

# **Stepping Up to Workplace Misconduct - Challenges for the Judiciary**

**Conference of Chief Judges of State Courts of Appeal**

**November 14, 2018**

**San Diego, CA**



# What the 2016 EEOC Study shows:



**Workplace harassment is a persistent and pervasive problem**

25% to 85% of women (private and public sectors) experience sexual harassment, depending on definition

For effective changes, employees must see:

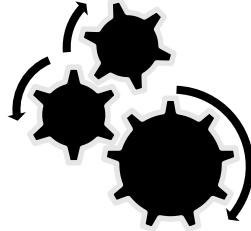
- Bad behavior will not stand
- Those complicit will be held responsible

Twelve risk factors lead to harassment, including “significant disparities in power”

# Federal Judiciary Report Conclusions



**Set Substantive  
Standards  
Ethics &  
Misconduct  
Proceedings**



**Improve  
Procedures for  
Seeking Advice,  
Assistance, or  
Redress**



**Increase  
Education and  
Training Efforts**



**Public Hearings**

# Ninth Circuit Task Force

**1**

Surveyed over 6,000 clerks  
and other employees

**2**

Created and hired Director of  
Workplace Relations

**3**

Changed Employment  
Dispute Resolution Policy and  
initiated new paths for  
informal reporting

**4**

Revised Confidentiality  
Policy to maximize clarity

**5**

Increased training for both  
judges and law clerks

# Discrimination

Discrimination is actions or behavior directed at an Employee based upon the Employee's race, sex, gender, or other protected characteristics as detailed in the EDR Policy. Discrimination often arises as an adverse employment related action that negatively affects an Employee.

# Harassment

Harassment is a form of discrimination and is unwelcome conduct that can include physical, verbal, non-verbal, or psychological behavior that interferes with work performance or creates a hostile or offensive work environment.

## Types of Misconduct

# 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.

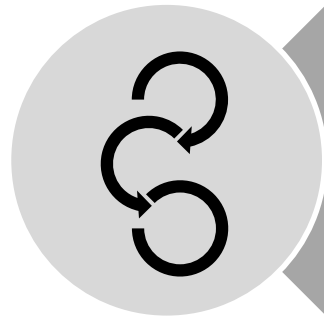
# Retaliation

Retaliation includes unwarranted reprimands; unfair downgrading of personnel evaluations; transfers to less desirable positions; verbal, physical, or psychological abuse; and altered or less convenient work schedules, due to the reporting of misconduct.

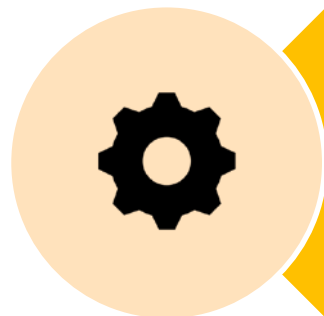
# Director of Workplace Relations



Available to offer  
confidential advice  
and conversations



Assists with the  
Employment Dispute  
Resolution process



Facilitates trainings

# Scope of Coverage



# Ninth Circuit Workplace Misconduct Inquiries and Complaints

## OPTIONS

## WHO TO CONTACT

### Informal Advice

Confidential advice and guidance on workplace issues

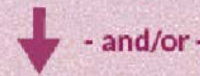
- **Ninth Circuit Director of Workplace Relations:**  
\*Marc Theriault, 415-355-8970
- **Ethics Advice:**  
Judge Murguia, 602-322-7580

### Assisted Resolution

Interactive, flexible process that may include voluntary mediation

- **Ninth Circuit Director of Workplace Relations:**  
\*Marc Theriault, 415-355-8970

### Formal Complaint



- and/or -



Under Ninth Circuit Employee Dispute Resolution Policy (for complaint against employee or judge)

Under Judicial Conduct & Disability Act (for complaint against a judge)

- **Ninth Circuit Director of Workplace Relations:**  
\*Marc Theriault, 415-355-8970

# Confidentiality

**Informal Advice**

**Confidential**

**Assisted Resolution**

**Need to Know Basis**

**Formal Complaint  
and Hearing**

**Confidentiality and  
Anonymity Not Guaranteed**

**Filing of a  
Request for  
Assisted  
Resolution  
Form**

**Filing of a  
Complaint  
under EDR  
Policy Form**

# Considerations in Addressing Workplace Issues

**1**

**Information gathering  
– survey/focus groups**

**5**

**Avenues for  
informal resolution**

**9**

**Training – that  
dreaded word**

**2**

**Scope of coverage**

**6**

**Revision of misconduct  
procedures**

**10**

**Public  
participation  
in process**

**3**

**Revision of policies  
– plain English**

**7**

**Judicial buy-in**

**11**

**Ongoing  
oversight**

**4**

**Confidentiality**

**8**

**Employee buy-in**

**“As the branch of government whose core purpose is equal justice under law, the Judiciary must hold itself to the highest standards of conduct and civility to maintain the public trust standards of conduct and civility to maintain the public trust.”**

**- 2018 Federal Working Group Report**