

D.C. Circuit Confidentiality Protection Policy

The formal and informal workplace conduct programs of the courts of the District of Columbia Circuit operate under a strong presumption of confidentiality, and everyone involved is committed to respecting confidentiality requests. Appropriate protective and corrective action may require the involvement of additional people with whom some information may need to be shared. This description of reporting options, and the tradeoffs between confidentiality and accountability, is designed to help you make informed choices. Nothing in this policy prevents or discourages an employee or a former employee from reporting misconduct by a judge, supervisor, or other person.

The courts of the District of Columbia Circuit are committed to providing a workplace free of misconduct. You are strongly encouraged to report any workplace misconduct you may experience or observe. Retaliation for reporting is strictly prohibited and will not be tolerated. If you feel comfortable doing so, talk to your supervisor, human resources professional, court unit executive, or chief judge. These managers are often best equipped to effectively, quickly, and discreetly resolve problems. Many alternative routes are also available to ensure that anyone with a complaint feels secure in raising it. You should use the avenues you think will be helpful.

The Workplace Conduct Committee recognizes that employees who experience or observe misconduct may be reluctant to come forward without assurances of confidentiality and/or anonymity. This page offers information about confidentiality for courthouse employees reporting misconduct, seeking advice, or getting assistance resolving problems—with or without a formal complaint. (Where we mention protection for confidentiality generally, we mean to include anonymity, recognizing that confidentiality and anonymity need not always be treated the same. For example, there may be situations where certain information about the alleged misconduct must to some extent be shared to take corrective action, but the anonymity of the reporting employee can be preserved.)

When you are consulting with anyone about workplace misconduct, you should discuss confidentiality and anonymity at the outset.

* * *

Before describing the protections associated with your various options, we provide some guiding principles:

First, all court employees, including judges, involved in any way with our workplace conduct program are committed to maintaining the fullest practicable degree of confidentiality for employees who bring forward information about workplace misconduct. And we recognize that employees who observe or experience misconduct are more likely to report it if they know their identity will not be disclosed and their confidentiality will be respected. To that end, the courts of the D.C. Circuit have recently added new informal mechanisms for confidential reporting and consultation to the range of processes previously available.

Second, we are committed to ensuring that misconduct is addressed. A safe courthouse free from workplace misconduct depends on information about misconduct reaching people with the ability to use that information to take corrective action. Our duty to provide a misconduct-free workplace means there will be times when complete confidentiality—confined to the employee raising a misconduct concern and the person they initially shared it with—cannot be strictly maintained. Sometimes an employee’s desire for confidentiality conflicts with the employer’s duties to protect employees and act against misconduct, because some problems cannot be fixed without investigation and corrective steps involving additional people.

We accordingly cannot, and should not, promise 100% confidentiality of reports of workplace misconduct within our ranks. However, the courts’ workplace misconduct programs generally operate under a presumption of full confidentiality. When information must be shared, the scope and nature of the shared information may still be closely controlled.

Degrees of confidentiality normally vary depending on who you contact and the kind of response you seek: The strongest confidentiality assurances attach to anonymous reporting via JNet. Also highly confidential is advice-seeking, especially from the Employee Sounding Board and the Law Clerk Advisory Group. Confidentiality generally decreases when you are seeking more than advice; if you raise a concern that calls for responsive action (*e.g.* protecting someone from an abusive or risky situation; censure or discipline of a wrongdoer), additional people may need to know in order for steps to be taken. As discussed below, judges have a mandatory duty to report reliable information reasonably likely to constitute misconduct by another judge.

To help you make informed decisions in response to workplace problems, we describe below (I) the specific confidentiality protections for three options available to you, followed by (II) guidelines that apply beyond those three options, and, finally, (III) we reiterate how, in any situation in which the confidentiality presumption is overcome, some meaningful degree of confidentiality and/or anonymity can often be maintained.

I. Confidentiality Protections Associated with Standard Options for Responding to Workplace Misconduct

- A. Anonymous Reporting (highest level of confidentiality):** Employees of any court in the federal judiciary can make anonymous, confidential reports of workplace misconduct to the [Administrative Office of the United States Courts via the Office of Judicial Integrity \(OJI\) JNet website](#). If you would like to make a confidential and anonymous complaint of workplace misconduct, you can send an email and not include any contact information. For an investigation to be initiated, you will need to provide information about where the misconduct occurred (the court or office), the name or position of the alleged wrongdoer, and a description of the misconduct. Without sufficient information, nothing can be done (although by virtue of the underlying facts, anonymous reporting may reveal enough information to support further action).

B. Informal misconduct advice (high level of confidentiality)

- *Employee Sounding Board*
- *Law Clerk Advisory Group*
- *Workplace Relations Coordinators*

When you seek informal advice from a member of one of these three groups, that person will presumptively keep confidential your identity and what you have discussed. In addition to hearing your concerns or complaints, a Workplace Relations Coordinator may be able to work with you—and, as appropriate, other employees, managers, or judges—to develop a constructive response to the situation.

Confidentiality is presumed except in the case in which someone else needs to be alerted because you have provided information identifying conduct that is or reasonably appears to pose an imminent risk of serious physical harm. Even in that case, information will be shared only to the extent specific persons have a need to know, and every effort will be made to prevent the release of any personally identifying information if requested.

What is an imminent risk of serious physical harm? An informal advisor might have to share information if they fear that you would otherwise injure yourself or be injured, or that someone else would be injured, including by sexual assault.

Additionally, informal advisors may share with the Workplace Relations Coordinators some general and anonymized information about the frequency and type of employee concerns. This is to ensure that the chief judges and the Workplace Conduct Committee are aware of issues and trends and are in a position to prevent misconduct and to ensure appropriate support and recourse if misconduct occurs.

Informal misconduct advice (lower level of confidentiality)

- *National Judicial Integrity Officer*

The National Judicial Integrity Officer (of the Administrative Office of the United States Courts) (JIO) is also available for informal consultation, and will share information only to the extent necessary and only with those whose involvement is necessary to address the situation. The JIO's assurance of confidentiality must yield to the extent necessary to respond to reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the Judiciary. *See* USCA and USDC/USBC EDR Plans.

C. Informal misconduct advice and resolution (lower level of confidentiality)

- *EDR Coordinators (informal and assisted resolution processes)*

All individuals involved in the Employment Dispute Resolution Process generally must protect the confidentiality of the allegations of wrongful conduct. Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation. An assurance of confidentiality must yield to the extent necessary to respond to reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the Judiciary. *See* USCA and USDC/USBC EDR Plans.

D. Formal complaints, with established process up to and including investigation and response (lower level of confidentiality)

- *EDR Coordinators (formal resolution process)*

All individuals involved in the Employment Dispute Resolution Process generally must protect the confidentiality of the allegations of wrongful conduct. Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation. An assurance of confidentiality must yield to the extent necessary to respond to reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the Judiciary. *See* USCA and USDC/USBC EDR Plans.

- *Judicial Conduct and Disability process*

If you choose to file a judicial conduct or disability complaint against a judge (magistrate, bankruptcy, district, or circuit judge), the processing of that complaint is governed by the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, which contain specific confidentiality provisions. Judicial conduct and disability complaints are reviewed by the circuit's chief judge, and can also involve review by the Circuit Judicial Council, and in certain cases a special investigative committee and the Committee on Judicial Conduct and Disability. *See* 28 U.S.C. §§ 352, 353. The circuit clerk must "promptly send copies of a complaint" to each subject judge. Rules for Judicial-Conduct and Judicial-Disability Proceedings, Article III, Rule 8. The persons responsible for responding to such complaints may need to share additional information with the complainant and the judge whose conduct is the subject of the complaint. *See* 28 U.S.C. § 360(a).

Confidentiality is otherwise presumptively maintained except to the extent that public disclosure of the existence of a pending proceeding is “necessary or appropriate to maintain public confidence in the judiciary’s ability to redress misconduct or disability.” Rules for Judicial-Conduct and Judicial-Disability Proceedings, Article VIII, Rule 23. After final action on the complaint has been taken, the Circuit Judicial Council’s order resolving it will be publicly available, but will generally not disclose the name of the complainant or the subject judge. 28 U.S.C. § 360(b).

II. Confidentiality Considerations with Respect to Other Options

A. Judges’ Reporting Duties

1. **Judges’ Duty to Report Misconduct by a Judge:** Please note that telling a judge about misconduct by another judge may trigger a mandatory reporting duty. Misconduct by judges themselves is a paramount threat to public confidence in the judiciary. The integrity of the Article III courts requires that judges put a stop to any misconduct by a judge directed at litigants, attorneys, judicial employees, or others. Rule 4(a)(6) defines cognizable misconduct by a judge to include “failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability.” Rules for Judicial-Conduct and Judicial-Disability Proceedings, Article VIII, Rule 4(a)(6). Cognizable misconduct that triggers a reporting duty is defined by Rule 4(a).

Judges “shall respect a request for confidentiality,” but a judge must report in confidence to his or her chief judge any “reliable information” “likely to constitute judicial misconduct or disability.” Rule 4(a)(6). The chief judge “shall also treat the information as confidential.” *Id.* These confidentiality assurances “must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary,” *id.*, but only to the extent necessary to address the threat.

2. **Judges’ Responsibility to Act on Misconduct by Court Employees:** Under canons of judicial ethics, judges are also expected to “take appropriate action upon receipt of reliable information indicating the likelihood that . . . a judicial employee’s conduct contravened the Code of Conduct for judicial employees.” Code of Conduct for United States Judges, Canon 3B(6). “Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence.” *Id.* (Commentary). In deciding what appropriate action to take, a judge “may take into

account any request for confidentiality made by a person complaining of or reporting misconduct.” *Id.*

- B. Reporting by Court Executives.** Telling a court executive about misconduct may trigger a report to the chief judge. The canons of ethics for judicial employees call on them to take “appropriate action upon receipt of reliable information indicating a likelihood” of misconduct. *See* Code of Conduct for Judicial Employees Canon 3(C). Appropriate action will vary depending on circumstances, and on the role and authority of the employee receiving the information. Because of the courts’ accountability for workplace misconduct, court executives—meaning people with the authority to hire, fire, and authoritatively evaluate other employees—may feel obligated to report to their chief judge reliable information they receive about potential misconduct.

III. When information must be shared, controls still apply

Even when strict confidentiality cannot be maintained under the standards explained above, the recipient of information will proceed with the following guiding principles:

- A.** If and when a recipient of information believes other(s) need to know, or a recipient has a disclosure obligation, to the extent possible the person who provided the information/complaint will be *consulted and informed*.
- B.** When information must be shared, it is shared only with those who *need to know* and only to the extent of their need.
- C.** Even if allegations must be shared on a need-to-know basis, consideration will be given to whether the information must be *shared with the person being accused of misconduct* and, if so, whether the *anonymity of the reporting person may nonetheless be preserved*.