

**NINTH CIRCUIT AD HOC COMMITTEE ON WORKPLACE  
ENVIRONMENT REPORT  
June 18, 2019**

*“The Ninth Circuit takes seriously its commitment to a respectful workplace. Over the past eighteen months, we have worked hard to put in place revised policies and procedures to make that commitment a reality and we will continue our innovations to foster a culture of respect.”*

*Chief Judge Sidney R. Thomas*

**INTRODUCTION**

In December 2017, Chief Circuit Judge Sidney R. Thomas of the United States Court of Appeals for the Ninth Circuit appointed the Ad Hoc Committee on Workplace Environment (“the Committee”) to review and revise policies and procedures to promote and safeguard a healthy working environment throughout the Ninth Circuit. Following extensive outreach and consultation with judges, employees, law clerks, and employment experts, the Committee reaffirmed the Ninth Circuit’s core values for a successful and welcoming workplace. The Ninth Circuit is committed to a workplace that treats everyone with respect, recognizes everyone’s dignity, and fosters inclusion of differences and diverse viewpoints. The Ninth Circuit also emphasizes the importance of removing barriers to reporting workplace concerns and the strict prohibition against retaliation for reporting misconduct.

Recognizing the importance of consultation and collaboration, the Committee engaged in an extensive outreach effort to obtain feedback to guide its work. This effort included developing and sending a questionnaire to thousands of current and former employees and law clerks; conducting, through Ninth Circuit mediators, small focus group sessions with law clerks and employees in multiple cities; conducting town halls with employees; having confidential conversations with individuals upon request; and making a Committee email address publicly available for additional comments. The Committee expanded its outreach effort to include law school deans, a national group of concerned law clerks, and others from around the country. This broad scope of input assisted the Committee in developing plans to improve the experience of employees, law clerks, externs,

interns, and volunteers. The Committee also cooperated extensively with the Federal Judiciary Workplace Conduct Working Group.

The Committee took the data and feedback and proposed immediate policy changes responsive to workplace concerns. These recommendations led to significant changes to the policies, procedures, practices, and resources available to all employees in every court unit in the Ninth Circuit:

- ***Revised Ninth Circuit Employment Dispute Resolution Policy (“EDR Policy”)***. The Committee received feedback that the previous EDR Policy was confusing, contained unwieldy processes, and imposed restrictive reporting timelines. The Committee revised and rewrote the EDR Policy in plain language, redefined sequential EDR steps into independent options, offered an option for informal advice, created a flowchart to assist in understanding the process, and extended the time to report misconduct from 30 days to 180 days.
- ***Established Director of Workplace Relations***. The most requested 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. The Committee created the Director of Workplace Relations position—the first of its kind in the federal judiciary. In January 2019, Yohance C. Edwards joined the Ninth Circuit as the Director of Workplace Relations. The Director of Workplace Relations oversees workplace misconduct issues, such as harassment and bullying; offers confidential consultations with employees at an early stage; assists in guiding employees through the EDR process; serves as a resource to and works in collaboration with local EDR Coordinators on EDR-related matters; and oversees general workplace environment issues.
- ***Simplified Confidentiality Policy***. The Committee learned that some employees and clerks viewed the existing confidentiality policy as restricting their reporting of workplace harassment and other misconduct. To remove any ambiguity for those facing these issues, the Committee quickly revised and simplified the confidentiality policy to clarify that, although court matters remain confidential, misconduct issues are not

subject to the confidentiality policy. The Judicial Council of the Ninth Circuit promptly approved the new Ninth Circuit confidentiality policy.

- ***Expanded Law Clerk Orientation and Other Resources.*** The Court of Appeals has long had an orientation for new law clerks. Beginning in September 2018, law clerks participated in an expanded orientation that included improved training on workplace policies, reporting procedures, and resources available to law clerks. Training sessions also focused on implicit bias and interpersonal communication skills. To further its effort, the Committee created a Chambers Checklist for in-chambers law clerk orientation and an anonymous exit survey process for all law clerks. An online law clerk portal was established to provide easy access to policies, reporting procedures, and other information important to law clerks. The Committee recently established a Law Clerk Resources Group, comprised of former clerks throughout the Ninth Circuit, to serve as a sounding board and source of information for current clerks. The Court of Appeals Clerk of the Court and Director of Workplace Relations also conducted mid-year updates for current employees and law clerks to emphasize the availability of confidential reporting and other resources within the Office of Workplace Relations.
- ***Conducted Employee Climate Survey and Implemented Exit Questionnaire.*** The Committee recognizes that a key source for information and ideas to improve the Ninth Circuit workplace came from those within the Ninth Circuit. At the outset of its work, the Committee conducted a climate survey of over 6,000 of its current and former employees and law clerks through a questionnaire, focus groups, and individual feedback. To increase opportunities for feedback and provide an ongoing mechanism to monitor the workplace environment throughout the Ninth Circuit, all employees will be asked to participate in periodic climate surveys, and all law clerks will be asked to complete an anonymous exit questionnaire, with the responses going to the Director of Workplace Relations.
- ***Expanded Training and Education.*** Training and education are key to the successful implementation of these new policies and practices. Moving forward, everyone throughout the Ninth Circuit—judges, court unit

executives, employees, and law clerks—will have additional workplace training opportunities. A number of training sessions have already taken place, including those for judges. The Director of Workplace Relations has already met with countless chief judges, judges, court unit executives, and employees throughout the Circuit and is developing additional training opportunities.

## OVERVIEW

This Report provides a summary of the work and findings of the Ninth Circuit Ad Hoc Committee on Workplace Environment to date. The Committee continues to monitor the new policies and address initiatives to improve the judicial workplace. The Report also includes an Appendix, which contains documents of interest and key revised policies, procedures, and best practices endorsed by the Committee, including: (1) the revised EDR Policy, adopted by the Judicial Council of the Ninth Circuit on December 27, 2018; (2) the revised Confidentiality Policy; (3) a Calendar of Events and Presentations, which includes past and upcoming events that relate to workplace topics; and (4) press releases and announcements of the Ninth Circuit's work.

The Report is organized into five sections:

- ***Section I: Background.*** This section discusses the formation of the Ninth Circuit Ad Hoc Committee on Workplace Environment.
- ***Section II: Outreach and Research.*** This section describes the outreach effort the Committee undertook to obtain feedback from current and former employees. The section also discusses research that guided the Committee's work, including the 2016 Report by the Equal Employment Opportunity Commission's Select Task Force on the Study of Harassment in the Workplace.
- ***Section III: Implementation.*** This section highlights the implementation of the Committee's recommendations, including the revised EDR Policy and the creation of the Director of Workplace Relations position.

- ***Section IV: Training.*** This section discusses the plan to implement training sessions on new policies and procedures as well as workplace topics.
- ***Section V: Past and Future Activities.*** This section outlines broader outreach efforts the Committee has taken within and outside of the Ninth Circuit.

## **I. Background**

In December 2017, Chief Circuit Judge Sidney R. Thomas appointed the Ad Hoc Workplace Environment Committee. The Committee was created in response to revelations about workplace misconduct within the Ninth Circuit and was tasked with addressing any deficiencies in the Circuit’s policies, procedures, and culture. Chief Judge Thomas named Circuit Judge M. Margaret McKeown as chair of the Committee, with membership consisting of Chief District Judge Virginia A. Phillips of the Central District of California; Senior District Judge Charles R. Breyer of the Northern District of California; Magistrate Judge Candy W. Dale of the District of Idaho; and employment and mediation specialist Abby Silverman. Court of Appeals Clerk of Court Molly Dwyer, Circuit Executive Elizabeth A. “Libby” Smith, and Deputy Circuit Executive Marc Theriault have served on the Committee as staff, along with Shannon Coit, a Ninth Circuit law clerk, and Megan Larkin, a former Ninth Circuit law clerk. Since January 2019, Director of Workplace Relations Yohance C. Edwards and Workplace Relations Specialist Stella Huynh have worked closely with, but independently of, the Committee.

Chief Judge Thomas selected each Committee member for their interest and experience in workplace environment issues. Along with being appointed by United States Supreme Court Chief Justice John G. Roberts, Jr. to serve on the Federal Judiciary Workplace Conduct Working Group, Judge McKeown formerly chaired the national Judicial Conference of the United States Code of Conduct Committee, which is the ethics committee for federal judges. Judge McKeown also served on various committees and panels related to workplace and gender discrimination, including the Ninth Circuit Gender Bias Task Force; served as president of the Federal Judges Association; and consulted with federal judges and courts throughout the nation about judicial ethics. Judge Breyer is a member of the Multidistrict Litigation Panel, and formerly served as the district judge

representative to the Executive Committee of the Judicial Conference of the United States and as a member of the U.S. Sentencing Commission. Judge Dale currently serves on the United States Judicial Conference as the magistrate judge observer. Prior to joining the bench, Judge Dale practiced employment law, which included counseling and training employers and representing employers in court and in administrative proceedings for over twenty years. Chief District Judge Phillips leads the largest federal court in the Ninth Circuit and serves on the Judicial Council of the Ninth Circuit. Ms. Silverman, one of the nation's top employment and alternative dispute resolution practitioners, serves as a mediator and arbitrator in employment law disputes.

## **II. Outreach and Research**

Shortly after its formation, the Committee implemented a comprehensive outreach effort to obtain feedback from a wide array of sources. The aim of this outreach was to better understand the needs of those working in the Ninth Circuit and help identify any deficiencies with the current policies and procedures. The information gathered through this effort helped guide the Committee's work. Members of Law Clerks for Workplace Accountability also attended several of the Committee meetings and provided extensive written comments. The feedback from the outreach efforts proved invaluable to the Committee in recommending changes to improve the Ninth Circuit's workplace environment. The Committee is confident that the willingness of so many current and former Ninth Circuit personnel to participate in these outreach efforts and to share their experiences and ideas is evidence of a widespread commitment to the development of best practices and an investment in the creation of a positive workplace environment for everyone.

### **A. Circuit-Wide Questionnaire**

The Ninth Circuit Workplace Environment Questionnaire ("Questionnaire") consisted of short questions seeking views, suggestions, and advice on workplace policies and procedures, trainings, and programs. The Questionnaire offered the opportunity for narrative comments and specifically sought feedback from employees about categories of individuals whom they would feel comfortable turning to for confidential advice or guidance on a workplace issue. The purpose

of the Questionnaire was to hear all voices and perspectives on the best ways the Ninth Circuit could provide employees with a healthy and productive workplace.

The Committee sent the Questionnaire to approximately 6,000 current and former employees and law clerks (appellate, district, and bankruptcy courts) and to former law clerks from the federal courts outside the Ninth Circuit. Participation was voluntary and anonymous. The Committee received nearly 3,000 responses. The responses came from employees in a variety of roles, including chambers staff (appellate, district, and bankruptcy courts); clerk's office staff (appellate, district, and bankruptcy courts); other circuit and court unit staff; and pretrial services and probation office staff.

The overwhelming majority of respondents expressed positive or neutral experiences while working in the Ninth Circuit. However, there were responses that identified specific negative experiences, defined as witnessing or experiencing conduct that, if reported, could lead to an EDR complaint or investigation. Respondents also identified other areas—outside of complaint-level behavior—that they felt needed improvement to enhance the workplace environment.

One of the most cited issues was a reluctance to report workplace concerns. Some respondents attributed this reluctance to the fear of retaliation and workplace power dynamics, as well as a concern about how reporting would affect their careers. Respondents recommended creating a confidential avenue to report workplace issues outside of the direct chain of command. Respondents expressed other concerns relating to reporting, such as whether details of their complaint would be kept private, reported misconduct would be adequately investigated, and reporting would lead to a satisfactory resolution. Additionally, some respondents commented on the lack of information on how to report workplace misconduct.

Other responses focused on a perceived lack of information and communication about workplace relations and work expectations. The respondents recommended policy and structural changes to highlight resources and improve communication in this arena. In addition, respondents recommended that information regarding the policies be readily accessible, such as posting on websites.

Respondents identified specific training and education that would help improve the judiciary's workplace environment. Respondents recommended developing and implementing trainings on harassment, bullying, implicit bias, leadership, and management techniques. Respondents indicated that the trainings should be mandatory, regular, and interactive for all Ninth Circuit employees, including judges.

Finally, respondents suggested fostering a healthy and more collegial workplace environment. Recommendations included more interaction across units and chambers to reduce feelings of isolation. Respondents also suggested training on work-life balance, identifying and addressing employee fatigue, and using positive reinforcements to boost morale and productivity for a more positive work environment.

## **B. Focus Groups**

Ninth Circuit mediators held eighteen voluntary focus group events for current and former law clerks and current court staff. The Committee and the mediators sought to create an environment where all participants could speak freely and confidentially. The mediators compiled the comments and suggestions from each group so that this information was kept anonymous and confidential.

The focus group participants identified similar recommendations and issues as the Questionnaire respondents. First, they expressed reluctance to report negative experiences and provided similar recommendations to establish a clearly identifiable and independent person to handle workplace matters.

Next, the participants suggested establishing workplace standards and norms so employees could easily identify whether a task or experience exceeded workplace expectations and norms. Some law clerks expressed reluctance to report workplace concerns because they were unsure whether their experiences fell outside normal bounds of their role. Court staff expressed a similar need for increased transparency and communication from leadership about policies and procedures, including supervisors who expressed concerns that, at times, lines of authority were unclear.



Third, the focus groups recommended establishing, improving, and communicating workplace policies and trainings at a higher level, especially as related to anti-bullying and sexual harassment, personnel management, and implicit bias. The participants particularly suggested these training sessions for judges, senior management, and supervisors.

Additionally, more broadly, the focus group participants expressed the need for changes to the overall judicial culture. There were participants who expressed concern that judges have not taken any action to prevent or stop abuse in the workplace. The participants identified various ways to change court culture: judges taking more responsibility to stop and prevent inappropriate behavior; modifying the Code of Judicial Ethics to include an affirmative obligation for judges to report misconduct; imposing discipline for judges who do not change their inappropriate behavior; and redefining the confidentiality policy to clarify and define expectations and limitations of confidentiality. Female law clerks further suggested improving policies that would make it easier for them to have children and balance childcare during their clerkship. Court staff suggested cross-trainings and creating a way to ensure staff can contribute to court policies, practices, and events. The participants also identified the issue of feeling isolated in the workplace and suggested ways to encourage community, such as holding workplace events to boost morale and show appreciation for employees.

Other focus group recommendations included reforming the law clerk hiring process, improving law clerk orientation, conducting exit interviews, and considering consultation with outside professionals. Focus group participants suggested having multiple avenues of confidential reporting and a system to review judges, such as a hotline or email reporting system, commenting that having multiple reporting methods would increase the likelihood of employees reporting workplace issues. Participants also suggested improving law clerk orientation to “set the proper tone,” providing resources on how workplace issues would be handled, and distributing workplace policies and procedures.

### **C. Confidential Conversations**

The Committee also provided individuals with the opportunity to speak confidentially with a Committee member or senior circuit executive. The Committee designated an email address to request a phone call or to provide

additional written comments. Though these conversations are kept confidential, they provided helpful and anecdotal information that served as an additional resource in the Committee’s deliberations.

#### **D. Law School Outreach**

The Committee engaged numerous law schools to work toward the joint goal of addressing workplace misconduct and generally improving the law clerk and extern experience in the Ninth Circuit. This outreach included phone calls with law school deans and letters sent to schools soliciting their input. Over thirty law school deans responded with suggestions for what both the law schools and the courts could do to improve the workplace environment for law clerks and externs. In its recommendations and implementation, the Committee considered these suggestions, which included increased communication between the law schools and the judiciary, improved training at law schools and in the judiciary, and clearer policies.

Committee members also participated in panel discussions on this topic and engaged with related groups. In January 2019, the Chair of the Committee was one of the coordinators of a panel at the Association of American Law Schools annual meeting to discuss how law schools, courts, and the private sector can work together to reduce workplace misconduct for law students and assist students with addressing such issues. The Committee Chair also participated in a panel at the National Association of Law Placement. In addition, the Committee considered and implemented a number of suggestions from Law Clerks for Workplace Accountability and the Yale Law School Judicial Workplace Conduct Working Group. The Committee plans to continue its conversations with law schools on these issues, including additional follow-up in the coming months.

#### **E. 2016 EEOC Report**

The Committee researched best practices in workplace relations both in the private and university settings. Most significantly, the foundational report of the 2016 Equal Employment Opportunity Commission Select Task Force on the Study of Sexual Harassment in the Workplace (“EEOC Report”) guided the Committee’s work. The EEOC Report found that 43% of the complaints filed by federal

employees in fiscal year 2015 alleged harassment.<sup>1</sup> Additionally, the EEOC Report identified that across various studies, between 25-85% of women report that they have experienced sexual harassment in the workplace (depending on how such harassment is defined).<sup>2</sup> It also found that “significant power disparities” is a prime risk factor for harassment.<sup>3</sup> The studies cited in the EEOC Report identify significant reporting of workplace harassment based on sex, gender identity, sexual orientation, race and ethnicity, national origin, religion, disability, age, and/or genetic information.<sup>4</sup> The data shows the prevalence of workplace harassment and emphasizes the importance of revising and improving policies and procedures to prevent such harassment in the workplace.<sup>5</sup>

The EEOC Report provided recommendations to prevent harassment in the workplace. These suggestions included ways to ensure that the organizational culture—particularly, the leadership—is committed to and values a respectful workplace.<sup>6</sup> For example, the EEOC Report recommended having systems in place to ensure accountability for *all* employees at *all* levels.<sup>7</sup>

The EEOC Report also advocated for comprehensive anti-harassment policies and procedures, written in clear, plain language, that are communicated regularly to employees.<sup>8</sup> The EEOC Report suggested organizations, even those with policies consistent with the EEOC’s recommendations, take a “fresh and critical look at their current processes and consider whether a ‘reboot’ is necessary or valuable.”<sup>9</sup> These policies should also include clear definitions of misconduct, explain reporting processes, and give assurances to employees that the employer will take proper, timely actions and protect confidentiality to the extent possible.<sup>10</sup> Policies should further establish reporting procedures that offer multiple avenues and points-of-contact; prompt, thorough, and impartial investigations; and

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<sup>1</sup> CHAI R. FELDBLUM & VICTORIA A. LIPNIC, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, REPORT OF THE CO-CHAIRS OF THE EEOC SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE 6 (2016).

<sup>2</sup> *Id.* at 8.

<sup>3</sup> *Id.* at 28.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 37-38.

<sup>6</sup> *Id.* 31-37.

<sup>7</sup> *Id.* at 34-37.

<sup>8</sup> *Id.* at 38.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

protections against retaliation.<sup>11</sup> Lastly, the EEOC Report recommends employers offer training to employees about what is considered harassment and what is considered unacceptable conduct in the workplace.<sup>12</sup>

The recommendations in the EEOC Report informed the Committee's recommendations.

### **III. Implementation**

Since May 2018, following the Ninth Circuit Judicial Council provisional approval of its recommendations, the Committee's work has focused on implementing these initiatives. The recommendations are consistent with those of the national Federal Judiciary Workplace Conduct Working Group and the EEOC Report, and are as follows.

#### **A. Revised Employment Dispute Resolution Policies**

The Committee revised the Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace ("EDR Policy"). The Judicial Council of the Ninth Circuit formally approved the revised EDR Policy on December 27, 2018, and it went into effect on January 1, 2019.

##### *Revised Ninth Circuit EDR Policy*

The process for revising the EDR Policy relied heavily on feedback from employees, judges, and employment experts. The much improved EDR Policy is written in plain language and provides important employee protections while maintaining proven, effective means of resolving employment disputes, such as mediation and other forms of informal dispute resolution.

The revised EDR Policy redefines the EDR process to include several, distinct options of the EDR process: (i) Informal Advice; (ii) Assisted Resolution of workplace issues; or (iii) the Formal Complaint of workplace issues. The newly-created Informal Advice option gives the employee the option to speak with a wide range of individuals to obtain guidance on addressing workplace issues. If

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<sup>11</sup> *Id.* at 38, 80.

<sup>12</sup> *Id.* at 46.

an employee wants to have a confidential conversation, the Director of Workplace Relations is available to assist the employee. The Assisted Resolution option is an interactive and flexible approach to informal resolution of workplace issues. It may include voluntary mediation or discussions with the parties to the conflict. The Formal Complaint option is the complaint and hearing procedure for resolving workplace disputes. A key change in this formal EDR procedure is that the time to file a complaint has been extended from 30 days to 180 days. The options for resolution are no longer sequential stages. Employees may choose the option that best fits their needs and comfort level.

The degree of privacy and confidentiality for each EDR option is now clearly laid out. Relevant forms contain checkboxes to confirm the complainant's understanding of the degree of privacy of each option. The Committee also created a flowchart to provide a quick reference to each option's level of confidentiality.

Though redefining the three EDR options was the most significant change to the EDR Policy, there were several other notable revisions. The Committee added a prefatory statement to affirm the Ninth Circuit's commitment to assuring a workplace where everyone is treated with respect, recognizing everyone's dignity, and fostering tolerance for differences and diverse viewpoints. The statement also emphasizes the importance of removing barriers to reporting workplace concerns and the strict prohibition against retaliation for reporting concerns.

The Covered Conduct section states more clearly and comprehensively employees' equal employment and anti-discrimination rights. Gender identity and gender expression were added to the covered rights. Because feedback frequently reflected concerns about bullying and abusive conduct, the Covered Conduct was expanded to include bullying. Bullying may involve repeated abusive conduct that is threatening, oppressive, or intimidating, or otherwise interferes with an individual's ability to do one's job. Additionally, the definitions of harassment and retaliation were refined. The revised EDR Policy now applies to conduct and actions that take place on and off premises if the conduct had or has adverse effects on the functioning and standing of the judiciary.

To further the goal of reducing barriers to reporting, employees now have the option to report to their local EDR Coordinator, their chief judge, or the

Director of Workplace Relations. An employee is no longer required to undergo a counseling period and engage in mediation. Complainants may, at their option, proceed directly to an EDR complaint, although seeking informal advice or voluntary assisted resolution is encouraged. Reporting is also encouraged for those who observe, but do not directly experience, workplace misconduct. Finally, the revised EDR Policy includes assurances throughout that the complainant and witnesses are protected from retaliation and that retaliation against a person who makes a report, whether as a target or bystander, is prohibited.

### *Local Courts and Federal Public Defender EDR Policies*

All units in the Ninth Circuit were required to either adopt the Ninth Circuit EDR Policy or receive Judicial Council approval for any modifications adopted in a local policy. While some units chose to adopt the revised Ninth Circuit EDR Policy in its entirety, many district and bankruptcy courts and the Ninth Circuit Federal Public Defenders submitted proposed local modifications. The Committee worked with the chief district judges and the Federal Public Defenders to review modified policies. The Judicial Council approved the submitted modifications, and the policies went into effect on January 1, 2019. The Director of Workplace Relations will oversee the implementation of EDR policies throughout the Circuit.

### **B. Director of Workplace Relations**

The Ninth Circuit established the first of its kind Director of Workplace Relations position to oversee workplace environment and training and to provide an avenue for employees to confidentially report, address, and resolve workplace issues. This position was specifically designed in response to information and recommendations received from the Questionnaire, focus groups, and other consultation with employees. The position functions with a high degree of independence and discretion and provides expert guidance on workplace issues (including harassment and bullying) and oversight of EDR-related matters. The Federal Judiciary Workplace Conduct Working Group has endorsed the Director of Workplace Relations position as a national model for other courts to adopt.

In January 2019, Yohance C. Edwards was named as the first Director of Workplace Relations and oversees the Office of Workplace Relations. Prior to his appointment, Mr. Edwards was the Associate Director and Deputy Title IX Officer

of the Office for the Prevention of Harassment and Discrimination at the University of California, Berkeley. At U.C. Berkeley, he oversaw the process for resolving complaints of discrimination and harassment based on race, color, national origin, age, gender, sex, sexual orientation, and gender identity, including allegations of sexual harassment. He also conducted training on the university's harassment and nondiscrimination policies and procedures and helped coordinate campus compliance with Title IX of the Education Amendments of 1972. Prior to his time at U.C. Berkeley, Mr. Edwards was an attorney at the U.S. Department of Education Office for Civil Rights. In that role, he was responsible for enforcing federal civil rights laws that prohibit discrimination at educational institutions receiving federal funding from the U.S. Department of Education. Mr. Edwards previously served as a staff attorney in the Ninth Circuit Court of Appeals, an associate at the law firm Munger, Tolles & Olson, and a law clerk to Judge McKeown. He received his J.D. from New York University School of Law, graduating magna cum laude and Order of the Coif, and his B.A. from Brown University.

The Director of Workplace Relations provides employees throughout the Ninth Circuit a resource outside of their direct line of supervision, where they can have confidential conversations about workplace issues. The Director of Workplace Relations also is available to assist employees and judges with all phases of the EDR process. Rather than replacing the role of EDR Coordinators throughout the Ninth Circuit, the Director of Workplace Relations will complement and work alongside EDR Coordinators in units that have a local point of contact for employment dispute issues.

Additionally, the Director of Workplace Relations will oversee the development and implementation of training sessions that will be offered to all the court units throughout the Ninth Circuit. These training sessions will be for judges, court unit executives, supervisors, and judiciary personnel. Training topics will include workplace issues and policies and procedures and are currently in development.

### **C. Revised Confidentiality Policy**

The Committee significantly revised the Confidentiality Policy. Feedback highlighted that the existing confidentiality policy was interpreted by some as

prohibiting the reporting of workplace harassment and other misconduct. The revised model Confidentiality Policy, which is now a single paragraph and written in plain language, clarifies that reporting misconduct is an exception to any and all chambers confidentiality requirements.

#### **D. Improved Law Clerk Orientation and Other Resources**

The Committee also revised the law clerk orientation programs. Beginning September 2018, the Court of Appeals law clerk orientation was expanded to include training on discrimination and harassment policies and employee dispute procedures. The September 2018 orientation also included a session on implicit bias and improving communication within and outside of chambers.

The Committee created a suggested Chambers Checklist for in-chambers law clerk orientation. This checklist includes addressing internal chambers policies and the new workplace resources available to law clerks. A law clerk portal was established on the Court of Appeals intranet to provide easy access to policies, procedures, and other information important to law clerks.

The Committee also recently formed the Law Clerk Resources Group. This group is comprised of former law clerks from throughout the Ninth Circuit, with several members who served as clerks in state courts as well as in various district and circuit courts. The group will serve as a resource for law clerks to discuss issues relating to clerkship and workplace issues. The Committee also plans to use the Law Clerk Resource Group as a diverse source of input as it continues to review, revise, and implement policies relating to workplace conduct.

#### **E. Employee Climate Survey and Law Clerk Exit Questionnaire**

The Committee has developed and will implement an employee climate survey and a law clerk exit questionnaire to gather more feedback on the experience of current employees and to monitor workplace environment issues. The climate survey will allow the Committee and Director of Workplace Relations to re-examine policies and practices on an ongoing basis to improve and foster a more productive and healthier workplace. Recognizing the unique circumstances of term law clerks, the anonymous exit questionnaire for departing law clerks will allow law clerks to confidentially provide feedback about their experiences.



#### **IV. Training**

A key aspect to the successful implementation of these new policies and practices is the training and education of law clerks, employees, managers, and judges. The 2019 Ninth Circuit Judges Symposium included a dedicated session on the Committee's work, the newly revised Judicial Code of Conduct, and the Judicial Conduct and Disability procedures, which mandate reporting of misconduct. The 2019 Ninth Circuit Orientation for New Judges included sessions on these topics as well. The upcoming 2019 Ninth Circuit Judicial Conference will also include a similar discussion and training. The next phase, which has already begun, includes training existing employees, managers, court unit executives, and judges on the rights and responsibilities in the conduct codes, the revised EDR Policy, and workplace matters.

Additionally, the Director of Workplace Relations is developing enhanced training for EDR Coordinators, who play a pivotal role in the EDR process at the local level. The development of additional EDR Coordinator training is consistent with the recommendation from the Federal Judiciary Workplace Conduct Working Group. The Ninth Circuit understands the importance of training and education to the successful implementation of the new policies and will be focusing on those efforts moving forward through the leadership of the Director of Workplace Relations.

#### **V. Past and Future Activities**

Committee members and staff have attended events throughout the Ninth Circuit to present updates to judges and court staff. These events have included the 2018 Ninth Circuit Judicial Conference, 2018 Court of Appeals Law Clerk Orientation, 2019 Ninth Circuit Judges Symposium, 2019 Ninth Circuit Orientation for New Judges, dedicated mid-year updates to court staff and law clerks, and meetings of judges, court clerks, federal public defenders, and probation and pretrial services officers. Additionally, Committee staff have also presented at events outside of the Ninth Circuit, including to the American Bar Association, the American Academy of Appellate Lawyers, the Association of Law Schools, and the National Association for Law Placement.

A “Calendar of Events and Presentations” detailing the past and future work of the Committee is included in the Appendix of this Report.

## **CONCLUSION**

This Report summarizes the Ninth Circuit’s work over the past eighteen months to improve the workplace environment. The foundation for the Ninth Circuit’s work is the extensive outreach effort and the tremendous amount of analysis and dialogue that the Ad Hoc Committee on Workplace Environment has engaged in concerning these very important issues. The feedback has guided the Ninth Circuit to implement several significant changes to the workplace environment of the Ninth Circuit, including a revised EDR Policy, revised confidentiality policy, newly-created Director of Workplace Relations position, revised orientation for law clerks, and new Employee Exit Questionnaire.

While revising policies and providing more resources will enact short-term change for the better, the Committee recognizes the implementation of positive training and the long-term commitment to all these initiatives are crucial to promoting and safeguarding a healthy workplace culture. The Committee, the judges, and the Director of Workplace relations will continue to listen and expect that the people of the Ninth Circuit will continue to participate in the creation and maintenance of the culture to which we aspire. Ensuring a healthy and productive workplace for all employees is, and will continue to be, the highest priority in the Ninth Circuit.

**Appendix 1: Ninth Circuit Employment Dispute Resolution Policy and  
Commitment to a Fair and Respectful Workplace**

**Ninth Circuit Employment Dispute Resolution Policy and  
Commitment to a Fair and Respectful Workplace**



**Judicial Council Approved: December 27, 2018  
Effective date: January 1, 2019**

# **Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace**

## **I. INTRODUCTION**

The Ninth Circuit is committed to a workplace that fosters respect, fairness, dignity, and tolerance. The Ninth Circuit’s Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace (“the EDR Policy” or “the Policy”), is designed to assure that these values are a part of the culture of the Ninth Circuit as a workplace. The goal is to eliminate misconduct, including discriminatory, harassing, demeaning, and bullying behavior.

The Policy describes types of conduct that are prohibited in the workplace, and then sets out options for addressing or resolving such conduct. The Policy outlines the Ninth Circuit’s mechanisms for (i) informal advice; (ii) assisted resolution of workplace issues; and (iii) formal resolution of workplace complaints.<sup>1</sup>

The Policy also seeks to encourage the reporting of workplace misconduct and reduce barriers to reporting, which include fear of retaliation, concern about reputational harm, and the belief that an issue will not be resolved even if it is reported. The Ninth Circuit recognizes the courage that is needed to report misconduct, and continues to encourage early reporting as the best way to address and prevent systemic, harmful conduct. The Policy prohibits retaliation against anyone who reports misconduct, whether the person experiences the misconduct directly or is a bystander. The Policy seeks to provide safe and accessible ways of reporting misconduct.

## **II. SCOPE OF COVERAGE**

This Policy applies to all courts and court units within the Ninth Circuit, including District Courts, Bankruptcy Courts and Clerks of the District and Bankruptcy Courts, as well as United States Probation and Pretrial Services Offices and Federal Public Defenders. For ease of reference, all judges, judicial officers, court unit heads, and their staffs (including law clerks, externs, interns, and volunteers) are referred to as “Employees” in the Policy. This Policy covers conduct and actions that take place both on and off work premises.

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<sup>1</sup> This Policy has been approved by the Ninth Circuit Judicial Council and supersedes all previous versions of the circuit Employment Dispute Resolution plan.

Any modification of this Policy by a court or court unit must be consistent with the rights and procedures in this Policy and must be approved by the Judicial Council of the Ninth Circuit.

### **III. COVERED CONDUCT<sup>2</sup>**

#### **A. Equal Employment and Anti-Discrimination Rights**

Employees are prohibited from engaging in discrimination, harassment, bullying, and retaliation, which are actions or behaviors that are unwelcomed, illegal, unfair, demeaning, or offensive. Discrimination and harassment are actions or behaviors directed against or toward an Employee, or group of Employees, based upon the Employee's race, sex or gender (including pregnancy, gender identity, gender expression, marital status, and parenthood), color, creed, national origin, citizenship, ancestry, age (at least 40 years of age at the time of the claimed discrimination), disability, religion, sexual orientation, genetic information, or past, current, or prospective service in the uniformed forces, in addition to any other status or characteristic protected under applicable federal law. Conduct need not be illegal to be Covered Conduct under this Policy. The rights and protections of Chapter 1 of the EEO Plan (Appendix 2) shall apply to Employees.

#### **B. Family and Medical Leave Rights**

Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381-6387, applies to Employees in the manner prescribed in Volume 12, Chapter 9, Section 920.45.20 of the *Guide to Judiciary Policy*.

#### **C. Employment and Reemployment Rights of Members of the Uniformed Services**

An employing office shall not discriminate against an eligible Employee or deny an eligible Employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301-4335.

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<sup>2</sup> This Policy also applies to additional workplace rights that are incorporated in Appendices 1 and 2.

## **D. Explanation of Types of Misconduct: Discrimination, Harassment, Bullying, and Retaliation**

**Discrimination:** Discrimination comes in many forms. It generally arises as an adverse employment-related action, such as a demotion or an unfair evaluation, or action that negatively affects an Employee's workplace environment, which is sometimes referred to as a "hostile workplace environment."

Harassment (including sexual harassment), bullying, and retaliation can all be forms of discrimination. Each is described below. The categories listed in this section are illustrative, not exhaustive. Nothing in this Policy should be interpreted as a limitation on what the Ninth Circuit considers to be discrimination or harassment. Further, conduct need not be directed toward a specific individual or group of individuals to be considered discrimination or harassment.

**Harassment:** Harassment, which may be a form of discrimination, is unwelcome conduct that is based on any of the categories of Covered Conduct. Harassment can include physical, verbal, non-verbal, or psychological behavior that interferes with work performance or creates a hostile or offensive work environment. Examples of harassment include offensive jokes, remarks, slurs or name-calling; viewing or display of inappropriate images, pictures, videos or cartoons; or disparaging comments.

Sexual harassment is a form of harassment based on sex or gender. Like harassment, sexual harassment can include physical, verbal, or non-verbal behavior. Examples of sexual harassment include offensive remarks about an individual's sex or gender; unwelcome sexual advances; requests for sexual favors; repeated sexual advances or jokes; inappropriate touching or physical contact; displaying sexually suggestive posters, cartoons, or drawings; leering; making sexual gestures; or any other conduct of a sexual nature, when any of the following occur:

- Submission to the advance, request, or conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the advance, request, or conduct is used as a basis for employment decisions; or

- Such advance, request, or conduct has the purpose or effect of substantially or unreasonably interfering with an Employee's work performance by creating an intimidating, hostile, or offensive work environment.

**Bullying:** Bullying includes repeated mistreatment involving abusive conduct that is threatening, oppressive, or intimidating, and interferes with an individual's ability to do one's job. It can be physical, verbal, non-verbal, or psychological and can involve work assignments and social ostracism as well as demeaning treatment and comments. Bullying is not consistent with a workplace that aims to treat all individuals fairly and with respect.

**Retaliation:** An Employee who asserts rights or participates in the filing or processing of any report or claim under this Policy has the right to be free from retaliation, coercion, or interference. Retaliatory behavior can include, but is not limited to, unwarranted reprimands; unfair downgrading of personnel evaluations; transfers to less desirable positions; verbal, physical, or psychological abuse; and altered or less convenient work schedules.

#### **IV. DIRECTOR OF WORKPLACE RELATIONS**

The Director of Workplace Relations will serve as the primary contact for Employees who experience or witness workplace misconduct and wish to discuss or report such misconduct. The duties of the Director of Workplace Relations include (i) providing information to Employees regarding the rights and protections under this Policy; (ii) providing guidance to Employees seeking options for resolution of workplace issues covered under this Policy; (iii) coordinating EDR proceedings; (iv) coordinating training for judges and Employees; (v) recording and resolution of complaints under this Policy; (vi) compiling periodic reports regarding implementation of this Policy; and (vii) collecting and analyzing data related to this Policy. The Director of Workplace Relations will act as a neutral point of contact to ensure a safe, fair, and discreet reporting environment.

In addition to the circuit Director of Workplace Relations, each court or court unit may designate an EDR Coordinator to assist with the resolution of workplace concerns. The duties of an EDR Coordinator may include (i) providing information to Employees regarding the rights and protections afforded under this Policy; (ii) facilitating training opportunities for Employees within the court or court unit; (iii) engaging in Assisted Resolution to



Employees; (iv) compiling court unit reports of misconduct allegations; and (v) other duties as assigned by the court or court unit, so long as they do not conflict with the duties of the Director of Workplace Relations.

## **V. COMMITMENT TO REPORT WORKPLACE MISCONDUCT**

Employees share the responsibility for keeping the workplace free of discrimination, harassment, bullying, retaliation, and other misconduct. To implement this Policy effectively, it is imperative that Employees report instances of misconduct immediately. Employees may reach out to a supervisor, a local EDR Coordinator, the Director of Workplace Relations, or any other resource for assistance. However, at their option, Employees may report directly to the Director of Workplace Relations. Any Employee (including supervisors and local EDR Coordinators) who receives a report or inquiry about misconduct should advise the Director of Workplace Relations.

## **VI. OPTIONS FOR RESOLUTION**

Employees who experience or witness discrimination, harassment, bullying, retaliation, or any other Covered Conduct have several options. These options include (i) requesting informal advice, (ii) seeking assisted resolution, or (iii) filing a formal complaint.

These options are not mutually exclusive. However, not all options can guarantee strict confidentiality, so Employees should choose the avenues that best fit their needs and comfort level. For a strictly confidential conversation, Employees are encouraged to contact the Director of Workplace Relations with any questions or simply to discuss ways in which to proceed. Nothing in this Policy prevents an Employee from addressing the situation directly with the person whose behavior is of concern if they are comfortable doing so, or from contacting a colleague, supervisor, chief judge, judge, local EDR Coordinator, or other individual to discuss or address the situation.

### **A. Informal Advice**

An Employee may contact the Director of Workplace Relations to request advice about a workplace concern. The purpose of this option is to provide an outlet for confidential advice and guidance on how an Employee can address workplace issues. An Employee may request anonymity, confidentiality, or that no action be taken following the inquiry. The Director of Workplace Relations

will adhere to the Employee's request unless the conduct is physically threatening or so pervasive as to present unsafe working conditions for the Employee or other Employees.

The advice could cover a range of topics, including:

- providing information regarding the rights and protections afforded under this Policy;
- providing perspective on the conduct described, including whether it violates this Policy;
- coaching on handling discriminatory or harassing conduct as it is happening;
- immediate options for further reporting the conduct or lodging a complaint; and
- possible options and procedures to consider given the circumstances.

In addition to contacting the Director of Workplace Relations for informal advice, an Employee may also contact the Judiciary Workplace Conduct Counselor, an employee of the Administrative Office of the U.S. Courts who staffs the federal judiciary workplace hotline, the Ninth Circuit Employee Assistance Program (EAP) for personal counseling, or, for ethics advice, a member of the Codes of Conduct Committee. Like the Director of Workplace Relations, these individuals are professionals who have been trained in the court's policies and practices and are outside the Employee's chain of command.

## **B. Assisted Resolution**

In addition to, or in lieu of, seeking Informal Advice, an Employee can seek Assisted Resolution of workplace issues.

Assisted Resolution is an interactive, flexible process that may include:

- interviewing witnesses to the conduct;
- discussion with the source of the conduct;
- conducting a preliminary investigation report
- crafting a resolution of the situation; and
- voluntary mediation between the parties.

Because this option may lead to a preliminary investigation that may include discussing the issue with the source of the conduct, confidentiality and

anonymity are not guaranteed. However, information about the complaint will be shared only on a “need to know” basis to ensure fairness to all parties and to minimize disruption to the workplace environment.

To pursue this option, an Employee should contact the Director of Workplace Relations and/or the local EDR Coordinator, who will assist the Employee in completing a “Request for Assisted Resolution under EDR Policy” (Appendix 3). The Request for Assisted Resolution form includes (1) a summary of the incident or decision giving rise to the dispute; (2) a list of any witnesses to the conduct; and (3) the desired outcome of reporting the conduct.

The Director of Workplace Relations will coordinate options for resolution with the local chief judge or court unit executive, depending on whether the source of the conduct is a judge or an Employee. At all stages of the process, the Director of Workplace Relations will ensure that no conflict of interest exists with the decision maker for the employing office.

If Assisted Resolution is successful in resolving the Employee’s concerns, a written Acknowledgement of Resolution will be signed by the parties and retained by the Director of Workplace Relations. If Assisted Resolution is not successful in resolving the matter, the Director of Workplace Relations will advise the Employee of rights under this Policy, including the option to file a formal complaint.

### **C. Formal Complaint and Hearing**

An Employee may also initiate a formal dispute resolution process. This option involves the filing of a formal complaint, which leads to an investigation and possibly a hearing. Appendix 4 is a summary of the timeline for a formal complaint.

**Filing Complaint:** To initiate this process, an Employee must file a “Complaint under the EDR Policy” (Appendix 5) with the Director of Workplace Relations or local EDR Coordinator within 180 calendar days of the alleged misconduct. Once this process is initiated, the Employee becomes known as the “Complainant,” and the Employing Office becomes known as the “Respondent.”

After a Complaint has been filed, a Hearing Officer will be assigned to the matter. For Complaints against Employees, including supervisors or court unit executives, the Hearing Officer will be the chief judge of the court of the employing office or a designee. For Complaints against judges, the Hearing

Officer is the chief circuit judge or a designee.<sup>3</sup> If the chief circuit judge is the subject of the Complaint, the circuit Judicial Council shall designate an alternative Hearing Officer to oversee the hearing process.

**Investigation:** The Hearing Officer or a designee will investigate the allegations in the Complaint thoroughly, promptly, and confidentially to the extent that is reasonable under the circumstances. Because the investigation may include interviews of known witnesses, confidentiality and anonymity cannot be guaranteed.

**Hearing:** Once the investigation is complete, the Hearing Officer will determine whether there are material factual issues or remedies for resolution. If the Hearing Officer determines that there are no remaining issues for resolution, the Hearing Officer will resolve the Complaint via a written decision. Otherwise, the Hearing Officer will proceed with a hearing decision.

The Hearing Officer will determine the time, place, and manner of conducting the hearing.

The following provisions shall apply to hearing procedures:

- The hearing shall take place no later than 60 calendar days after the filing of the Complaint. No later than 30 calendar days before the hearing date, written notice of the hearing shall be given to the Complainant, the Respondent, and the head of the office from which relief is being sought.

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<sup>3</sup> With respect to misconduct by a judge, the Employee may also file a Judicial Misconduct Complaint under the Judiciary Conduct & Disability Act (“the Act”). 28 U.S.C. §§ 351-364.

If a judge becomes the subject of both an EDR Complaint and a judicial misconduct complaint under the Judiciary Conduct and Disability Act, the Judicial Council of the Ninth Circuit or its designee, which may include the chief judge of the circuit, will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial Disability Proceedings, and, as practicable, this EDR Policy. In doing so, the council or its designee, who may include the chief judge of the circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

- The scope of the hearing shall generally be limited to a review and discussion of the documents and other written evidence submitted, rather than a full evidentiary hearing or trial. However, at the discretion of the Hearing Officer, witnesses may be presented.
- At the hearing, the Complainant and the employing office are permitted to be represented by counsel.
- A verbatim record of the hearing must be kept and shall be the sole official record of the proceeding.
- In reaching a decision, the Hearing Officer shall be guided by judicial and administrative decisions under relevant rules and statutes.
- Remedies may be provided in accordance with this Policy where the hearing officer finds that the Complainant has established by a preponderance of the evidence that a substantive right protected by this Policy has been violated.
- The final written decision of the Hearing Officer must be issued no later than 30 calendar days after the conclusion of the hearing.
- All parties, and any aggrieved individual, shall be provided with a copy of the written decision.

The Hearing Officer may extend for good cause any of the deadlines in this Policy. All extensions of time granted will be made in writing and become part of the record.

A Complainant or Respondent may appeal the Hearing Officer's final decision within 30 calendar days of the date of the decision. Appeals must be made in writing to the Executive Committee of the Judicial Council of the Ninth Circuit. The Executive Committee's decision is final.

**Remedies:**<sup>4</sup> Any remedies imposed by the Hearing Officer should be tailored as closely as possible to the specific violation involved. For Covered Conduct under this Policy, remedies may include, but are not limited to:

- required counseling or training for the Respondent;
- an oral or written reprimand to the Respondent;
- loss of salary or benefits for the Respondent;
- suspension, probation, demotion, or termination for the Respondent;
- an apology;
- placement of a Complainant in a position previously denied;
- placement of a Complainant in a comparable alternative position;
- reinstatement to a position from which the Complainant was previously removed;
- prospective promotion of a Complainant;
- priority consideration of a Complainant for a future promotion or position;
- back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
- records modification and/or expungement;
- "equitable" relief, such as temporary stays of adverse actions;
- granting of family and medical leave; and
- accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.

Remedies that are not legally available include:

- payment of attorney's fees (except as authorized under the Back Pay Act);
- compensatory damages;
- punitive damages; and
- overtime pay.

**Record-keeping:** The Director of Workplace Relations shall retain all notes, reports, files, and other documents created or submitted in connection with this Policy. Records necessary for statistical or reporting purposes shall be

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<sup>4</sup> Consistent with the Constitution of the United States and the Judicial Conduct & Disability Act, certain remedies are unavailable where a judge is the Respondent.

stripped of any personally identifiable information. Records created in connection with this Policy, shall not be: (1) filed in any Employee's personnel folder, except as necessary to implement an official personnel action, or (2) made available to the public or to other Ninth Circuit personnel. However, the Hearing Officer may determine that all or portions of the decision be made available to the public.

## **VII. ANNUAL REPORT**

The Director of Workplace Relations will prepare an annual report for the fiscal year for the Judicial Council, indicating:

1. The number and type of alleged violations for which Informal Advice was provided.
2. The number and type of alleged violations for which Assisted Resolution was requested.
3. The number and type of Complaints filed.
4. The number and type of hearings conducted.
5. The number and type of final decisions rendered reflecting the number for which some relief was granted.
6. With respect to all the data supplied in items 1 through 5 above, the allegations or Complaints shall be reported according to the section of this Policy that is involved and the type(s) of discrimination alleged.

### **Appendices Attached:**

1. Additional Workplace Protections
2. Ninth Circuit Equal Employment Opportunity Plan
3. Request for Assisted Resolution under EDR Policy
4. Timeline for EDR Complaint Process
5. Complaint under EDR Policy
6. Petition for Review Procedures and Sample Form

Judicial Council approved: December 27, 2018

Effective date: January 1, 2019

**Additional Workplace Protections**

**I. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS**

No “employing office closing” or “mass layoff” (as defined below) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff that results from the absence of appropriated funds.

**Definitions**

- A. The term “employing office closing” means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.
- B. The term “mass layoff” means a reduction in force which:
  - 1. is not the result of an employing office closing; and
  - 2. results in an employment loss at the single site of employment during any 30-day period for
    - a. (i) at least 33 percent of the employees (excluding any part-time employees); and
    - (ii) at least 50 employees (excluding any part-time employees), or
    - b. at least 500 employees (excluding any part-time employees).

*See 29 U.S.C. § 2101.*

**II. OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS**

Each employing office shall implement a program to provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration (“GSA”) or the United States Postal Service



(“USPS”) to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.

### III. POLYGRAPH TESTS

Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

### IV. WHISTLEBLOWER PROTECTION

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take an adverse employment action with respect to any employee (excluding applicants for employment) because of any disclosure of information by the latter employee to -

- A. the appropriate federal law enforcement authority, or
- B. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, which that employee reasonably and in good faith believes evidences a violation of any law, rule, or regulation, or other conduct that constitutes gross mismanagement, a gross waste of funds, or a substantial and specific danger to public health or safety, provided that such disclosure of information -
  - 1. is not specifically prohibited by law,
  - 2. does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide to Judiciary Policy*, Vol. 20, Ch. 8), and
  - 3. does not reveal information that would endanger the security of any federal judicial officer.

**Definition** - For purposes of this section, an “adverse employment action” means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee’s job status, compensation, terms, or responsibilities, or the employee’s working conditions.

## NINTH CIRCUIT EQUAL EMPLOYMENT OPPORTUNITY PLAN<sup>1</sup>

### I. Statement of Policy

Each court and court unit will promote equal employment opportunity to all persons or classes of persons regardless of their race, sex or gender (including pregnancy, gender identity, and gender expression), color, creed, national origin, citizenship, ancestry, age (at least 40 years of age at the time of the claimed discrimination<sup>2</sup>), disability, religion, sexual orientation, genetic information, or past, current or prospective service in the uniformed forces, in addition to any other status or characteristic protected under applicable federal law. All facets of employment such as recruitment, hiring, work assignments, compensation, benefits, education, disciplinary actions, terminations, training, promotion, advancement, and supervision are included in the Plan. Each court unit executive will promote a court or office environment free of discrimination and harassment. Along with employees (as defined in the EDR Policy), applicants for employment and former employees are covered by this Plan. All Complaints under this plan shall be covered by the procedures in Section VI of the Ninth Circuit EDR Policy.

Court unit executives must ensure that appropriate vacancies (with the exception of chambers law clerk and judicial assistant vacancies) are publicly announced to attract candidates who represent the make-up of persons available in the relevant labor market and that all hiring and other employment decisions are based solely on job-related factors. Job postings may be published solely to internal staff in certain circumstances, such as budgetary constraints; career ladder promotions; reassignments; and accretion of duties.

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<sup>1</sup> This plan was originally adopted in December 1997 and approved and amended in June 1998, November 2000, and June 2014 by the Judicial Council of the Ninth Circuit. This plan supersedes the Court of Appeals and the Circuit Executive's former EEO Plan.

<sup>2</sup> Special provision for probation and pretrial services officers – The age discrimination provision shall not apply to the initial hiring or mandatory separation of probation and pretrial services officers and officer assistants. *See* Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17. Additionally, probation and pretrial services officers must meet all fitness for duty standards, and compliance with such standards does not, in and of itself, constitute discrimination on the basis of disability.

Reasonable efforts should be made to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits, and within the limits of available resources, cross-training, reassignments, special assignments, and outside job-related training.

## **II. Annual Report**

Court unit executives must submit an annual report to the chief circuit judge. The report will describe any significant achievements in providing equal employment opportunities, identify areas where improvements are needed, and explain factors inhibiting achievement of equal employment opportunity objectives. The report will be the same report as that submitted annually to the Administrative Office of the United States Courts.

## **III. Objectives**

When the court unit executive deems it necessary or desirable, he or she will develop annual objectives that reflect improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan (report) explaining how those objectives will be achieved.

## **IV. Distribution and Public Notice**

Copies of this plan shall be made available to all employees and furnished, upon request, to applicants for positions of employment.

Judicial Council approved: December 27, 2018

Effective date: January 1, 2019

## Appendix 3

### REQUEST FOR ASSISTED RESOLUTION UNDER EDR POLICY

Submitted under the Procedures of the Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace

Prior to completing this form, please refer to the EDR Policy.

1. Full name of person requesting Assisted Resolution: \_\_\_\_\_
2. Mailing Address:  
Email Address:
3. Home Phone: (\_\_\_\_\_)\_\_\_\_\_ Work Phone: (\_\_\_\_\_)\_\_\_\_\_
4. If you are an employee with the Court of Appeals or Circuit Executive's Office, state the following:  
Court Unit in which employed: \_\_\_\_\_  
Job Title \_\_\_\_\_
5. Name and address of the office from which you seek resolution of your dispute:  
\_\_\_\_\_  
\_\_\_\_\_
6. Identify the Section(s) of the EDR Policy under which your Request for Assisted Resolution is being filed.
  - Section III.A - Equal Employment Opportunity & Anti-Discrimination Rights
    - Race
    - Color
    - Sex or Gender (may include: pregnancy, gender identity, gender expression, marital status, parenthood, sexual harassment, biological sex)
    - Bullying
    - Religion or creed
    - National Origin, citizenship, or ancestry
    - Age
    - Disability
    - Sexual Orientation
    - Genetic information

- Section III.B - Family and Medical Leave Rights
- Section III.C - Employment and Reemployment Rights of Members of the Uniformed Services
- Section III.D - Retaliation
- Appx. 1, Section I - Worker Adjustment and Retraining Notification Rights
- Appx. 1, Section II - Occupational Safety and Health Protections
- Appx. 1, Section III - Polygraph Tests
- Appx. 1, Section IV - Whistleblower Protection Provision

7. Date(s) of alleged incident or decision giving rise to this dispute: \_\_\_\_\_

8. Please summarize the actions or occurrences giving rise to this dispute. (If insufficient space, use the reverse side or an attachment):

\_\_\_\_\_

\_\_\_\_\_

9. Please list any witnesses to the actions or occurrences giving rise to this dispute:

10. What corrective action do you seek in this matter?

\_\_\_\_\_

11. I acknowledge that this Request will be kept confidential to the extent possible and that the Director of Workplace Relations or EDR Coordinator may share confidential information on a need to know basis to attempt resolution of this matter as provided in the EDR Policy.

- Yes       No

This Request for Assisted Resolution is submitted by: \_\_\_\_\_

\_\_\_\_\_

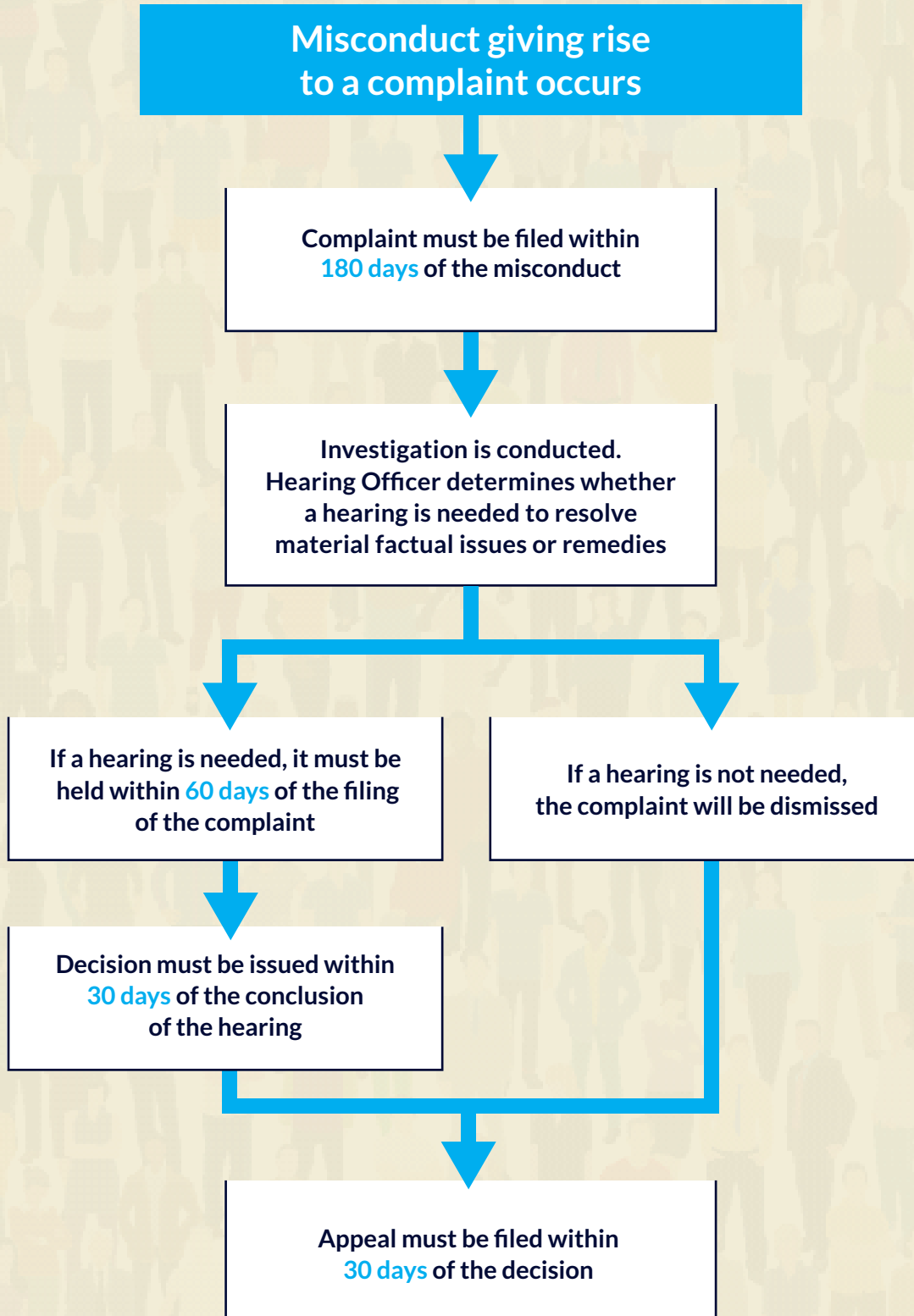
Signature

\_\_\_\_\_

Date

Director of Workplace Relations Signature: \_\_\_\_\_ Date of Receipt: \_\_\_\_\_

## Timeline for EDR Complaint Process



**COMPLAINT UNDER EDR POLICY**

Submitted under the Procedures of the Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace

Prior to completing this form, please refer to the EDR Policy.

- 1. Full name of person filing complaint: \_\_\_\_\_
  
- 2. Mailing Address: \_\_\_\_\_  
Email Address: \_\_\_\_\_
  
- 3. Home Phone: (\_\_\_\_\_)\_\_\_\_\_ Work Phone: (\_\_\_\_\_) \_\_\_\_\_
  
- 4. If you are an employee with the Court of Appeals or Circuit Executive’s Office, state the following:  
Court Unit in which employed: \_\_\_\_\_  
Job Title \_\_\_\_\_
  
- 5. Name and address of the Employing Office against whom this complaint is filed: (all complaints must be filed against an “Employing Office,” and, except in the case of a judge, not an individual):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  
- 6. Identify the Section(s) of the EDR Policy under which your complaint is being filed.
  - Section III.A - Equal Employment Opportunity & Anti-Discrimination Rights
    - Race
    - Color
    - Sex or Gender (may include: pregnancy, gender identity, gender expression, marital status, parenthood, sexual harassment, biological sex)
    - Bullying
    - Religion or creed
    - National Origin, citizenship, or ancestry
    - Age
    - Disability
    - Sexual Orientation
    - Genetic information

- Section III.B - Family and Medical Leave Rights
- Section III.C - Employment and Reemployment Rights of Members of the Uniformed Services
- Section III.D - Retaliation
- Appx. 1, Section I - Worker Adjustment and Retraining Notification Rights
- Appx. 1, Section II - Occupational Safety and Health Protections
- Appx. 1, Section III - Polygraph Tests
- Appx. 1, Section IV - Whistleblower Protection Provision

7. Date(s) of alleged violation: \_\_\_\_\_

8. Date on which Informal Advice was requested, if any: \_\_\_\_\_  
 Date on which Informal Advice was completed: \_\_\_\_\_  
 Date on which Assisted Resolution was requested, if any: \_\_\_\_\_  
 Date on which Assisted Resolution was concluded: \_\_\_\_\_

9. Name of person who served as Director of Workplace Relations on this matter: \_\_\_\_\_

10. Name of all other Circuit personnel who worked with you on this matter: \_\_\_\_\_

11. Please summarize the actions or occurrences giving rise to your complaint. Explain in what way you believe your rights under the EDR Policy were violated. Identify all persons who participated in this matter or who can provide relevant information concerning your complaint, including persons who witnessed the actions or occurrences giving rise to your complaint. (If there is insufficient space below, you may attach additional pages.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**[Please attach a copy of any documents that relate to your complaint, such as an application form, resume, letters, notices of discipline, or termination, etc.]**

12. What corrective action do you seek from your complaint? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



13. Do you have an attorney or any other person who represents you in this matter?

Yes       No

If yes, please provide the following information concerning that person:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Work Phone: (\_\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_\_) \_\_\_\_\_

Email: \_\_\_\_\_

14. I acknowledge that this Complaint will be kept confidential to the extent possible and that the Director of Workplace Relations or EDR Coordinator may share confidential information on a need to know basis to attempt resolution of this matter as provided in the EDR Policy.

Yes       No

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**PROCEDURES FOR REVIEW OF EDR HEARING OFFICER  
DECISION BY THE EXECUTIVE COMMITTEE OF THE JUDICIAL  
COUNCIL OF THE NINTH CIRCUIT**

**I. Scope of the Rules**

These rules govern procedures for petitioning for review of a decision, or summary dismissal, of a Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace (“the EDR Policy”) complaint rendered by a “Hearing Officer” (see the EDR Policy, Section VI.C). Such review is conducted by the Executive Committee of the Judicial Council of the Ninth Circuit (“Executive Committee”).

**II. Filing of Petition for Review**

- A. *Filing the Petition for Review* -- A party aggrieved by a final decision of the Hearing Officer or by summary dismissal of a complaint, may petition for review of that decision or summary dismissal by filing a petition for review to which is attached a copy of the decision of the Hearing Officer (or a copy of the summary dismissal).
- B. *Form of Petition and Supporting Arguments* -- The petition shall be in accordance with Form 1, which follows these procedures. Included in the petition or as an attachment to the petition shall be a statement, not to exceed 10 pages in length (8 ½ x 11 white paper, double-spaced, single-sided) setting forth the basis for the petition and all arguments and information supporting the petition. The petition must be filed with the Executive Committee in a timely manner as set forth in Section III below.

- C. *Serving the Petition for Review* -- The petitioning party must serve the petition on the Executive Committee by having it delivered to the Circuit Executive at the following address:

Office of the Circuit Executive	Parcel Delivery:
Assistant Circuit Executive - EDR Policy	95 Seventh Street
P.O. Box 193939	San Francisco, CA 94103
San Francisco, CA 94119	Fax (415) 355-8901

Simultaneously, a copy of the petition (and all attachments thereto) must be served on the opposing party, and proof of such service shall be included with the petition filed with the Executive Committee.

### **III. Filing Deadlines**

- A. *Time for Filing a Petition for Review* -- A petition for review must be submitted to the Executive Committee no later than 30 days following the date of the final decision of the Hearing Officer or following the date of a summary dismissal of the complaint.
- B. *Requests for Extension of Time* -- The Executive Committee may extend the time to file a petition for review and for any other filing specified in these procedures, provided the request is received no later than the required filing date, and provided the petitioner shows good cause or excusable neglect.
- C. *Determining Time Periods* -- The word “days” in all filing deadlines in these procedures shall mean calendar days, except that if the deadline date occurs on a Saturday, Sunday or holiday, the deadline shall be extended to the next following Monday or court business day respectively.

### **IV. Consideration by the Executive Committee**

- A. *General* -- All reviews will be conducted by the members of the Executive Committee, and shall be based on the decision of the Hearing Officer or the summary dismissal of a complaint and any documents submitted by the parties in response to the directive of the Executive Committee as outlined below.
- B. *Scope of Record and Documents to be Considered* -- Within 20 days following receipt of the petition for review, the Executive Committee shall notify the parties concerning what, if any, additional information, i.e., record (e.g., hearing transcript), documents and/or briefs, may be submitted for its consideration. Unless notified by the Executive Committee of its request for additional information, neither party is to submit further information.
- C. *Oral Argument* -- Oral argument will normally not be permitted, but may be ordered by the Executive Committee. Either party may request such argument in writing filed within 7 days following filing of the petition as part of the petition (in the case of the party filing the petition) or (in the case of the Respondent) in a letter submitted no later than 7 days from receipt of the petition, setting forth the specific reasons why such argument is necessary, and why adequate argument cannot be made in written form. If granted, oral argument, may, at the sole discretion of the Executive Committee, be conducted via teleconference using video and/or audio technology.
- D. *Standard of Review* -- The decision or summary dismissal of the Hearing Officer shall be affirmed if supported by substantial evidence.
- E. *Summary Disposition* -- If at any time prior to the final submission of the case for review, the Executive Committee determines that the basis(es) of the request

for review are so insubstantial as not to justify further proceedings, the court may issue an appropriate dispositive order.

- F. *Form of Final Review* -- The Executive Committee shall issue its decision in writing.

Attachment: **Sample Petition for Review to the Executive Committee of the Judicial Council of the Ninth Circuit from Hearing Officer's Decision.**  
[see next page for form]



## **Appendix 2: Revised Confidentiality Policy**

## **Confidentiality Policy**

Confidential information is information, however communicated, received in the course of judicial duties that is not public and is not authorized to be made public. Employees are prohibited from using or disclosing confidential information. Former judicial employees should observe the same restrictions on disclosure of confidential information that apply to current employees. This restriction does not apply to (nor should it discourage) reporting misconduct, including sexual or other forms of harassment.

**Appendix 3: Workplace Committee/Workplace Relations  
Calendar of Events and Presentations**



**Workplace Committee/Workplace Relations**  
**Calendar of Events and Presentations 2018-2019**

*Updated June 17, 2019*

<b>Date</b>	<b>Event/Presentation</b>
January 25, 2018	Workplace Committee Meeting
February 6, 2018	Focus Group Event
February 7, 2018	Focus Group Event
February 7, 2018	Focus Group Event
February 13, 2018	Focus Group Event
February 14, 2018	Focus Group Event
February 14, 2018	Focus Group Event
February 15, 2018	Focus Group Event
February 26, 2018	Workplace Questionnaire Released
February 27–28, 2018	Ninth Circuit Clerks Conference Presentation
March 12, 2018	Workplace Committee Meeting
March 27, 2018	Focus Group Event
March 29, 2018	Focus Group Event
April 3, 2018	Focus Group Event
April 4, 2018	Focus Group Event
April 15–18, 2018	Circuit Judges Symposium Presentation
April 24, 2018	Presentation for Federal Judicial Center
April 24, 2018	Workplace Committee Meeting
April 25, 2018	Focus Group Event
May 14, 2018	Workplace Committee Meeting
May 17, 2018	Judicial Council Meeting Presentation
May 23-25, 2018	Magistrate Judges Executive Board Presentation
June 5, 2018	Focus Group Event
June 11, 2018	Focus Group Event

**Workplace Committee/Workplace Relations**  
**Calendar of Events and Presentations 2018-2019**

*Updated June 17, 2019*

<b>Date</b>	<b>Event/Presentation</b>
June 19, 2018	Update/Meeting with District Court
June 20, 2018	Workplace Committee Meeting
June 29, 2018	Revised EDR Policy Approved by Judicial Council
July 22–26, 2018	Ninth Circuit Judicial Conference Presentation
August 2–6, 2018	ABA Annual Meeting Presentation
August 27–28, 2018	Conference of Chief District Judges and District Court Clerks Presentation
September 23–25, 2018	Conference of Chief Bankruptcy Judges Presentation
September 26–27, 2018	Law Clerk Orientation—Workplace presentation and training
October 4–5, 2018	Magistrate Judges Executive Board Presentation
October 6–7, 2018	American Academy Appellate Lawyers Annual Meeting Presentation
November 14, 2018	Conference of Chief Judges Annual Conference Presentation
December 11, 2018	Workplace Committee Meeting
December 27, 2019	Ninth Circuit and District EDR Policies Approved by Judicial Council
January 5, 2019	Association of American Law Schools Annual Meeting Presentation
January 7, 2019	Yohance Edwards joins the Ninth Circuit as Director of Workplace Relations
February 6-7, 2019	Conference of Chief District Judges
February 25, 2019	Ninth Circuit Clerks Meeting
February 26, 2019	Ninth Circuit Workplace Committee Panel

**Workplace Committee/Workplace Relations**  
**Calendar of Events and Presentations 2018-2019**

*Updated June 17, 2019*

<b>Date</b>	<b>Event/Presentation</b>
February 27-28, 2019	Federal Defender Conference
March 6, 2019	Ninth Circuit Chief and Deputy Chief Probation Officers Meeting
March 15, 2019	Workplace Committee Meeting
March 18-19, 2019	Conference of Chief Bankruptcy Judges
March 26, 2019	Court of Appeals Court Meeting
April 9-12, 2019	National Association for Law Placement Annual Education Conference
April 28-May 1, 2019	Circuit Judges Symposium
May 14-16, 2019	Federal Defender Supervisory Training
May 29, 2019	Judicial Council Meeting Presentation
May 29-31, 2019	Magistrate Judges Executive Board Presentation
May 30-31, 2019	Ninth Circuit New Judges Orientation
July 21–25, 2019	Ninth Circuit Judicial Conference Presentation
September 16-20, 2019	Pacific Judicial Council Biennial Conference Presentation
September 24–25, 2019	Law Clerk Orientation
October 10-11, 2019	Association of Bankruptcy Judicial Assistants
October 22-23, 2019	Ninth Circuit Chief Deputy Conference

## **Appendix 4: News Releases**



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**United States Courts for the Ninth Circuit**

Office of the Circuit Executive · 95 7<sup>th</sup> Street, San Francisco, CA 94103 · (415) 355-8800 · (415) 355-8901 Fax

**NEWS RELEASE**

January 12, 2018

Contact: David Madden, (415) 355-8000

## **Ninth Circuit Committee to Review Workplace Environment Policies**

SAN FRANCISCO – Chief Judge Sidney R. Thomas of the United States Court of Appeals for the Ninth Circuit today announced the members of a special ad hoc committee on workplace environment, which he created on December 17, 2018. Chief Judge Thomas said that the committee will coordinate its work with the Federal Judiciary Workplace Conduct Working Group established by Chief Justice Roberts. “We do have many effective procedures in place to avoid problems in the workplace. But we need to re-examine them, develop better means of communication, and assure our law clerks and staff of a healthy and productive workplace,” Chief Judge Thomas said.

Ninth Circuit Judge M. Margaret McKeown will lead the special committee, which also includes Chief District Judge Virginia A. Phillips of the U.S. District Court for the Central District of California, Senior District Judge Charles R. Breyer of the U.S. District Court for the Northern District of California, Magistrate Judge Candy W. Dale of the U.S. District Court for the District of Idaho, and San Diego attorney Abby Silverman, one of the nation’s top employment and alternative dispute resolution practitioners.

Judge McKeown chaired the national United State Judicial Conference Code of Conduct Committee and is frequently consulted by federal judges and court staff throughout the nation on judicial ethics. She was also appointed by Chief Justice Roberts to serve on the Federal Judiciary Workplace Conduct Working Group. In the past, she has served on various committees and panels related to workplace and gender discrimination, including the Ninth Circuit Gender Bias Task Force. She also served as President of the Federal Judges Association.

Judge Breyer formerly served as the district judge representative to the Executive Committee of the United States Judicial Conference, while Judge Dale currently serves on the Judicial Conference as the magistrate judge observer. Chief Judge Phillips leads the largest federal court in the Ninth Circuit, while Ms. Silverman serves as a mediator and an arbitrator in employment law disputes.

Ninth Circuit Clerk of Court Molly C. Dwyer, Circuit Executive Elizabeth L. Smith and Deputy Circuit Executive Marc Theriault will support the committee in liaison roles.

Every court unit within the Ninth Circuit, including the Court of Appeals, has established an Equal Employment Opportunity plan and an Employee Dispute Resolution plan with whistleblower protection. The Ninth Circuit also has implemented an Adverse Action Plan for situations specifically involving a demotion or denial of a promotions, and a Grievance Procedure, when the issue involves application of a policy or procedure related to employment.

Misconduct complaints against federal judges, whether by court employees or others, are governed by rules promulgated by the Judicial Conference of the United States pursuant to federal law. The rules guide proceedings under the Judicial Conduct and Disability Act (the Act), 28 U.S.C. §§ 351–364, to determine whether a covered judge has “engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts or is unable to discharge the duties of office because of mental or physical disability.” The Ninth Circuit Court of Appeals has also established informal procedures to identify and solve potential problems relating to judicial conduct and disability.

The new ad hoc committee will review the policies in place, propose revisions where necessary, and identify means of maintaining a healthy workplace environment. The committee will also employ focus groups of staff, law clerks, and other interested parties to ensure that all potential workplace issues will be identified and effectively addressed.

The Ninth Circuit Court of Appeals, the nation’s largest and busiest appellate court, hears appeals of cases decided by federal trial courts and certain Executive Branch administrative agencies in nine western states and two Pacific Island jurisdictions.

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**NEWS RELEASE**

February 28, 2018

Contact: David Madden, (415) 355-8000

## **Ninth Circuit Committee Begins Workplace Environment Review**

SAN FRANCISCO – A special Ninth Circuit committee is actively consulting with current and former law clerks and employees as it seeks to address issues related to the prevention of workplace harassment and fostering of a positive working environment in the federal courts.

Appointed in December by Ninth Circuit Chief Judge Sidney R. Thomas, the Workplace Environment Committee was tasked with reviewing policies and procedures and proposing revisions where necessary to maintain a healthy working environment.

The Committee is chaired by Circuit Judge M. Margaret McKeown of San Diego and includes Chief District Judge Virginia A. Phillips of the Central District of California in Los Angeles; District Judge Charles R. Breyer of the Northern District of California in San Francisco; Magistrate Judge Candy W. Dale of the District of Idaho in Boise, Idaho; and employment and mediation specialist Abby Silverman, also of San Diego.

In a recent report to the Judicial Council of the Ninth Circuit, Judge McKeown said the Committee has conducted focus groups with current law clerks. It has plans for focus groups for former law clerks and current employees, and has reached out to law school deans for advice. The Committee also is redrafting various law clerk and employee policies and is consulting other organizations on best practices.

Judge McKeown later commented, "The Committee is dedicating substantial time and resources to this endeavor and we anticipate making recommendations for changes in policies and for circuit-wide training."

On February 26, 2018, the Committee sent a confidential questionnaire to about 6,000 current employees and current and former law clerks. The questionnaire seeks suggestions on circuit policies, training, and programs to address harassment prevention and improve the workplace environment. Comments may be submitted anonymously. Former Ninth Circuit clerks or employees who did not receive the questionnaire but want to participate, should contact the Committee at: [ninth\\_circuit\\_workplace\\_policies\\_committee@ce9.uscourts.gov](mailto:ninth_circuit_workplace_policies_committee@ce9.uscourts.gov).

The Committee is also coordinating with the federal judiciary's Workplace Conduct Working Group, which was appointed by Chief Justice Roberts.

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**NEWS RELEASE**

May 21, 2018

Contact: David Madden, (415) 355-8000

## **Ninth Circuit Judicial Council Acts on Workplace Environment Recommendations**

SAN FRANCISCO – The Judicial Council of the Ninth Circuit has adopted recommendations to revise policies and procedures that ensure a healthy workplace environment for all employees, including law clerks, working in the federal courts of the western states and the Pacific islands. The council action was announced today by Chief Judge Sidney R. Thomas of the United States Court of Appeals for the Ninth Circuit.

“In an effort to promote and safeguard a healthy working environment, our goal is to make our policies and procedures more accessible, more understandable and more effective,” Chief Judge Thomas said.

The recommendations, which were put forth by a special ad hoc committee appointed by the chief judge last December, include:

- Establishing a new position, the director of workplace relations, responsible for overseeing workplace issues in the Ninth Circuit courts generally. The director will be available to assist all courts and court units in the circuit and will oversee discrimination and sexual harassment training.
- Reducing barriers to reporting workplace misconduct.
- Providing multiple avenues for employees to seek informal advice on workplace issues, including through the director of workplace relations, the circuit’s Employee Assistance Plan, and other available circuit-wide resources.
- Providing the option for assisted resolution of workplace disputes, including through coordinated dispute resolution and voluntary mediation.
- Revising the model Employment Dispute Resolution policy to make the process accessible and easy to understand. Employees also would have up to 180 days to bring a complaint



under the policy, rather than the current 30-day window. Following additional input and revisions, the policy will be effective in October 2018.

- Revising the confidentiality policy to make clear that the confidentiality restriction does not prevent or discourage employees from reporting misconduct, including sexual or other forms of harassment.
- Developing ongoing workplace training programs for judges and court employees.

“These recommendations are the result of a broad outreach effort over several months to both current and former law clerks and other court employees,” noted Circuit Judge M. Margaret McKeown, who chairs the special committee. “There was an intensive effort to gather information and hear from court employees about workplace issues.”

Also serving on the committee are Chief District Judge Virginia A. Phillips of the U.S. District Court for the Central District of California, Senior District Judge Charles R. Breyer of the U.S. District Court for the Northern District of California, Magistrate Judge Candy W. Dale of the U.S. District Court for the District of Idaho, and San Diego attorney Abby Silverman, one of the nation’s top employment and alternative dispute resolution practitioners.

The outreach included a questionnaire sent to almost 6,000 current and former employees. The response was overwhelming and employees expressed their appreciation for being queried, Judge McKeown said. Responses are still being reviewed but have already netted a number of suggestions that are being incorporated into circuit initiatives. Other outreach included focus groups conducted by Ninth Circuit mediators for current and former law clerks in Los Angeles, San Francisco, Seattle, and Washington, DC. Additional focus groups for staff are in progress. The committee also sent letters to law school deans soliciting ideas for cooperation between the law schools and the courts with respect to law clerks and externs.

The committee also is focusing on workplace education, including training on sexual harassment and bullying, for judges, law clerks, and court employees; revising law clerk orientation programs; creating a special internet portal for law clerks; and developing an employee exit questionnaire.

In addition to leading the Ninth Circuit effort, Judge McKeown also serves on the Federal Judiciary Workplace Conduct Working Group established at the direction of Chief Justice John G. Roberts. The national group also is focused on improving workplace policies and procedures and has sought input from former and current law clerks and judiciary employees.

The federal courts of the Ninth Circuit include the Ninth Circuit Court of Appeals and the district courts and bankruptcy courts in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, the U.S. Territory of Guam and the Commonwealth of the Northern Mariana Islands.

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**NEWS RELEASE**

November 13, 2018

Contact: David Madden, (415) 355-8800

## **Ninth Circuit Announces Appointment of First Director of Workplace Relations**

SAN FRANCISCO – Chief Judge Sidney R. Thomas of the United States Court of Appeals for the Ninth Circuit announced today the appointment of attorney Yohance Claude Edwards as the Ninth Circuit’s first director of workplace relations.

In his new position, the first of its kind in the federal judiciary, Mr. Edwards will help lead the Ninth Circuit’s ongoing effort to address issues related to preventing and resolving workplace harassment, and to fostering a positive working environment in the federal courts of the western states.

“The Ninth Circuit is committed to ensuring a healthy and productive workplace. We are extremely pleased to have Mr. Edwards fill a critical leadership role in this effort,” Chief Judge Thomas said.

Mr. Edwards currently serves as the associate director and deputy Title IX officer in the Office for the Prevention of Harassment and Discrimination at the University of California, Berkeley. The office is responsible for ensuring the university provides an environment for faculty, staff and students that is free from discrimination and harassment. Mr. Edwards oversees the process of resolving complaints of discrimination and harassment based on race, color, national origin, gender, age, sexual orientation and gender identity, including allegations of sexual harassment.

Scheduled to assume his new duties on January 7, 2019, Mr. Edwards will work within the Office of the Circuit Executive, which provides services and support to the Ninth Circuit Court of Appeals along with the federal trial and bankruptcy courts and associated court units within the 15 judicial districts that make up the Ninth Circuit. He will be available to assist all judges and court staff and will oversee the development and implementation of discrimination and sexual harassment training.

The hiring of a director of workplace relations was foremost among the recommendations put forth earlier this year by the Workplace Environment Committee, an ad hoc panel appointed by

Chief Judge Thomas to review policies and procedures aimed at maintaining a healthy working environment. The committee based its proposals on input received from more than 4,000 current and former law clerks and other court staff who responded to a wide-ranging workplace questionnaire.

“We are answering one of the most frequent concerns expressed by employees,” noted Ninth Circuit Judge M. Margaret McKeown, who chairs the committee. “They felt it very important to have a trained, professional contact to whom they can turn for information and advice about a range of workplace issues.”

Mr. Edwards joined the UC Berkeley administration in 2016. In addition to managing a staff of six complaint resolution officers and a data coordinator, he meets frequently with diverse campus stakeholders to advise them on discrimination and harassment issues and processes. He has conducted numerous trainings on the university’s harassment and nondiscrimination policies and procedures. He also helps coordinate campus compliance with Title IX of the Education Amendments of 1972, which prohibits sex discrimination in educational programs and activities.

Prior to UC Berkeley, Mr. Edwards served as an attorney in the U.S. Department of Education’s Office for Civil Rights in San Francisco from 2012 to 2016. He was responsible for enforcing federal civil rights laws that prohibit discrimination at educational institutions receiving funds from the U.S. Department of Education. He also led technical assistance trainings for educators and organizations on Title IX, Title IV, and Section 504.

Mr. Edwards served as a staff attorney in the Ninth Circuit Court of Appeals from 2011 to 2012. He began his law career in 2004 as an associate in the San Francisco office of Munger, Tolles & Olson from 2004 to 2010. While with the firm, he worked as a volunteer attorney in the San Francisco District Attorney’s Office.

“I am thrilled to return to the Ninth Circuit in this new role. I look forward to working with judges and staff throughout the circuit on these important workplace issues.” Mr. Edwards said.

Mr. Edwards received his B.A. in 1996 from Brown University, where he served as a minority peer counselor to first-year students and played for four years on the school’s NCAA Division I soccer team. He received his J.D. in 2003 from New York University School of Law, graduating magna cum laude and Order of the Coif. He served as an associate editor of the New York University Law Review and co-chaired the law review’s Diversity Committee. After law school, he served as a law clerk to Judge McKeown from 2003 to 2004.

A resident of El Cerrito, California, Mr. Edwards is active in community service. He currently serves on the Board of Trustees of Prospect Sierra School in El Cerrito, is an advisory trustee of enGender, a non-profit group supporting gender diverse youth, and is a former board member of BUILD Oakland, an entrepreneurship and college preparatory program for young people.

In addition to the hiring of Mr. Edwards, the Ninth Circuit’s comprehensive response to workplace harassment issues has included revised Employment Dispute Resolution and

Confidentiality policies and a series of educational presentations to judges and court staff. The overall goal is to provide multiple avenues for employees to seek informal advice on workplace issues and to assist in the resolution of workplace disputes, including through coordinated dispute resolution and voluntary mediation.

The U.S. Courts for the Ninth Circuit consists of the Ninth Circuit Court of Appeals, and the federal trial and bankruptcy courts and related court units in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, the U.S. Territory of Guam and the Commonwealth of the Northern Mariana Islands.

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**NEWS RELEASE**

March 6, 2019

Contact: David Madden, (415) 355-8800

## **New Office of Workplace Relations Established to Assist Federal Courts Within the Ninth Circuit**

SAN FRANCISCO – The Ninth Circuit’s new Office of Workplace Relations, which is responsible for preventing and resolving workplace harassment and fostering a positive working environment in the federal courts, is now fully operational with a director and support staff stationed at the circuit headquarters in San Francisco.

Yohance C. Edwards, Esq., hired in January to serve as director of workplace relations, and a workplace relations specialist, Stella Huynh, recently settled into offices in the James R. Browning United States Courthouse, home to the U.S. Court of Appeals for the Ninth Circuit and the regional administrative hub for the federal courts in the western states and Pacific islands.

Mr. Edwards is available to directly assist all judges and court staff in the circuit. He also oversees development of discrimination and sexual harassment training programs for federal trial and bankruptcy courts in the 15 judicial districts within the circuit. His near-term goals include new webpages to provide workplace-related information to the public and judiciary employees.

Materials recently posted online include a significantly revised Employment Dispute Resolution Policy, which sets out processes and practices for resolving workplace matters. The EDR Policy has been adopted by the Ninth Circuit Court of Appeals. All other courts in the circuit, and the Federal Public Defender offices, have either adopted the Ninth Circuit’s revised EDR Policy in its entirety, or have adopted revised local court policies that are substantially similar to the Ninth Circuit’s revised EDR Policy. All revised EDR Policies went into effect on January 1, 2019.

Mr. Edwards also has initiated a survey of EDR coordinators in all courts of the circuit to identify their needs and issues.

“All of us here in the Ninth Circuit are committed to maintaining a healthy and productive workplace. We are very pleased with the progress made to date,” said Ninth Circuit Chief Judge Sidney R. Thomas.

– more –

Mr. Edwards was formerly the associate director and deputy Title IX officer in the Office for the Prevention of Harassment and Discrimination at the University of California, Berkeley. Ms. Huynh is a recent law school graduate who previously worked in the Ninth Circuit's public information unit.

The hiring of a director of workplace relations was foremost among the recommendations put forth last year by the Workplace Environment Committee, an ad hoc panel appointed by Chief Judge Thomas to review policies and procedures aimed at maintaining a healthy working environment. The committee based its proposals on input received from more than 3,000 current and former law clerks and other court staff who responded to a wide-ranging workplace questionnaire.

More information about Office of Workplace Relations activities is available at <https://www.ca9.uscourts.gov/workplace>.

The U.S. Courts for the Ninth Circuit consists of the Ninth Circuit Court of Appeals, and the federal trial and bankruptcy courts and related court units in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, the U.S. Territory of Guam and the Commonwealth of the Northern Mariana Islands.

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