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Susan Goldberg, Circuit Executive for the United States Courts for the First Circuit, submits the following suggested edits to the September 2018 revised drafts of the Code of Conduct for U.S. Judges and the Rules for Judicial-Conduct and Judicial-Disability Proceedings, respectively.

### **Code of Conduct for United States Judges - DRAFT 9/13/2018**

#### **CANON 3B(4)**

A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not ~~retaliate against those who report~~ **engage in retaliation for reporting of allegations of such misconduct.** A judge should ~~seek to hold court personnel who are subject to~~ **under** the judge's ~~direction control~~ **direction** to similar standards ~~in their own dealings with other court personnel.~~

#### **COMMENTARY**

**Canon 3B(4).** A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation ~~reaches~~ **includes** retaliation against former as well as current judiciary personnel. . . .

### **Rules for Judicial-Conduct and Judicial-Disability Proceedings (JC&D Rules) - DRAFT 9/13/2018**

**Rule 4(a)(6) Failure to Report or Disclose.** Cognizable misconduct includes failing to call to the attention of the relevant chief district judge and chief circuit judge information reasonably likely to constitute judicial misconduct or disability. A judge who receives such information shall respect a request for confidentiality but shall disclose the information to the chief district judge and chief circuit judge, who shall also treat the information as confidential. Some information will be protected from disclosure by statute or rule. ~~A judge's promise of~~ **However,** confidentiality may necessarily yield when there is information of misconduct that is serious or egregious and thus **disclosure of the existence of a proceeding under these Rules is necessary or appropriate to maintain** ~~threatens~~ the integrity ~~and proper functioning~~ of the judiciary. **See Rule 23(b)(1).** This duty to report is included within every judge's obligation to assist in addressing allegations of misconduct or disability and to take appropriate corrective action as necessary.

#### **Rule 23. Confidentiality**

**(a) Confidentiality Generally.** Confidentiality ~~as referenced in~~ **under** these Rules is ~~directed toward~~ **intended to** protecting the fairness and thoroughness of the process by which a complaint is filed or initiated, investigated (in specific circumstances), and ultimately resolved, ~~as specified under these Rules.~~