Judicial Branch. Unfortunately, the bill fails to recognize the robust safeguards that have been in place within the Judiciary to protect Judiciary employees, including law clerks, from wrongful conduct in the workplace, including protections against discrimination, harassment, retaliation, and abusive conduct. Further, the bill interferes with the internal governance of the Third Branch; creates structures that compete with existing governing bodies and authorities within the Judiciary; and imposes intrusive requirements on Judicial Conference procedures. For these reasons, the Judicial Conference of the United States opposes the bill. The Judiciary will provide a more detailed response to the Committee after further study, and I request that you not take further action on the bill, pending our review.

The Judiciary has been and remains committed to an exemplary workplace for all Judicial Branch employees. In recent years, we have taken numerous steps to strengthen policies, procedures, and organizational structures to help foster a safe and respectful workplace. The attached Fact Sheet provides a brief overview of some of our current protections, but I will highlight some here.

Our Employment Dispute Resolution (EDR) system has long provided Judiciary employees enforceable protections against all the same conduct covered under Title VII, Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), as well as the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. Judicial Branch employees are also already provided with whistleblower protection. Indeed, Judiciary employees now have expanded enforceable protections

against “abusive conduct,” even when the misconduct is not discriminatory or based on protected categories.

Judiciary employees have multiple avenues to report workplace conduct concerns, including anonymously and to points of contact outside of their employing office. Confidentiality policies have been clarified to remove potential barriers and encourage reporting. The Codes of Conduct and Judicial Conduct and Disability Rules have been changed, among other things, to emphasize that judges and judiciary employees have a responsibility to take appropriate action upon learning of potential workplace misconduct, even if they are a bystander.

We have put in place scores of local EDR coordinators, Circuit Directors of Workplace Relations, and the national Office of Judicial Integrity, to assist employees with confidential reporting and address workplace conduct inquiries and complaints. We have enhanced and expanded training for all Judiciary employees, including judges and chambers staff, on the EDR process, employment laws, wrongful conduct, and unconscious bias, among other relevant topics for the workplace. We have actively engaged internal and external stakeholders, including judges, Judiciary employees, and law schools, among others, to hear and address issues of mutual concern.

Contrary to assertions that federal Judiciary employees are denied basic workplace rights and are provided no protection from workplace harassment, discrimination, and retaliation, the Judiciary has in place the protections and mechanisms to provide for an exemplary workplace, and to allow all employees to obtain confidential advice, report misconduct, and seek and receive remedial action. While we have accomplished much, we recognize there is additional work to do. We are committed to doing so and are presently engaged in that effort.

The Federal Judiciary Workplace Conduct Working Group was established in 2018 to examine the sufficiency of safeguards currently in place within the Judiciary to protect Judiciary employees from inappropriate conduct in the workplace. In its first six months it conducted extensive investigation and research, and published a 45-page report that contained numerous findings and 24 recommendations to the Judicial Conference of the United States for enhancing protections, improving working conditions, and refining procedures. That Group continues to meet to assess those safeguards and recommend further improvements.

It is critical that our current practices and improved policies be included and accurately reflected in any consideration of the Judiciary Accountability Act. Moreover, any mechanism addressing workplace conduct must recognize the Judiciary as a separate and co-equal branch of the United States government under the Constitution and allow the Branch, through the decentralized administration of the federal courts, to govern


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itself. The Judicial Branch must retain autonomy over internal administration, including matters of employee and workplace management, as is the case in the other two branches.

I look forward to communicating further with you on this critical topic.

Sincerely,

A handwritten signature in black ink that reads "Roslynn R. Mauskopf". The signature is written in a cursive, flowing style.

Roslynn R. Mauskopf
Secretary

Enclosure

cc: Honorable Chuck Grassley
Honorable Sheldon Whitehouse
Honorable John Kennedy
Honorable Richard Blumenthal
Honorable Mazie K. Hirono
Honorable Patty Murray

FACT SHEET

Workplace Protections in the Federal Judiciary

Background

Workplace protections have long existed for judicial employees, including explicit prohibitions on discrimination and harassment. Significant improvements have been implemented over the last several years that have increased the scope of employee protections, strengthened the obligations of judges and other employees to report misconduct or take other appropriate action, and improved the processes for reporting and addressing reports of misconduct.

In 2018, at the request of the Chief Justice, the Director of the Administrative Office created the Federal Judiciary Workplace Conduct Working Group to examine the sufficiency of safeguards currently in place within the Judiciary to protect judicial employees from inappropriate conduct in the workplace. In its first six months it conducted extensive investigation and research, and [published a 45-page report](#) that contained numerous findings and recommendations to the Judicial Conference of the United States for enhancing protections, improving working conditions, and refining procedures.

Based on those recommendations, the Judicial Conference approved and implemented sweeping improvements to the Model EDR Plan, Codes of Conduct, and Judicial-Conduct & Judicial-Disability (JC&D) Rules. A national Office of Judicial Integrity was created and the circuits established offices for Circuit Directors of Workplace Relations, in addition to existing Employment Dispute Resolution (EDR) Coordinators at every local court.

Facts

- **Express discrimination and harassment prohibitions and protections have long existed for all judicial employees.**
 - Court EDR Plans prohibit discrimination, harassment, and retaliation, including conduct that would violate Title VII, Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; and the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973. The JC&D Rules define misconduct to include discrimination, abusive or harassing behavior, and retaliation.

- **An additional prohibition against Abusive Conduct protects employees even when the misconduct is not discriminatory.**
 - Court EDR Plans prohibit Abusive Conduct, defined as “a pattern of demonstrably egregious and hostile conduct not based on a Protected Category that unreasonably interferes with an employee’s work and creates an abusive working environment. Abusive conduct is threatening, oppressive, or intimidating.” The JC&D Rules define misconduct to include treating judicial employees “in a demonstrably egregious and hostile manner.”

- **The Codes of Conduct and JC&D Rules emphasize that judicial employees and judges have a responsibility to take appropriate action upon learning of potential workplace misconduct, even if they are only a bystander.**

- **Confidentiality policies have been clarified to remove potential barriers and encourage reporting.**
 - Employee confidentiality obligations, such as those for chambers staff, expressly do not preclude one’s ability to report wrongful conduct.

- **Judicial employees have multiple avenues to report workplace conduct concerns, including anonymously and to points of contact within or outside their employing office. A multi-layer network of dedicated personnel—at the national, circuit, and local court levels—is available to provide confidential and impartial advice and guidance to judicial employees, managers, and judges.**
 - The Office of Judicial Integrity at the Administrative Office of the US Courts, Directors of Workplace Relations in each circuit, and Employment Dispute Resolution Coordinators in each court and employing office are all able to assist employees with a broad range of workplace conduct concerns. Employees are free to contact whomever they feel most comfortable and often contact more than one resource.
- **Robust informal processes provide valuable flexibility for employees to address workplace concerns.**
 - In addition to the formal complaint process, employees can also utilize a more flexible Assisted Resolution option, which has fewer fixed rules or deadlines.
- **The Formal EDR Complaint process has been revised in recent years to be more user-friendly and provides well-defined procedures through which workplace conduct issues are heard by an impartial federal judge.**
 - The Formal EDR Complaint process allows for an investigation of allegations and potential hearings for disputed issues. Parties have the right to be represented by counsel and a resulting decision can be appealed to the circuit judicial council.
- **In addition to a Formal EDR Complaint, employees can also file a complaint under the JC&D Act to address allegations of misconduct by a judge.**
- **All courts and employing offices must conduct annual training for all judicial employees and judges on workplace conduct protections and processes.**
- **The Federal Judicial Center (FJC) has created a broad range of publications, on-line resources, and in-person training programs to promote fair employment practices and workplace civility that supplement court-sponsored training and materials.**
 - The FJC regularly provides training programs for judicial employees in individual districts. Programs include Preventing Workplace Harassment, which is available in two versions, one for managers and one for employees; Respect in the Workplace, which fosters workplace civility; and another regarding the Codes of Conduct. Since 2016, the FJC has presented these programs nearly 200 times in courts around the country.
- **Data is collected across the Judiciary on Formal EDR Complaints and requests for Assisted Resolution, as well as judicial conduct and disability complaints and actions under the JC&D Act.**
- **The Federal Judiciary’s Workplace Conduct Working Group, in collaboration with Judicial Conference committees and Administrative Office advisory groups, continues to engage in evaluation and assessment of existing policies, procedures, and practices to ensure an exemplary workplace for judicial employees.**
- **The Judiciary continues to actively engage internal and external stakeholders. For example, recently a letter was sent to approximately 200 law schools across the country, highlighting the Office of Judicial Integrity and Circuit Directors of Workplace Relations as confidential avenues for law school administrators to seek guidance and/or report concerns of which they become aware.**