EMPLOYMENT DISPUTE RESOLUTION PLAN

NORTHERN DISTRICT OF FLORIDA

APPROVED ON JULY 27, 2020
BY BOARD OF JUDGES

APPROVED ON AUGUST 17, 2020
BY ELEVENTH CIRCUIT JUDICIAL COUNCIL

MAINTAINED BY
UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
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I. INTRODUCTION

The Federal Judiciary is committed to the performance of its duties in an outstanding and efficient manner and to maintaining a workplace of respect, civility, fairness, tolerance, and dignity, free of discrimination and harassment. These values are essential to the Judiciary, which holds its judges and employees to the highest standards. All judges and employees are expected to treat each other accordingly.

This Employment Dispute Resolution Plan ("EDR Plan") provides options for the reporting and resolution of allegations of wrongful conduct (discrimination, sexual, racial, or other discriminatory harassment, abusive conduct, and retaliation) in the workplace. Early action is the best way to maintain a safe work environment. All judges, employing offices, and employees should promote workplace civility, and should take appropriate action upon receipt of reliable information indicating a likelihood of wrongful conduct under this Plan. *See* Code of Conduct for Judicial Employees, Canon 3(C).

Current and some former employees may seek relief under this Plan. The term "employee" includes law clerks; chambers employees; paid and unpaid interns, externs, and other volunteers; federal public defender employees; and probation and pretrial services employees, as well as applicants for employment who have been interviewed. The term "former employee" is defined in Appendix 1. The following persons cannot seek relief under this Plan: judges, applicants for judicial appointment, Criminal Justice Act panel attorneys and applicants, investigators and service providers, community defender employees, volunteer mediators, and any other non-employees not specified above. *See* Appendix 1 for full definitions of judges and employees.

This Plan establishes rights of employees, as that term is defined in Appendix 1. All provisions of this Plan should be interpreted from the perspective of a reasonably prudent person.

Any employee may file both a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, and a claim under this Plan. Likewise, if the Court or any court unit has a Grievance Policy, prior to the filing of a claim under this Plan,

an employee may pursue a grievance under that Grievance Policy. An employee, however, may not pursue a claim under both a Grievance Policy and this Plan, either simultaneously or sequentially. Instead, the employee must choose only one of these plans to pursue a claim. [If an employee elects to pursue a claim under a Grievance Policy, but, in the judgment of the Presiding Judicial Officer, the claim would be more appropriately handled under this Plan, the Presiding Officer, in his or her unreviewable discretion, may allow the employee to proceed instead under this Plan.]

No individual liability of any person is established by any proceedings under this Plan.

On its effective date, this Plan supersedes the EDR Plan previously adopted by this Court. Any claim pending under the previous EDR Plan on the effective date of this Plan shall continue to be processed and considered under the procedures established under the EDR Plan in effect at the time it was filed. Any claim brought under this Plan after the effective date of this Plan shall be processed under the provisions of this Plan regardless of whether the actions giving rise to the claim may have occurred before the effective date of this Plan. This Plan provides the exclusive remedy for Judiciary employees relating to employment rights covered by this Plan.

II. WRONGFUL CONDUCT

A. This Plan prohibits wrongful conduct by the Court that occurs during an employee's period of employment, and wrongful conduct for an applicant for employment who has been interviewed for the position in question. The term "employee" refers to a member of either group. As further defined in Appendix 1, wrongful conduct means:

1. A discriminatory adverse employment action against an employee based on that employee's race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (if the employee is 40 years of age or over), or disability;

2. Harassment of an employee, based on a protected category, as listed above, that is severe or pervasive enough to alter the conditions of employment;

3. Abusive conduct;

4. Retaliation (including retaliation as described in the Whistleblower Protection Provision in *Guide to Judiciary Policy*, Vol. 12, § 220.10.20(c)) (last revised September 17, 2019); and

5. Action by the Court that would violate the Family and Medical Leave Act of 1993, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Worker Adjustment and Retraining Notification Act, or the Employee Polygraph Protection Act of 1988. *See Guide*, Vol. 12, Ch. 2.

B. The provisions of this Plan shall not be construed as modifying or reducing qualification standards for employment that have been or may hereafter be established by the Judicial Conference. There are no positions for which race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (except as indicated elsewhere in this Plan), or any combination of such factors, is an occupational qualification.

C. Efforts to accomplish the legitimate and worthy objectives of nondiscrimination must not infringe upon the principles of equal employment opportunity stated in this Plan. Special recruitment efforts may properly be directed towards qualified individuals in unrepresented or under-represented segments of the available labor force, provided, however, that no such efforts should imply that qualified persons from other segments of the available labor force are disqualified or in any way discouraged from also becoming applicants. The provisions of this Plan shall not be construed as calling for employment or promotion to a position for which the individual is not qualified or as providing anyone with entitlement to preferential treatment based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability.

D. Each employee of the Court is and will continue to be an "AT-WILL" employee, unless otherwise provided by law.

E. **Prohibition Against Retaliation**. The Court, a court unit executive, or their designees shall not retaliate against an employee based on the employee's exercise of rights under this Plan.

Notwithstanding this prohibition, a Court and its designees are not precluded from taking appropriate responsive action when an employee, in bad faith, makes a vexatious or knowingly false claim. A vexatious claim is a claim without foundation made for the purpose of harassment or to undermine the orderly operation of the court.

F. **Special Provisions Relating to Disabilities**

1. The provisions of this Plan do not preclude consideration of a person's physical or mental impairments if the impairments would significantly affect that individual's ability to perform essential functions of the job in question. If a person whose impairments would otherwise prevent performance of the essential functions of a job requests an accommodation that would allow that person to perform the particular job, the unit executive should consider whether the accommodation is reasonable and whether it would permit the employee to perform the essential duties of the position. In deciding whether a requested accommodation is reasonable, the employing office may inquire whether the Administrative Office will fund the costs of that accommodation, and, if it will not, the employing office may consider budgetary constraints in deciding whether to offer the requested accommodation.

2. Probation and pretrial services officers must meet all fitness for duty standards, and requiring compliance with such standards does not, in and of itself, constitute discrimination on the basis of disability

G. **Special Provisions Relating to Age**. The provisions of this Plan relating to age:

1. are subject to special provisions of law and regulations approved by the Judicial Conference with respect to the maximum age at initial hiring of probation and pretrial services officers and officer assistants and to mandatory retirement ages for such persons.

2. do not preclude consideration of appropriate training, experience, and education, notwithstanding the fact that such factors may weigh in favor of older persons.

3. do not preclude (subject to the protections afforded in § II.F) consideration of a particular individual's physical or mental impairment or limitation that significantly affects that person's ability to perform essential functions of a job even though that impairment or limitation may arguably be the result of the aging process.

H. Special Provision Relating to Pregnancy and Leave. Notwithstanding the prohibition on discrimination based on pregnancy and disability, any leave requested by an employee based on pregnancy or disability is subject to the particular leave policy which is applicable to that employee. Further, the provisions of the Family and Medical Leave Act ("FMLA") apply only to an employee who is covered by the FMLA and who has been employed by the federal government for at least one year.

I. Family and Medical Leave Rights. The FMLA, 29 U.S.C. § 2601 et seq., applies to court employees in the manner prescribed in the *Guide to Judiciary Policy*. Coverage is limited to employees who are covered by the annual and sick leave program established under 5 U.S.C. §6301 et seq., and who have completed at least 12 months of civilian service with the Federal Government.

J. Employment and Reemployment Rights of Members of the Uniformed Services. An employing office shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.

K. Occupational Safety and Health Protections. Each employing office shall use its best efforts to insist that the General Services Administration ("GSA") provide a place of employment free from recognized hazards that cause or are likely to cause death or physical harm to employees. Because court offices and units occupy space and utilize facilities provided by the GSA, complaints that seek a remedy exclusively within the jurisdiction of the GSA are not cognizable under this Plan; such requests should be filed directly with GSA.

L. Polygraph Tests. Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

M. Whistleblower Protection.

1. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not take an adverse employment action with respect to an employee (excluding applicants for employment) because of that employee's disclosure of information to a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, if a reasonable employee would believe—and if the employee actually believes—that the information constitutes evidence of gross mismanagement, a gross waste of funds, a substantial and specific danger to public health or safety, or a violation of the law.

Likewise, no adverse employment action shall be taken against an employee who discloses information to an appropriate law enforcement agency if a reasonable person would believe—and if the employee actually believes—that the information constitutes a violation of the law.

2. This prohibition on adverse employment action, however, does not arise if disclosure of the information:

a. is prohibited by law,

b. reveals case sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide*, Vol. 20, Ch. 8),

c. reveals information that would endanger the security of any federal judicial officer or other person, or

d. otherwise contravenes reasonable policies established by the employing office concerning workplace confidentiality or non-disclosure of information obtained in the workplace.

III. REPORTING WRONGFUL CONDUCT

The Judiciary encourages the reporting of wrongful conduct to officials who are empowered to remedy that conduct in order that prompt action can be taken. Employees who experience or are aware of wrongful conduct in violation of this Plan are encouraged to take appropriate action, including reporting this wrongful conduct to a supervisor, human resources professional, unit executive, Employment Dispute Resolution ("EDR") Coordinator, Chief Judge, Chief Circuit Judge, Circuit Director of Workplace Relations, or to the national Office of Judicial Integrity. *See* Code of Conduct for Judicial Employees, Canon 3(C). Employees are also encouraged to report wrongful conduct in the workplace by non-employees. Court and chambers' confidentiality requirements do not prevent any employee—including law clerks—from revealing or reporting wrongful conduct by any person.

IV. OPTIONS FOR RESOLUTION

The Judiciary's goal is to promptly address wrongful conduct in the workplace. There are various options under the Plan for an employee to resolve such a problem. Sometimes an employee will feel that resolution can be better achieved outside the provisions of this Plan, through informal efforts. For example, if comfortable doing so, an employee is always free to address a conduct issue directly with the person who allegedly engaged in wrongful conduct. Likewise, an employee may wish to discuss the problem with a direct or indirect supervisor or other Court official in an effort to resolve the matter informally. In addition, if an employee is not yet prepared to take formal action, but wishes to obtain confidential advice, the Plan allows for

such advice under its Informal Advice provision. A more formal step, short of filing a Complaint, is Assisted Resolution. Finally, an employee may file a Formal Complaint to address the particular claim of wrongdoing.

Nevertheless, conversations with supervisors, the seeking of Informal Advice, or participation in Assisted Resolution will not extend the time period within which a Complaint claiming wrongful conduct must be filed, and an employee may file a Complaint without having gone through more informal routes. Further, the failure to successfully resolve an instance of wrongful conduct informally or via Assisted Resolution will not bar the filing of a Complaint under this Plan, except that an employee may not file a Complaint alleging abusive conduct without having first sought relief under Assisted Resolution.

A. Plan Options. This Plan provides three options to address wrongful conduct, as explained in detail below:

1. Informal Advice

2. Assisted Resolution

3. Formal Complaint

B. General Provisions and Protections. The three options under the Plan—Informal Advice, Assisted Resolution, and Formal Complaint—are intended to respect the privacy of all involved to the greatest extent possible, and to protect the fairness and thoroughness of the process by which allegations of wrongful conduct are initiated, investigated, and ultimately resolved. Except as otherwise provided, these rights apply to the individual alleging a violation of rights under this Plan and the employing office, as well as to any individual alleged to have violated rights under this Plan.

1. Confidentiality. All individuals involved in the processes underlying the three options in this Plan should protect the confidentiality of the allegations of wrongful conduct to the extent possible. Information should be shared only to the extent necessary to assess the credibility of assertions made by a claimant or respondent or to otherwise

determine the appropriate resolution of the claim. An assurance of confidentiality cannot be honored when there is reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious enough to threaten the integrity of the Judiciary or the effective operation of the court system.

Confidentiality obligations in the Code of Conduct for Judicial Employees concerning use or disclosure of confidential information received in the course of official duties do not prevent nor should they discourage employees from reporting or disclosing wrongful conduct, including sexual, racial, or other forms of discriminatory harassment by a judge, supervisor, or other person.

Supervisors, unit executives, and judges should take appropriate action when they learn of reliable information of wrongful conduct, such as sexual, racial, or other discriminatory harassment, which action may include informing the appropriate Chief Judge.

2. **Impartiality**. All investigations, hearings, and other processes under this Plan must be conducted in a thorough, fair, and impartial manner. The EDR Coordinator, the Circuit Director of Workplace Relations, and the Presiding Judicial Officer must be impartial and may not act as an advocate for either party. The EDR Coordinator, Circuit Director of Workplace Relations, or Presiding Judicial Officer should recuse if he or she participated in, witnessed, or was otherwise involved with the conduct or employment action giving rise to the claim in a manner that would undermine the individual's ability to fairly address the claim. Recusal of these individuals is also required if the matter creates an actual conflict or the reasonable appearance of a conflict.

   If good cause exists, a party may seek disqualification of the EDR Coordinator, Presiding Judicial Officer, or other person involved in or assigned to oversee a particular dispute resolution proceeding by written request to the Chief Judge or, if the Chief Judge is the Presiding Judicial Officer whose disqualification is sought, the Chief Circuit

Judge. If the Chief Circuit Judge is the Presiding Judicial Officer, a disqualification request should be sent to the Judicial Council. Such written request shall specify why the individual should be disqualified.

If the Presiding Judicial Officer is disqualified, the body that made the disqualification decision will designate another judge to serve as Presiding Judicial Officer. If the EDR Coordinator is disqualified, the Chief Judge will appoint one of the alternate EDR Coordinators or, if available, an EDR Coordinator from another court (with the consent of the respective Chief Judge of that court).

3. **Right to representation**. An individual invoking the dispute resolution procedures of this Plan or an individual who has allegedly acted in violation of this Plan (such as a court unit executive or an employee who has allegedly sexually harassed the complaining employee) has the right to be represented by an attorney at his or her own expense.

4. **Interim Relief**. In his or her discretion, the unit executive or Presiding Judicial Officer may consider whether appropriate interim relief is necessary, including, but not limited to, transfer, alternate work arrangements, or administrative leave.

5. **Allegations Regarding a Judge**. An employee alleging that a judge has engaged in wrongful conduct may use any of the options for resolution as set forth in § IV.C. An employee may also file a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

6. **Case Preparation**. It is expected that employees involved in or affected by a dispute resolution process will continue to perform the duties for which they are being paid and will limit any official duty time spent on case preparation, instead preparing their case, as much as possible, during breaks, lunch periods, or after-hours. To the extent that some preparation or interviewing of witnesses by a party must occur during official duty hours, the person seeking to so utilize these

duty hours shall apply, in writing, to the appropriate EDR decision-maker for authorization to use official time to prepare his or her case, specifying the amount of time sought, the functions to which that time will be devoted, and any other court personnel who may be involved. If the allegations are made in the Informal Advice or Assisted Resolution processes, this determination shall be made by the EDR Coordinator. If the allegations are made in the Formal Complaint process, the decision-maker shall be the Presiding Judicial Officer. The decision-maker shall coordinate with the unit executive under whom the employee works prior to making a decision on the request. The determination of the decision-maker shall be final and not subject to further review, nor may the decision itself be the subject of a proceeding under this Plan. The unit executive who is responding on behalf of the court is not required to request permission that duty hours be utilized.

7. **Notice**. At the Informal Advice level, all communications shall be kept confidential as contemplated in § IV.B.1 of this Plan. The EDR Coordinator shall inform the employee seeking relief under this Plan at the Informal Advice stage how this notice provision may eventually affect the confidentiality of the proceedings.

   During Assisted Resolution and Formal Complaint proceedings, every party has the right to have reasonable notice of the charges and an opportunity to respond to the allegations.

8. **Extensions of Time**. The Chief Judge of the court, or another designated Presiding Judicial Officer, may extend any of the deadlines set forth in this Plan, for good cause, except for the deadline to issue a written decision, which may only be extended by the Chief Judge. Deadlines can be extended *sua sponte* or after consideration of a written request submitted by a party.

9. **Dismissal of Claim**. On his or her own initiative, at the request of any party, or on the recommendation of the EDR Coordinator, the Chief Judge or Presiding Judicial Officer may, at any time in the proceedings,

dismiss in writing a claim on the grounds that it does not invoke violations of the rights or protections granted under this Plan, is plainly without merit, is untimely, is repetitive of a previous claim, is frivolous, or fails to state a claim upon which relief may be granted.

10. **Records**. At the conclusion of proceedings under this Plan, all papers, files, and reports will be filed with the court's EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.

C. Specific Options

1. **Informal Advice**. An employee may contact an EDR Coordinator, Circuit Director of Workplace Relations, or the national Office of Judicial Integrity for confidential advice and guidance (*see* § IV.B.1) about a range of topics including:

- the rights and protections afforded under this Plan, the Judicial Conduct and Disability Act, and any other processes;
- ways to respond to wrongful conduct as it is happening; and/or
- options for addressing the conduct, such as informal resolution, participating in Assisted Resolution, or pursuing a Formal Complaint under this Plan, the Judicial Conduct and Disability Act, or any other processes.

2. **Assisted Resolution**. Assisted Resolution is an interactive, flexible process that may include:

- discussing the matter with the person whose behavior is of concern, with the assistance of the EDR Coordinator;

- conducting a preliminary investigation, including interviewing persons alleged to have violated rights under this Plan and witnesses to the alleged conduct;
- engaging in voluntary mediation between the persons involved; and/or
- resolving the matter by agreement.

a. To pursue this option, an employee must submit a completed "Request for Assisted Resolution" (Appendix 2) to any of the court's EDR Coordinators. **An employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint.** Filing a Request for Assisted Resolution does not toll (extend) the time for filing a Formal Complaint under § IV.C.3 unless one of the parties requests, and the Chief Judge or Presiding Judicial Officer grants, an extension of time for good cause, as permitted in § IV.C.3.a.

b. If the allegations concern the conduct of a judge, the Chief Judge of the appropriate district or circuit court must be notified and will be responsible for coordinating any Assisted Resolution and/or taking any other action required or appropriate under the circumstances. *See, e.g.*, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

c. If the allegations concern the conduct of an employee, the EDR Coordinator will oversee Assisted Resolution and must notify the appropriate unit executive(s), who will coordinate with the EDR Coordinator in assessing the allegation(s) and taking appropriate steps to resolve the matter. If the allegations concern the conduct of a unit executive, the EDR Coordinator shall notify the Chief Judge, but the EDR Coordinator will be responsible for assessing the allegation(s) and attempting to resolve the matter as appropriate.

d. The EDR Coordinator responsible for assessing the allegations, as indicated in (b) and (c) above, may deny the Request for Assisted Resolution at any time if he or she concludes it is frivolous; it does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

e. If Assisted Resolution is successful in resolving the matter, the parties will so acknowledge in writing. The documentation of the resolution must be signed by the employee, his or her representative, if the employee is represented by legal counsel, and the member of the employing office who is authorized to resolve the matter on the employing office's behalf. Copies of the agreement resolving the matter must be provided to all parties. If the resolution of the matter will require the expenditure of any funds from the court's budget (decentralized funds) or from the Administrative Office's budget (centralized funds), approval of the Chief Judge shall also be required.

f. The parties by mutual assent, or the EDR Coordinator or Circuit Director of Workplace Relations in his or her discretion, will determine when to conclude the Assisted Resolution process.

g. If, at the end of the Assisted Resolution process, the parties have not resolved the claim that forms the basis of the request for Assisted Resolution, the EDR Coordinator shall provide to the employee, the employee's representative, if any, and the head of the employing office with written notice that the Assisted Resolution period has concluded. The notice shall also inform the employee of his or her rights to file a Formal Complaint and/or pursue action under the Judicial Conduct and Disability Act, if applicable, or any other processes.

3. **Filing a Formal Complaint**. An employee may file a Formal Complaint ("Complaint") with any of the court's EDR Coordinators to address a claim of wrongful conduct.

   a. To file a Complaint, an employee must submit a "Formal Complaint" (Appendix 3) to any of the court's EDR Coordinators within 180 days of the alleged wrongful conduct or within 180 days of the time the employee becomes aware or reasonably should have become aware of such wrongful conduct. Use of the Informal Advice or Assisted Resolution options does not toll (extend) this 180-day deadline unless the Chief Judge of the court or the Presiding Judicial Officer grants an extension of time for good cause.

   b. An employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint.

   c. The employee filing the Complaint is called the Complainant. The party responding to the Complaint is the employing office that is responsible for providing any appropriate remedy and is called the Respondent. The Complaint is not filed against any specific individual(s) but against the employing office.

   d. **Complaint Regarding a Judge**. An employee alleging that a judge has engaged in wrongful conduct may file a Complaint under this Plan. The EDR Coordinator must immediately provide a copy of the Complaint to the Chief Circuit Judge (or the next most-senior active circuit judge, if the allegation is against the Chief Circuit Judge). If a district, magistrate, or bankruptcy judge is the subject of the Complaint, the EDR Coordinator must also provide a copy of the Complaint to the Chief District Judge (unless the Chief District Judge is the subject of the Complaint, in which case the Complaint will be given only to the Chief Circuit Judge).

If a Complaint is filed against a judge, the procedures described in this Plan will be performed by the Judicial Council, either by members of the Council directly or by persons designated to act on its behalf, which may include the Chief Circuit Judge.

If a judge becomes the subject of both a Complaint under this Plan and a complaint under the Judicial Conduct and Disability Act, the Judicial Council or its designees will determine the appropriate procedure for addressing both, which may include holding the EDR claim in abeyance and determining how best to find any common issues of fact, subject to all requirements of the Judicial Conduct and Disability Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, this EDR Plan. Regardless of whether there is a formal complaint under the Judicial Conduct and Disability Act, the Chief Circuit Judge should consider whether any interim relief is necessary.

e. Formal Complaint Procedures and Procedural Rights

i. *Appointment of Presiding Judicial Officer*. Upon receipt of a Complaint, the EDR Coordinator will immediately send a copy of the Complaint to the Chief Judge of the court, who will serve as, or appoint, the Presiding Judicial Officer. The Complaint and any other documents shall be reviewed by the Chief Judge of the court as the Presiding Judicial Officer, or by another judicial officer of the court designated by the Chief Judge to serve as the Presiding Judicial Officer. In the event the Chief Judge is disqualified under § IV.B.2, or is unavailable to serve under this subsection, the reviewing official shall be designated by the next most senior active judge. The Presiding Judicial Officer may be a judge in the court or,

when appropriate, a judge from another court (with the consent of the respective Chief Judge of that court).

When a judge is the subject of a Complaint alleging wrongful conduct under this Plan, the Chief Circuit Judge shall determine which member of the Judicial Council, or other judicial officer, will act as the Presiding Judicial Officer.

ii. *Presiding Judicial Officer*. The Presiding Judicial Officer oversees the Complaint proceeding. The Presiding Judicial Officer will provide a copy of the Complaint to the head of the employing office against which the Complaint has been filed (Respondent), except when the Presiding Judicial Officer determines for good cause that the circumstances dictate otherwise. The Presiding Judicial Officer must provide the individual alleged to have violated rights under this Plan notice that a Complaint has been filed and a copy of the Complaint.

The Presiding Judicial Officer will direct, to the extent appropriate, any or all of the following: investigation and discovery; settlement discussions; the filing of written submissions by the parties; and a hearing, if needed. The Presiding Judicial Office shall issue a written decision, and, if warranted, order appropriate remedies.

iii. *Disqualification and Replacement*. Any party may seek disqualification of the EDR Coordinator or the Presiding Judicial Officer by following the procedure in § IV.B.2.

iv. *Response*. Any party other than the Complainant may file a response to the Complaint with the EDR Coordinator within **30 days** of receiving the Complaint. The EDR Coordinator must immediately send the response to the

Presiding Judicial Officer and to any other interested parties.

v. *Investigation and Discovery*. The Presiding Judicial Officer will ensure that the allegations are thoroughly, impartially, and fairly investigated, and may use outside trained investigators if warranted. Local funds must be used to pay for any expenses incurred during this process. Any expenditure of funds must be approved by the appropriate Chief Judge. The investigation may include interviews with persons alleged to have violated rights under this Plan and witnesses, review of relevant records, and collecting documents or other records. The Presiding Judicial Officer will provide for such discovery to the parties as is necessary and appropriate. The Presiding Judicial Officer will also determine what evidence and written arguments, if any, are necessary for a fair and complete assessment of the allegations and response.

vi. *Established Precedent*. In reaching a decision, the Presiding Judicial Officer should be guided by judicial and administrative decisions under relevant rules and statutes, as appropriate. The Federal Rules of Evidence and any federal procedural rules do not apply. The standard of proof for all claims is preponderance of the evidence (more likely than not).

vii. *Notice of Written Decision*. The EDR Coordinator or Presiding Judicial Officer shall send a copy of the written decision to the parties, the Chief Judge of the court, and to any individual alleged to have violated rights protected by this Plan. The EDR Coordinator will inform the parties of appeal rights, procedures, and deadlines.

f. **Resolution of Complaint Without a Hearing**. After notifying the parties of a potential dispositive action and giving them an opportunity to respond, the Presiding Judicial Officer may resolve the matter without a hearing.

i. The Presiding Judicial Officer may dismiss a Complaint at any time in the proceedings on the grounds that: it is untimely filed, is frivolous, fails to state a claim, or does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances, and was resolved by, a previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

ii. After completion of investigation and discovery, the Presiding Judicial Officer may, on his or her own initiative or at the request of a party, issue a written decision if the Presiding Judicial Officer determines that no relevant facts are in dispute and that one of the parties is entitled to a favorable decision on the undisputed facts.

iii. The parties may enter into an agreed written settlement if approved in writing by the Presiding Judicial Officer and the Chief Judge.

g. **Resolution of Complaint with a Hearing**. If the Complaint is not resolved in its entirety by dismissal, Assisted Resolution, decision without a hearing, or settlement, the Presiding Judicial Officer will order a hearing on the merits of the Complaint.

i. *Hearing*. The hearing will be held no later than **60 days** after the deadline for the filing of a response unless the Presiding Judicial Officer extends the deadline for good cause. The Presiding Judicial Officer will determine the place and manner of the hearing.

ii. *Notice*. The Presiding Judicial Officer must provide reasonable notice of the hearing date, time, and place to the Complainant, the Respondent, and any individual(s) alleged to have violated the Complainant's rights.

iii. *Right to Present Evidence*. All parties have the right to legal representation, to present evidence, and to examine and cross-examine witnesses.

iv. *Record of Proceedings*. A verbatim written record of the hearing must be made and will be the official record of the proceeding. The employing office from which the Complaint arose is responsible for paying for the transcript.

v. *Written Decision*. The Presiding Judicial Officer will make all reasonable efforts to issue a written decision, which will include findings of fact and conclusions of law, no later than **60 days** after the conclusion of the hearing or within 60 days after the preparation of a transcript of the proceeding, if a transcript is needed to prepare the written decision. The EDR Coordinator or Presiding Judicial Officer shall send a copy of the written decision to the parties, the Chief Judge of the court, and to any individual alleged to have violated rights protected by this Plan. The EDR Coordinator will inform the parties of appeal rights, procedures, and deadlines. All parties shall receive written notice of any action taken as a result of the hearing.

h. **Remedies**. When the Presiding Judicial Officer finds that the Complainant has established by a preponderance of the evidence (more likely than not) that a substantive right protected by this Plan has been violated, the Presiding Judicial Officer may direct the employing office to provide remedies for the Complainant. The remedies are limited to providing relief to the Complainant,

should be tailored as closely as possible to the specific violation(s) found, and should take into consideration the impact on any employing office. A judge's decision in EDR matters must be in conformance with all statutes and regulations that apply to the judiciary, and, in proceedings pursuant to this Plan, neither the Presiding Judicial Officer nor any judicial panel reviewing a final decision has authority to declare such statutes or regulations unconstitutional or invalid. A judge presiding in EDR matters may not compel the participation of, or impose remedies upon, agencies or entities other than the employing office which is the respondent in such matters.

The Chief Judge and employing office (Respondent) must take appropriate action to carry out the remedies ordered in the written decision, subject to any applicable policies or procedures. Any remedy that will require the expenditure of any funds from the court's budget (decentralized funds) or from the Administrative Office's budget (centralized funds), requires the written approval of the chief judge.

i. *Allowable Remedies* may include:

- placement of the Complainant in a position previously denied;
- placement of the Complainant in a comparable alternative position;
- reinstatement to a position from which the Complainant was previously removed;
- prospective promotion of the Complainant;
- priority consideration of the Complainant for a future promotion or position;

- back pay and associated benefits, when the statutory criteria of the Back Pay Act are satisfied;[1]
- records modification and/or expungement;
- granting of family and medical leave;
- any reasonable accommodation(s); and
- any other appropriate remedy to address the wrongful conduct.[2]

ii. *Unavailable Remedies*. Other than under the Back Pay Act, monetary damages are not available. The Presiding Judicial Officer may award attorney's fees only if the statutory requirements under the Back Pay Act are satisfied.

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[1] *Back Pay Act*. Remedies under the Back Pay Act, including attorney's fees, may be ordered only when the statutory criteria of the Back Pay Act are satisfied, which include: (1) a finding of an unjustified or unwarranted personnel action; (2) by an appropriate authority; (3) which resulted in the withdrawal or reduction of all or part of the employee's pay, allowances, or differentials. An order of back pay is subject to review and approval by the Director of the Administrative Office of the United States Courts. *See* 5 U.S.C. § 5596(b)(1) and *Guide*, Vol. 12, § 690.

[2] The issue in an EDR Complaint is whether the employing office is responsible for the alleged conduct; it is not an action against any individual. The Presiding Judicial Officer lacks authority to impose disciplinary or similar action against an individual. When there has been a finding of wrongful conduct in an EDR proceeding, an appointing official, or official with delegated authority, should separately assess whether further action, in accordance with any applicable policies and procedures, is necessary to correct and prevent wrongful conduct and promote appropriate workplace behavior, such as:

- requiring counseling or training;
- ordering no contact with the Complainant;
- reassigning or transferring an employee;
- reprimanding the employee who engaged in wrongful conduct;
- issuing a suspension, probation, or demotion of the employee who engaged in wrongful conduct; and/or
- terminating employment for the employee who engaged in wrongful conduct.

V. REVIEW PROCEDURES (APPEAL)

A. Review of decision. A party may seek review of a Presiding Judicial Officer's final decision on a Complaint under the following procedures. The standard governing such review shall be whether the decision is supported by substantial evidence on the record created by the Presiding Judicial Officer. The EDR Coordinator shall be responsible for submitting the complete record of the proceeding to the Circuit Executive for use by the Judicial Council. No evidence that was not before the Presiding Judicial Officer will be considered.

B. Time, place, and manner of filing a Request for Review of Decision. A party may, within 30 days of the date of the letter transmitting the decision of the Presiding Judicial Officer, file with the Circuit Executive a Request for Review of Decision (Appendix 4) by the Judicial Council.

1. Receipt of timely petition in proper form. Upon receipt of a timely Request for Review of Decision filed in the form required, the Circuit Executive shall promptly acknowledge receipt of the Request and transmit a copy to the unit executive by which the Complainant is employed, to the Presiding Judicial Officer, and any other party who participated in the proceedings below. Neither the person filing the Request, nor the Presiding Judicial Officer, may otherwise communicate with the Judicial Council or any of its members about the matter.

2. Receipt of Request for Review of Decision not in proper form or out of time.

a. Upon receipt of a Request for Review not filed in the form required, the Circuit Executive shall return the Request and explain why it was returned. The party requesting review may re-file the corrected Request for Review with the Circuit Executive within 14 days of receipt of the returned Request. Failure to file a second time in the form and within the time

required will result in dismissal of the Request for Review of Decision.

b. A Request for Review must be received by the Circuit Executive within 30 days of the date of the letter transmitting the decision. A Request received after this 30-day deadline may be considered only upon a showing of good cause, as determined by the Judicial Council or its designee.

C. Review of order.

1. Parties shall be allowed 30 days to respond to the Request and the person who filed the Request shall be allowed 14 days to reply to any response.

2. Once the time for responses and replies has lapsed, the Circuit Executive shall send to the Circuit's EEO committee, copies of: (1) the original Complaint and any documents filed pertaining to it; (2) the record of proceedings; (3) the decision affecting the Claimant and any documents filed pertaining to it; (4) the Request for Review, and (5) any response(s) and replies(s).

3. The Judicial Council EEO Committee shall consider the entire record and recommend to the Judicial Council whether or not the decision made by the Presiding Judicial Officer below should be affirmed.

4. The Circuit Executive shall transmit to all non-disqualified members of the Judicial Council the Committee's recommendation along with a ballot that shall ask: (a) whether the decision of the Presiding Judicial Officer below should be affirmed; (b) whether the Judicial Council should discuss the Request for Review; and (c) whether the Judicial Council member recuses himself or herself from participating in the consideration of the Request.

5. If, within 14 days of the date on which the Circuit Executive sends ballots to the members of the Council, no non-disqualified member of

the Council votes to discuss the Request, the original decision of the Presiding Judicial Officer below shall be deemed affirmed and the Council shall issue an order so stating.

6. If, however, a non-disqualified member of the Council votes to discuss the Request, the Circuit Executive will prepare a second ballot so notifying the Council. The second ballot will provide the name of the judge who voted to discuss the Request and any reason provided for the vote. The ballot will then ask: (a) whether the decision of the Presiding Judicial Officer below should be affirmed without discussion; and (b) whether the Council should discuss the Request for Review. Voting shall be deemed closed 14 days from the date on which the Circuit Executive sent the second ballot to the members of the Council, absent a request from any Council member for more time to consider the matter. A majority vote of the non-disqualified members of the Council shall be required to discuss any Request. Failure to return the second ballot within 14 days, absent a request for additional time, shall be deemed a vote to affirm without discussion.

D. Decision by Judicial Council.

1. The Judicial Council may enter an order (a) affirming the original decision or summary dismissal; (b) directing further investigation; or (c) directing corrective action including remedies set forth in § IV.C.3.h of this Plan. The Judicial Council may also take any other action within its authority pursuant to 28 U.S.C. §§332, 351-364.

2. The order of the Judicial Council may be accompanied by a separate memorandum setting forth facts and containing findings and conclusions made by the Judicial Council. The order shall be accompanied by any separate or dissenting statements by members of the Council.

3. The Circuit Executive shall provide to all parties and the Presiding Judicial Officer a copy of the order and any separate or dissenting

statements issued by members of the Council and shall inform them that the Council's decision is final.

4. The Circuit Executive shall transmit a copy of the order to the Chief Judge and maintain a summary record that clearly identifies the nature of the proceeding and the disposition reached.

E. **Complained-of judge**. A complained-of judge and the judge rendering the decision that initially determined the matter which is under review by the Council are disqualified from participating in deliberations or decisions by the Judicial Council.

F. **Withdrawal of Request for Review**. A party may withdraw a Request for Review at any time before the Judicial Council acts on the Request.

G. **Finality**. The decision of the Judicial Council is final and not subject to further review.

VI. COURT AND EMPLOYING OFFICE OBLIGATIONS

To ensure that employees are aware of the options provided by this Plan, and that the Plan is effectively implemented, courts and employing offices must adhere to the following:

A. **Adopt and Implement EDR Plan.** Each court of the Eleventh Circuit shall adopt and implement a plan based upon the Eleventh Circuit Model EDR Plan ("Model Plan"). Courts may join with others to adopt consolidated EDR Plans. For example, a district and bankruptcy court in the same district may wish to adopt a consolidated EDR Plan. Any modification of the Model Plan by a court must first be approved by the Judicial Council of the Eleventh Circuit. The Judicial Council delegates to the Circuit Executive the authority to approve on its behalf any plans with modifications that are ministerial and are not material. A copy of each EDR Plan and any subsequent modifications must be filed with the Administrative Office.

B. **Records.** At the conclusion of informal or formal proceedings under this Plan, all papers, files, and reports will be filed with the EDR Coordinator. No

papers, files, or reports relating to an EDR matter will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.

C. **Release of Final Decisions**. Final Decisions under this Plan will be made available to the public, appropriately redacted, in accordance with procedures established by the Judicial Council of the Eleventh Circuit.

D. **EDR Coordinators.** The Chief Judge will designate both a primary EDR Coordinator and at least one alternate EDR Coordinator for the court. A court may use an EDR Coordinator from another court, if necessary, with the approval of the appropriate Chief Judge. An employee may choose the EDR Coordinator with whom he or she wishes to seek Informal Advice, request Assisted Resolution, or file a Complaint under this EDR Plan.

An EDR Coordinator must be an employee who is not a unit executive. A judge may not be an EDR Coordinator. All EDR Coordinators must be trained and certified as deemed appropriate by the court.

The duties of the EDR Coordinator shall include the following:

1. providing information to the court and employees regarding the rights and protections afforded under this Plan;

2. coordinating and organizing the procedures and establishing and maintaining official files of the court pertaining to complaints and other matters initiated and processed under the court's EDR Plan;

3. collecting, analyzing, and consolidating statistical data and other information pertaining to the court's EDR Plan;

4. drafting for the court's approval an annual report to the Administrative Office;

5. recommending to the court modifications to this Plan and suggestions for improvement in implementation; and

6. Sending to the Chief Judge for information purposes a copy of any Form, Appendix 2, 3, or 4, that may come into his or her possession.

The person serving as EDR Coordinator on the effective date of this Plan shall automatically become the initial EDR Coordinator under this Plan.

E. **Advising Employees of their Rights**. Courts and employing offices must:

1. **prominently post** on their internal and external main homepages a direct link, labeled "Your Employee Rights and How to Report Wrongful Conduct," to:

   - the entire EDR Plan with all Appendices and relevant contact information;
   - the Judicial Conduct and Disability Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and the Judicial Conduct and Disability Complaint form; and
   - contact information for all of the court's EDR Coordinators, Circuit Director of Workplace Relations, and the national Office of Judicial Integrity.

2. **prominently display** in the workplace:

   - the posters set forth in Appendix 5; and
   - an Anti-Discrimination and Harassment Notice that: (a) states that discrimination or harassment based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability is prohibited; (b) explains that employees can report, resolve, and seek remedies for discrimination, harassment, or other wrongful conduct under the EDR Plan and identifies the appropriate persons to whom such complaints must be made; (c) identifies the names and contact information of all court EDR Coordinators, the Circuit Director of Workplace Relations, and

the national Office of Judicial Integrity; and (d) states where the EDR Plan can be located on the court's website.

3. ensure that each new employee receive an electronic or paper copy of the EDR Plan and acknowledge in writing that he or she has received the Plan; and

4. conduct training annually for all judges and employees, including chambers staff, to ensure that they are aware of the rights and obligations under the EDR Plan and the options available for reporting wrongful conduct and seeking relief. This requirement can be satisfied by remotely viewing appropriate training materials, as determined by the Circuit Director of Workplace Relations.

E. **Reporting.** Each court will provide annually, to the Administrative Office of the United States Courts, data on: (1) the number and types of alleged violations for which Assisted Resolution was requested, and for each matter, whether it was resolved or was also the subject of a Complaint under this Plan or other complaint; (2) the number and type of alleged violations for which Complaints under this Plan were filed; (3) the resolution of each Complaint under this Plan (dismissed or settled prior to a decision, or decided with or without a hearing); and (4) the rights under this Plan that were found by decision to have been violated. Courts and employing offices should also provide any information that may be helpful in identifying the conditions that may have enabled wrongful conduct or prevented its discovery, and what precautionary or curative steps should be undertaken to prevent its recurrence. The Circuit Executive shall be copied on all of these reports to aid in tracking this data, Circuit-wide.

F. **Appendices Attached:**

1. Definitions

2. Request for Assisted Resolution

3. Formal Complaint Form

4. Request for Review of Decision Procedures and Sample Form (each court to attach its Circuit's Request for Review Procedures)

5. Posters

This Plan supersedes all prior Model Equal Employment Opportunity and Employment Dispute Resolution Plans.

Effective Date: August 17, 2020

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EMPLOYMENT DISPUTE RESOLUTION
APPENDIX 1 - DEFINITIONS

Abusive Conduct: Abusive conduct is a pattern of demonstrably egregious and hostile conduct not based on a protected category that is so severe or pervasive as to alter the terms and conditions of employment and create an abusive working environment. Abusive conduct is conduct that a reasonable person would consider to be threatening, oppressive, and intimidating. The Judiciary expects outstanding performance by and hard work from its employees, and it has a long-standing reputation for achieving that level of excellence. Accordingly, abusive conduct does not include communications and actions reasonably related to the supervision of an employee's performance and designed to ensure that employees live up to the high expectations of their positions, including but not limited to: instruction, corrective criticism, and evaluation; performance improvement plans; duty assignments and changes to duty assignments; office organization; progressive discipline. Further, abusive conduct does not include an adverse employment action.

Adverse Employment Action: An adverse employment action is an action that materially affects the terms, conditions, or privileges of employment, such as hiring, firing, or a failure to promote.

Circuit Director of Workplace Relations: A Circuit employee who coordinates workplace conduct issues and the implementation of all court EDR Plans within the Circuit. The scope of duties will be determined by the Circuit Executive, but generally a Circuit Director of Workplace Relations may provide Informal Advice and Assisted Resolution under any EDR Plan within the Circuit; assist in training the EDR Coordinators within the Circuit; provide or arrange for training throughout the Circuit on workplace conduct, discrimination, and sexual harassment; and collect and analyze statistical data and other information relevant to workplace conduct matters.

Claim/Claimant: A claim is any allegation made under the provisions of this Plan, to include allegations made under the Informal Advice, Assisted Resolution, and Formal Complaint procedures. A claimant is one making a claim.

Court: The court (courts of appeals, district courts, bankruptcy courts, Court of Federal Claims and Court of International Trade, or of any court created by an Act of Congress in a territory that is invested with any jurisdiction of a district court of the United States) in which the employing office that would be responsible for, and capable of, ordering redress, correction, or abatement of a violation of rights under this EDR Plan is located. In the case of disputes involving employees of the federal public defender, "court" refers to the appropriate court of appeals. In the case of disputes involving probation and pretrial services, "court" refers to the appropriate district court.

Days: Calendar days.

Disability: Disability means: (1) a physical or mental impairment that substantially limits one or more of the major life activities of an employee; (2) a record of such an impairment, or (3) being regarded as having such an impairment. *See* 42 U.S.C. §12102(1).

Discriminatory Adverse Employment Action: An adverse employment action that is based on the employee's membership in a protected category: race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability taken against an employee because he or she is a member of a protected category.

EDR Coordinator: A court employee designated by the Chief Judge to coordinate all of the options for resolution provided for in this Plan. A judge or unit executive cannot serve as an EDR Coordinator. The EDR Coordinator provides confidential advice and guidance (see § IV.C.1) if an employee seeks Informal Advice; coordinates the Assisted Resolution process, including any necessary investigation; accepts Complaints under this Plan for filing; and assists the Presiding Judicial Officer in the Complaint proceeding, as directed. The EDR Coordinator maintains and preserves all court files pertaining to matters initiated and processed under this EDR Plan. The EDR Coordinator assists the court in meeting its obligations under this Plan to train and advise employees of their rights under this Plan, and to post the Plan as directed.

Employee: All employees of a court, except as provided below. The term "employee" includes unit executives and their staffs; judicial assistants and other chambers employees; law clerks; federal public defenders, chief probation officers and chief pretrial services officers and their respective staffs; court reporters

appointed by a court; and paid and unpaid interns, externs, and other volunteer employees. It also includes former employees who were terminated or removed from employment, but who did not have a reasonable opportunity to raise their claim during the period of employment. The term "employee" also includes applicants for employment who have been interviewed. Absent extraordinary circumstances, an employee will be considered to have been provided a reasonable opportunity to raise a claim if the employee was provided notice of the termination/removal and the reasons for it, was given at least two-weeks to respond, and was notified that any claim under this Plan must be made prior to termination.

The following persons cannot seek relief under this Plan and thus are not considered employees: judges, applicants for judicial appointment, Criminal Justice Act panel attorneys and applicants, investigators and service providers, community defender employees, volunteer mediators, and any other non-employees not specified above. This Plan does not apply to the award of contracts or subcontracts, or to employment decisions made by such contractors or subcontractors.

Employing Office/Respondent: The office of the court, or Federal Public Defender Office, that is responsible for providing any appropriate remedy. For purposes of coverage under this EDR Plan, the court is treated as the employing office of the clerks of court and the chief probation officer. The clerks of court are treated as the employing officer of court reporters and courtroom deputies. Depending on the identity of the decision maker(s) or the identity of the person or persons with the power to provide a remedy for the adverse action being alleged, the clerk of the court, the court, or the supervising judge is treated as the employing officer of pro se law clerks. The clerks of court and chief probation officer are treated as the employing officers of all staff in their respective offices. Federal public defenders, bankruptcy administrators, and their staffs are subject to the EDR Plan of the Eleventh Circuit, rather than the EDR Plans of the district in which they serve. The court is the employing office of judges and chambers employees.

Final Decision: A final decision is a decision by a Presiding Judicial Officer that resolves a Complaint, with or without a hearing. A final decision of the Judicial Council shall include any resolution of a Request for Review of Decision. The term "final decision" does not include any decisions made or resolutions reached during the Informal Advice or Assisted Resolution processes.

Harassment: Harassment, other than sexual harassment, means actions taken or comments directed at an employee based upon the latter's status as a member of a protected group. Discriminatory harassment occurs when a workplace is permeated with discriminatory intimidation, ridicule, and insult so severe or pervasive as to alter the conditions of the employment and create an abusive working environment.

> *Examples of conduct that may give rise to discriminatory harassment*: racial slurs; derogatory comments about a person's ethnicity, culture, or national origin, age, disability, or sexual orientation.

Judge: A judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, a judge of the Court of Federal Claims, a judge of the Court of International Trade, or a judge of any court created by Act of Congress in a territory that is invested with any jurisdiction of a district court of the United States.

Office of Judicial Integrity: The office of the Administrative Office of the United States Courts staffed to provide advice and guidance to employees nationwide about workplace conduct issues, including sexual, racial, and other discriminatory harassment, abusive conduct and other wrongful conduct. Contact information for the Office of Judicial Integrity can be found on JNet and on uscourts.gov.

Parties: The employing office, the employee who has filed a request for Assisted Resolution or a Formal Complaint, and any employee who has allegedly violated the rights of the complaining employee.

Protected Category: Race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over),[1] or disability.

Retaliation: Retaliation refers to an adverse employment action taken against an employee for opposing, reporting, or asserting a claim of wrongful conduct under this Plan. Retaliation is itself wrongful conduct. Notwithstanding this prohibition, a court and its designees are not precluded from taking appropriate responsive action when an employee, in bad faith, makes a vexatious or knowingly false claim. A

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[1] The age discrimination provision does not apply to hiring, retirement, or separation of probation and pretrial services officers under 5 U.S.C. chapters 83 and 84.

vexatious claim is a claim without foundation made for the purpose of harassment or to undermine the orderly operation of the court.

Sexual Harassment: Sexual harassment includes:

1. unsolicited and unwelcomed verbal comments, gestures, or physical contact of a sexual nature that are severe or pervasive enough to alter the conditions of employment and create an abusive working environment, and

2. demands, solicitations, offers, invitations, or other inducements for sexual relations between an employee and his or her supervisor, as to which it is explicitly or implicitly indicated that future personnel decisions regarding employment, advancement, evaluation, wages, assignment of duties, or other conditions of employment or advancement might, would, or should, be affected by the existence or continuation of such sexual relations.

   Examples of conduct that may give rise to sexual harassment: suggestive or obscene notes, emails, text messages, or other types of communications; sexually degrading comments; display of sexually suggestive objects or images; unwelcome or inappropriate touching or physical contact; unwelcome sexual advances or propositions; inappropriate remarks of a sexual nature; or an employment action, implicitly or explicitly, conditioned on submission to sexual advances.

Unit Executive: Unit executive refers to the person most directly involved in or responsible for the employment decisions relating to employees in the particular unit and includes, e.g., the circuit executive, district court executive, clerk of court, chief probation officer, chief pretrial services officer, federal public defender, bankruptcy administrator, bankruptcy appellate panel clerk, senior staff attorney, chief preargument/conference attorney/circuit mediator, or circuit librarian.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EMPLOYMENT DISPUTE RESOLUTION
APPENDIX 2 – REQUEST FOR ASSISTED RESOLUTION

USE OF ASSISTED RESOLUTION DOES NOT EXTEND THE 180-DAY DEADLINE TO FILE A FORMAL COMPLAINT UNLESS THE DEADLINE IS EXTENDED UNDER EDR PLAN § IV.C.3.a

Submitted under the Procedures of the Northern District of Florida Employment Dispute Resolution Plan

Court: _____

Full name of person submitting the form: _____

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

Name and address of Employing Office from which you seek assistance (*if the matter involves a judge or chambers employee, the Employing Office is the Court*): _____

_____

_____

_____

Your job title/job title applied for: _____

Date of interview: _____

Date(s) of alleged incident(s) for which you seek Assisted Resolution: _____

_____

Summary of the actions or occurrences for which you seek Assisted Resolution (attach additional pages as needed): _____

_____

_____

_____

_____

_____

Names and contact information of any witnesses to the actions or occurrences for which you seek Assisted Resolution: _____

_____

_____

Describe the assistance or corrective action you seek: _____

_____

_____

Alleged Wrongful Conduct for which you seek Assisted Resolution (*check all that apply*):

- ☐ Discrimination based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Pregnancy
- ☐ Sexual orientation
- ☐ Religion
- ☐ National origin
- ☐ Age
- ☐ Disability

- ☐ Harassment based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Pregnancy
- ☐ Sexual orientation
- ☐ Religion
- ☐ National origin
- ☐ Age
- ☐ Disability

- ☐ Abusive Conduct
- ☐ Retaliation
- ☐ Whistleblower Protection
- ☐ Family and Medical Leave
- ☐ Uniform Services Employment and Reemployment Rights
- ☐ Worker Adjustment and Retraining
- ☐ Occupational Safety and Health
- ☐ Polygraph Protection
- ☐ Other (describe)

Do you have an attorney or other person who represents you?

☐ Yes

Please provide name, mailing address, email address, and phone number(s):

_____

_____

☐ No

I acknowledge that this Request will be kept confidential to the extent possible, but information may be shared to the extent necessary and with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan (*see* EDR Plan § IV.B.1).

Your signature _____

Date submitted _____

Request for Assisted Resolution reviewed by EDR Coordinator on _____

EDR Coordinator name _____

EDR Coordinator signature _____

Local Court Claim ID (Court Initials–AR–YY–Sequential Number): _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EMPLOYMENT DISPUTE RESOLUTION
APPENDIX 3 – FORMAL COMPLAINT

Submitted under the Procedures of the Northern District of Florida Employment Dispute Resolution Plan

Court: _____

Full name of person submitting the form (Complainant): _____

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

Name and address of Employing Office from which you seek a remedy (*if the matter involves a judge or chambers employee, the Employing Office is the Court*): _____

_____

_____

Your job title/job title applied for: _____

Date of interview: _____

Date(s) of alleged incident(s) for which you seek a remedy: _____

_____

Summary of the actions or occurrences giving rise to the Complaint (*attach additional pages as needed*): _____

_____

_____

_____

_____

Describe the remedy or corrective action you seek (*attach additional pages as needed*): __

_____

_____

Identify, and provide contact information for, any persons who were involved in this matter, who were witnesses to the actions or occurrences, or who can provide relevant information concerning the Complaint (*attach additional pages as needed*): _____

_____

_____

Identify the Wrongful Conduct that you believe occurred (*check all that apply*):

- ☐ Discrimination based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Pregnancy
- ☐ Sexual orientation
- ☐ Religion
- ☐ National origin
- ☐ Age
- ☐ Disability

- ☐ Harassment based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Pregnancy
- ☐ Sexual orientation
- ☐ Religion
- ☐ National origin
- ☐ Age
- ☐ Disability

- ☐ Abusive Conduct
- ☐ I have already sought Assisted Resolution for this Abusive Conduct claim.

Provide date Request for Assisted Resolution submitted and concluded, and describe the resolution, if any: _____

_____

- ☐ Retaliation
- ☐ Whistleblower Protection
- ☐ Family and Medical Leave
- ☐ Uniform Services Employment and Reemployment Rights
- ☐ Worker Adjustment and Retraining
- ☐ Occupational Safety and Health
- ☐ Polygraph Protection
- ☐ Other (describe)

Do you have an attorney or other person who represents you?

☐ Yes
Please provide name, mailing address, email address, and phone number(s): _____

_____

_____

☐ No

☐ I have attached copy(ies) of any documents that relate to my Complaint (such as emails, notices of discipline or termination, job application, etc.)

I acknowledge that this Complaint will be kept confidential to the extent possible, but information may be shared to the extent necessary and with those whose involvement is necessary to resolve this matter, as explained in the EDR Plan (*see* EDR Plan § IV.B.1).

I affirm that the information provided in this Complaint is true and correct to the best of my knowledge:

Complainant signature _____

Date submitted _____

Complaint reviewed by EDR Coordinator on _____

EDR Coordinator name _____

EDR Coordinator signature _____

Court Claim ID (Court Initials–FC–YY–Sequential Number): _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EMPLOYMENT DISPUTE RESOLUTION
APPENDIX 4 – REQUEST FOR REVIEW OF DECISION (APPEAL)

Submitted under the Procedures of the Northern District of Florida Employment Dispute Resolution Plan

Name of Requesting Party _____
Address _____
Phone Number(s) _____
Email Address _____

Name of Court in Which Presiding Judicial Officer's Decision Was Issued

_____

_____, Requesting Party v.
_____, Responding Party

Request for Review of Decision on Formal Complaint

Notice is hereby given that _____, (Requesting Party) in the above named case, hereby requests review by the Judicial Council for the Eleventh Circuit from the decision by Judge _____ entered in this matter on the _____ day of _____, 20__.

☐ Attached to this request is a copy of the Presiding Judicial Officer's decision.

State the reason(s) you contend that the Presiding Judicial Officer's decision was in error (**attach additional pages if necessary**): _____

_____

_____

_____

Submitted this _____ day of _____, 20___.

Signature of Requesting Party _____

Signature of Counsel, if any _____

Received by the Eleventh Circuit Judicial Council on _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EMPLOYMENT DISPUTE RESOLUTION
APPENDIX 5 - POSTERS

UNITED STATES COURTS

You Have Options

How to Address Wrongful Conduct in the Workplace

INFORMAL ADVICE

To request advice about a workplace concern, contact your Employment Dispute Resolution (EDR) coordinator, Circuit Director of Workplace Relations, or the Office of Judicial Integrity. They can provide you with advice and guidance on how to address the issue including:

- Your rights under the EDR Plan
- Advice on handling discriminatory, harassing, or abusive conduct
- Options for addressing the conduct

ASSISTED RESOLUTION

Contact an EDR Coordinator to request Assisted Resolution. This interactive, flexible process may include:

- Discussions with the source of the conduct
- Preliminary investigation, including interviewing witnesses
- Resolving the matter by agreement

FORMAL COMPLAINT

Contact an EDR coordinator to file a formal complaint.

The Complaint must be filed within **180 days** of the alleged violation or the discovery of the violation. This formal process includes:

- Appointment of Presiding Judicial Officer
- An investigation and/or hearing if appropriate
- Written decision
- Appeal rights

Confidentiality

All options for resolution are intended to respect privacy of all involved to the greatest extent possible, and to protect the fairness and thoroughness of the process by which allegations of wrongful conduct are initiated, investigated, and ultimately resolved.

Contact Information:

Local EDR Coordinator
Andrea Zern
(850) 470-8140
Andrea_Zern@flnd.uscourts.gov

Alternate EDR Coordinators
Travis Green
(850) 521-5013
Travis_Green@flnb.uscourts.gov

Karen Cooke
(850) 470-3071
Karen_Cooke@flnp.uscourts.gov

National Office of Judicial Integrity
Jill Langley, Judicial Integrity Officer
(202) 502-1604
AO_OJI@ao.uscourts.gov

The Northern District of Florida EDR Plan is located on the internet Home page under the link labeled "Your Employee Rights and How to Report Wrongful Conduct" and under the intranet Guides & Manuals tab.

UNITED STATES COURTS

Your Rights

In a Federal Judiciary Workplace

Employees of the Federal Judiciary are protected by the employment rights listed below, as described in *Guide to Judiciary Policy*, Vol. 12, Ch. 2.

Employees have options for resolution, including Informal Advice, Assisted Resolution, and filing a Formal Complaint. Formal Complaints must be filed within 180 days of when the Employee knew or should have known of the alleged violation. More information, including a list of court EDR Coordinators, can be found on JNet.

Employees may confidentially report workplace discrimination, harassment, abusive behavior, or retaliation to an EDR Coordinator or the Judicial Integrity Officer, Jill B. Langley, at 202-502-1604.

Protection from Unlawful Discrimination

Prohibits discrimination in personnel actions based on race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40+), or disability.

Protection from Harassment

Prohibits sexual harassment, discriminatory harassment, and abusive conduct.

Protection for Exercising Workplace Rights

Prohibits intimidation, retaliation, or discrimination against employees who exercise their employment rights or report or oppose wrongful conduct, including **whistleblower protection**.

Family and Medical Leave

Provides rights and protections for employees needing leave for specified family and medical reasons.

Protection for Veterans and Members of the Uniformed Services

Protects employees performing service in the uniformed services from discrimination and provides certain benefits and reemployment rights.

Notification of Office Closings and Mass Layoffs

Under certain circumstances, requires that employees be notified of an office closing or of a mass layoff at least 60 days in advance of the event.

Hazard-Free Workspaces

Requires employing offices to comply with occupational safety and health standards, and provide workplaces free of recognized hazards.

Polygraph Testing Prohibition

Restricts the use and the results of polygraph testing.

These rights are fully explained in Guide to Judiciary Policy, Vol. 12, Ch. 2.

UNITED STATES COURTS

The Employment Dispute Resolution Formal Complaint Process

File a Complaint

File a complaint with an EDR coordinator within **180 days** of the conduct (or discovery of the conduct).

Gather Information

The Presiding Judicial Officer decides what investigation and discovery are needed and if written arguments are needed.

Hearing

The Presiding Judicial Officer determines if a hearing is needed.

DECISION

RIGHTS

- An impartial investigation and/or hearing, if appropriate.
- Both parties may use an attorney (at own expense).
- Both parties may present witnesses and examine adverse witnesses.
- A prompt written decision by a Presiding Judicial Officer.
- Appeal.

APPEAL

Parties have the right to appeal to the circuit judicial council within 30 days of a decision.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

EMPLOYMENT DISPUTE RESOLUTION
APPENDIX 6 - NOTICE AND ACKNOWLEDGMENT OF RECEIPT

On July 27, 2020, the Board of Judges for the Northern District of Florida and on August 17, 2020, the Eleventh Circuit Judicial Council approved amendments to the Employment Dispute Resolution Plan ("EDR Plan") for the Northern District of Florida. This EDR Plan supersedes all previously adopted EDR and Equal Employment Opportunity Plans for the Northern District of Florida.

The EDR Plan has been posted on the court's internal website, http://www.flnd.circ11.dcn/, and external website, http://www.flnd.uscourts.gov/, but can also be obtained by using the specific links below.

Internal Website: EDR Plan
External Website: EDR Plan

As stated in the EDR Plan, each court unit is required to:

- provide notice to all employees of the Plan's amendment;
- provide instructions to all employees describing how the Plan can be obtained or accessed electronically; and
- maintain a written or electronic record of each employee's acknowledgment that the employee has been notified of the Plan or amendments thereto and has been provided with instructions describing how the Plan can be obtained or accessed electronically.

This Notice of Amendment and Acknowledgment of Receipt Form will serve as documentation of the above requirements.

ACKNOWLEDGMENT OF RECEIPT

I acknowledge that I have received notice of amendment to the EDR Plan for the Northern District of Florida and that I have been provided with instructions describing how the EDR Plan can be obtained or accessed electronically.

_____ _____
Signature of Employee Date

_____
Written or Typed Name of Employee