

Exhibit C

To: Subcommittee on Courts, Intellectual Property, and the Internet
From: Anonymous Judiciary Employee, submitted through counsel¹
Date: March 17, 2022
Re: Hearing on Workplace Protections for Federal Judiciary Employees

Dear Chairman Johnson, Ranking Member Issa, and Members of the Subcommittee on Courts, Intellectual Property, and the Internet,

I write this letter to share my experience with an insidious, unwritten feature of the federal judiciary's Employment Dispute Resolution (EDR) Plan: the use of non-disclosure agreements (NDAs). I write this letter anonymously because of my enduring fear that I will be harassed and retaliated against for sharing my experiences related to the EDR Plan.

Several years ago, I reported to my employer conduct by other staff that amounted to pervasive abusive conduct and discriminatory harassment against other employees. Rather than investigate my reports of wrongful conduct, my employer began to harass, discriminate and retaliate against me, which culminated in threatening behavior. I engaged the EDR process because of the escalating nature of my employer's behavior, including the threat of termination.

It quickly became clear to me that the EDR process itself was riddled with numerous conflicts, including the requirement that I negotiate with my employer about the conduct they perpetuated. The process was skewed in terms of support; my employer not only had the ability to use government funds to hire counsel, but also had the round-the-clock, free help from the Office of General Counsel and circuit employees to navigate my case. I was unable to find any local lawyers who were versed in the EDR Plan, and I was relegated to representing myself or paying an attorney to learn about and muddle through the intentionally nebulous process. At every turn, the process took on whatever form was most advantageous to my employer in burying my claims.

At the conclusion of one part of the EDR process, there was a stated interest to reach a settlement. At that late stage in the EDR process, I learned for the first time that I would be required to sign an NDA. It became clear to me that signing the NDA was the only way to reverse the retaliatory actions to which I was unlawfully subjected. Other than that, I had little to gain from settling my case given the limited remedies available under the EDR Plan. For my employer, however, the NDA assured them that their unlawful and illegal conduct would never be discussed.

¹ To preserve my anonymity, I am submitting this letter through my counsel at Kecker, Van Nest & Peters LLP. See Letter of Deeva V. Shah.

If I chose not to sign the NDA, I had three options: (1) walk away from the negotiations and continue to endure the illegal behavior in the workplace; (2) quit, or (3) request a hearing where I would be revictimized all over again and forced to re-litigate my claims from scratch. If I chose the hearing phase, I faced the same dilemma regarding counsel; I could represent myself or hire someone to represent me while my employer benefitted from several layers of representation, including counsel specializing in the EDR Plan. The EDR Plan provided no guidance on whether, at the hearing, the Court's chosen judicial officer would allow me to submit any of the admissions made in earlier stages of the EDR process. Given the options, I chose settlement with the accompanying NDA.

Since settling my EDR matter and signing what I was told is the standard NDA used in EDR proceedings, I learned that other federal judiciary employees signed NDAs when their matters were resolved. In no way did the text of the EDR Plan in any of the provisions discussing settlement provide notice that my silence would be a necessary prerequisite to settlement. Given that I had experienced unlawful retaliation and colleagues heard and witnessed the retaliation and had been made aware of my complaint (without my permission), I had hoped that a positive and public resolution would repair the reputational damage I suffered, and also deter any future retaliation.

I suffered in silence believing I was an outlier navigating the EDR process, only to learn that others have used the process but are forbidden from talking about it when the resolution is favorable, thereby protecting the people who engage in misconduct. The NDA severely limited my ability to even seek advice about what portions of the EDR process I could not disclose. On a larger scale, the common use of NDAs likely contributed to my inability to find others who could provide guidance on these proceedings. The NDAs are coercive, as they are used as bargaining chips to guarantee an end to the confusing, harrowing, traumatic process that is the EDR Plan.

I often reflect on the irony of the repeated assertion I heard when I joined the federal judiciary, claiming that federal judiciary employees enjoy added employment protections. The reality, as I learned it while trying to remedy violations of my employment rights, was that I had fewer protections than the majority of the workforce in the United States. I even dug through my onboarding documents to find where I received notice concerning my waiver of Title VII and other federal employment protections and was instead knowingly and willingly availing myself to the EDR process as the only means to resolve workplace misconduct claims. In a legal system that rises and falls on notice, knowing and voluntary waiver, and assumption of risk, I was never advised of the substantial workplace protections and constitutional rights that I gave up to become a federal judiciary employee.

I learned exactly what I gave up and what limited options I had to resolve serious violations of my rights only when I confronted the grim reality that I had nowhere to go other than to use the EDR Plan. When I buy appliances I am better aware of my rights to litigate problems than when I agree to work for the very system tasked with enforcing those rights. Those of us who have come forward represent a sliver of those harmed. Had I not had documented proof of the harassment and retaliation I suffered, I am unsure whether I would have pursued an EDR claim to conclusion—or perhaps at all—given what I learned about the process.

Notwithstanding all of this I have endured, I remain proud to be part of the federal judiciary system. I am proud of every aspect of the brilliant public service work we do. What I cannot begin to understand is why we are excluded from using the very system we work so hard to support. I have full faith that had my claims been brought to court, or the recognition that I had that ability to openly and fairly litigate my claims, they would have been resolved in the fair, impartial manner that all other matters are resolved. Even the mere existence of an ability to openly and fairly litigate my claims would have served as a deterrent to any subsequent harms perpetuated by the same actors.