

Congress of the United States
Washington, DC 20515

November 18, 2020

The Honorable Gene Dodaro
Comptroller General of the United States
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Dodaro:

The Federal Judicial Branch includes more than 30,000 people across the Supreme Court, 13 circuits and the courts they encompass, the Court of International Trade, the Court of Federal Claims, and agencies such as federal public defender organizations, probation and pretrial services offices, the United States Sentencing Commission, the Federal Judicial Center, the Judicial Conference of the United States, and the Administrative Office of the United States Courts. In recent years, the extent to which these employees are protected from workplace harassment—including sexual harassment, other forms of discrimination, including racial discrimination, and retaliation—has been the subject of persistent Congressional oversight.

In December 2017, the Chief Justice of the United States Supreme Court, who also serves as the presiding officer of the Judicial Conference of the United States, wrote that “events in recent months have illuminated the depth of the problem of sexual harassment in the workplace, and events in the past few weeks have made clear that the judicial branch is not immune,” and explained that “the judiciary will begin 2018 by undertaking a careful evaluation of whether its standards of conduct and its procedures for investigating and correcting inappropriate behavior are adequate to ensure an exemplary workplace for every judge and every court employee.”¹

To that end, in January 2018, the Director of the Administrative Office of the United States Courts established a Federal Judiciary Workplace Conduct Working Group to review the safeguards in place to protect Judiciary employees from inappropriate conduct in the workplace. The Working Group issued a report in June 2018 recommending measures to improve workplace conduct policies and procedures in the Federal Judiciary.² In September 2019, the Working Group issued a status report noting that “[t]he Judicial Branch has demonstrated commitment from courts nationwide to creating and ensuring exemplary workplaces.”³

¹ Chief Justice John Roberts, *2017 Year-End Report on the Federal Judiciary* (2017), <https://www.supremecourt.gov/publicinfo/year-end/2017year-endreport.pdf>; see also Jessica Gresko, *Roberts: Judiciary Will Review Sexual Misconduct Policies*, AP (Jan. 1, 2018), <https://apnews.com/article/d5fd569f16454c499f6608ef84320c3a>.

² Fed. Judiciary Workplace Conduct Working Grp., *Report of the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States* (2018), https://www.uscourts.gov/sites/default/files/workplace_conduct_working_group_final_report_0.pdf.

³ U.S. Courts, Fed. Judiciary Workplace Conduct Working Grp., *Status Report from the Federal Judiciary Workplace Conduct Working Group to the Judicial Conference of the United States* (2019), https://www.uscourts.gov/sites/default/files/working_group_status_report_to_jcus_september_2019_0.pdf.

The Working Group’s 2018 report referred frequently to the Equal Employment Opportunity Commission’s Select Task Force on the Study of Harassment in the Workplace, which identified five key steps and a set of best practices that have generally proven effective in preventing and addressing harassment.⁴ Those steps include: (1) a “committed and engaged leadership,” (2) “consistent and demonstrated accountability,” (3) “strong and comprehensive harassment policies,” (4) “trusted and accessible complaint procedures,” and (5) “regular, interactive training tailored to the audience and the organization.” The EEOC Task Force also included specific examples of best practices—for example, the Task Force recommended that employers conduct “anonymous employee surveys on a regular basis to assess whether harassment is occurring or is perceived to be tolerated.”⁵

Various actions have been taken following the Working Group’s 2018 report, many of which are described in the Working Group’s 2019 status report.⁶ However, concerns remain as to whether there are adequate safeguards in place to protect employees from and facilitate redress for workplace misconduct. As a result, we ask GAO to review the judicial branch’s current efforts to stop workplace sexual harassment and other forms of workplace discrimination and retaliation. As part of this review, we ask GAO to consider the following:

1. How, if at all, the Judicial Branch’s current policies, procedures, practices, and culture align with best practices for addressing workplace harassment and other forms of discrimination and retaliation.
2. Whether the Judicial Branch has developed performance measures to determine the effectiveness of any efforts to detect, prevent, and remediate workplace harassment, discrimination, and retaliation.
3. The extent to which the Judicial Branch has implemented and provided oversight of its policies for addressing incidents of sexual harassment, discrimination, and retaliation.
4. Whether the Judicial Branch’s processes for filing, investigating, adjudicating, and resolving complaints related to workplace harassment, discrimination, or retaliation align with best practices.
5. How, if at all, the Judicial Branch tracks complaints and investigations of harassment, discrimination, retaliation, and other workplace misconduct; whether the Judiciary uses a centralized mechanism to track complaints, investigations, and remedies in a standardized manner; and whether it is catalogued whether a workplace, supervisor, or judicial officer has a substantiated history of harassment, discrimination, or retaliation.

⁴ EEOC Select Task Force on the Study of Harassment in the Workplace, *Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf. The Judiciary’s Working Group noted in its June 2018 report that the EEOC Study was particularly helpful as the Judiciary shares common features with other public and private workplaces.

⁵ *Promising Practices for Preventing Harassment*, U.S. Equal Emp. Opportunity Commission, <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm> (last visited Feb. 11, 2020).

⁶ In addition to the measures described in the 2019 status report, in March 2020 the Judicial Conference amended the Code of Conduct for Federal Defender Employees to address workplace misconduct. See https://www.uscourts.gov/sites/default/files/jcus_mar_20_proceedings.final__0.pdf, at 8.

6. The extent to which perpetrators are consistently held accountable for substantiated instances of harassment, discrimination, retaliation, and other workplace misconduct; and the range of disciplinary and remedial action for substantiated instances of such misconduct.
7. The use of nondisclosure agreements and confidentiality requirements in workplaces and the processes for resolving workplace misconduct complaints.
8. The collection and use of workplace misconduct data to inform the Judicial Branch's policies, practices, and procedures; and the quality of any such data.
9. How the Judicial Branch has communicated and trained its employees on sexual harassment policies, and procedures, including procedures for filing a sexual harassment complaint, and addressing any other related concerns raised by employees.

In conducting this assessment, we request that GAO's efforts include outreach, to the extent possible, to victims of harassment, discrimination, retaliation, and other workplace misconduct in a manner that respects their privacy concerns and the sensitive nature of the subject.

We appreciate your consideration of this request.

Sincerely,



Henry C. "Hank" Johnson Jr.
Chairman
Subcommittee on Courts, Intellectual Property,
and the Internet



Jackie Speier
Member of Congress



Norma J. Torres
Member of Congress