

Legal Issues

# Federal judiciary leaders approve new rules to protect court employees from workplace harassment

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By [Ann E. Marimow](#)

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Leaders of the federal judiciary signed off Tuesday on new rules designed to enhance transparency and accountability in courthouses throughout the country when judges are accused of misconduct.

The [changes to the disciplinary system](#) were adopted following sexual misconduct claims against a once prominent appeals court judge in California, Alex Kozinski.

Kozinski [stepped down from the bench](#) after The Washington Post reported that 15 women had accused him of a range of misconduct.

At a press briefing Tuesday at the Supreme Court, Merrick Garland, the chief judge of the federal appeals court in Washington, announced the adoption of the new system for handling workplace harassment complaints. Under the new rules, judges and court employees are required to report likely misconduct, and retaliation against individuals who disclose bad behavior also constitutes misconduct.

Law clerks, who depend on the judges they serve to help them advance in their legal careers, have been concerned that reporting would violate strict confidentiality policies about case work in individual judges' chambers. But Garland said the new rules make clear that such confidentiality "does not and cannot extend to misconduct."

The new system does not apply to Supreme Court justices, who are not bound by the misconduct rules.

Ethics professors, law clerks and advocates of court transparency had pressed for more disclosure and accountability for federal judges. Former law clerks recommended the creation of a national, confidential reporting system and independent investigations so that judges are not responsible for reviewing allegations filed against their colleagues on the bench.

But Garland said Tuesday that judges would continue to take the lead in conducting investigations, including those involving other judges.

"We think we can police our own," he said, noting the importance of maintaining the independence of the judicial branch.

Jaime Santos, an appellate attorney who helped found Law Clerks for Workplace Accountability, said she is pleased that judges who become aware of misconduct are now obligated to report it.

Santos, whose organization has worked with the judiciary to combat workplace harassment, said the judiciary should hire independent investigators to handle complaints and that any allegations made against judges should be automatically referred to a different circuit. “These measures would better ensure actual neutrality and increase employee confidence that they will receive a fair and impartial investigation and adjudication if they are brave enough to come forward and report harassment if they experience or witness it,” she said.

In the past, court employees appear to have been reluctant to file complaints. Not one misconduct complaint came from the 30,000 people working for the federal judiciary in fiscal 2016.

The administrative office of the courts has already taken steps to create a central, confidential reporting system. In December, the office announced its first judicial integrity officer, who will track workplace issues and provide independent guidance for resolving complaints. The office has set up an internal website for employees to report harassment or abusive behavior.

Chief Justice John G. Roberts Jr. initiated the review of the system after allegations against Kozinski surfaced in 2017 at the U.S. Court of Appeals for the 9th Circuit. Roberts had referred Kozinski’s case for review by another appeals court. After Kozinski stepped down, that court announced it was closing the investigation because it no longer had jurisdiction over the former judge.

In his year-end report on the federal judiciary, Roberts said, “While I am pleased that our branch has mobilized to ensure that the judiciary is the exemplary workplace that we all want, I also realize that the job is not yet done.”


The overhaul of the ethics code and conduct rules was formally approved by the Judicial Conference of the United States, the governing body for the federal court system, at its semiannual gathering.

The judicial council reviewing 83 misconduct claims against Justice Brett M. Kavanaugh, coinciding with his bitter nomination battle, [dismissed the complaints](#) against the former D.C. Circuit judge because the ethics rules do not extend to the high court.

In testimony before Congress last week, [Justice Elena Kagan said](#) Roberts is studying whether the Supreme Court should have its own ethics code. Kagan and Justice Samuel A. Alito Jr. told a House subcommittee there are practical and constitutional reasons it would be unworkable to try to apply the code of conduct that governs other federal judges to the Supreme Court.

Gabe Roth of Fix the Court, which advocates for greater court transparency, said in a statement that he hopes Roberts will include in any new ethics code for justices many of the provisions adopted Tuesday, “namely that a judge should ‘neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment.’”

### **Ann E. Marimow**

Ann Marimow covers legal affairs for The Washington Post. She joined The Post in 2005 and has covered state government and politics in California, New Hampshire and Maryland. [Follow](#) 

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