

U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT EMPLOYMENT DISPUTE RESOLUTION PLAN

I. INTRODUCTION

The federal judiciary is committed to 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 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 have a responsibility to promote workplace civility, prevent harassment or abusive conduct, and to 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).

This Plan applies to all judges, current and former employees (including all law clerks; chambers employees; paid and unpaid interns, externs, and other volunteers; and federal public defender employees), and applicants for employment who have been interviewed. 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.

II. WRONGFUL CONDUCT

- A.** This Plan prohibits wrongful conduct that occurs during the period of employment or the interview process (for an applicant). Wrongful conduct includes:
- discrimination;
 - sexual, racial, and other discriminatory harassment;
 - abusive conduct; and
 - retaliation (including retaliation as described in the Whistleblower Protection Provision in the Guide to Judiciary Policy, Vol. 12, § 220.10.20(c)).

Wrongful conduct can be verbal, non-verbal, physical, or non-physical.

Wrongful conduct also includes conduct that would violate the following employment laws and policy, as applied to the judiciary by Judicial Conference policy:

- Title VII, Civil Rights Act of 1964;
- Age Discrimination in Employment Act of 1967;
- Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973;
- Family and Medical Leave Act of 1993;
- Uniformed Services Employment and Reemployment Rights Act of 1994;
- Whistleblower Protection Provision (Guide, Vol. 12, § 220.10.20(c));
- Worker Adjustment and Retraining Notification Act;
- Occupational Safety and Health Act; and
- The Employee Polygraph Protection Act of 1988.

See Guide, Vol. 12, Ch. 2.

B. Discrimination is an adverse employment action that materially affects the terms, conditions, or privileges of employment (such as hiring, firing, failing to promote, or a significant change in benefits) based on the following protected categories: race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over),¹ or disability.

C. Discriminatory harassment occurs when a workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the employment and create an abusive working environment. Discriminatory harassment includes sexual harassment.

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

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 about physical appearance; or employment action affected by submission to, or rejection of, sexual advances.

D. Abusive conduct is a pattern of demonstrably egregious and hostile conduct *not* based on a protected category that unreasonably interferes with an employee's work and creates an abusive working environment. Abusive conduct is threatening, oppressive, or intimidating.

Abusive conduct does not include communications and actions reasonably related to performance management, including but not limited to: instruction, corrective

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.

criticism, and evaluation; performance improvement plans; duty assignments and changes to duty assignments; office organization; progressive discipline; and adverse action.

- E. Retaliation** is a materially adverse action taken against an employee for reporting wrongful conduct; for assisting in the defense of rights protected by this Plan; or for opposing wrongful conduct. Retaliation against a person who reveals or reports wrongful conduct is itself wrongful conduct.

III. REPORTING WRONGFUL CONDUCT

The judiciary encourages early reporting and action on wrongful conduct. Employees who experience, observe, or learn of reliable evidence of sexual, racial, or other discriminatory harassment or abusive conduct are strongly encouraged to take appropriate action, including reporting it to a supervisor, human resources professional, unit executive, Employment Dispute Resolution (EDR) Coordinator, chief judge, chief circuit judge, Workplace Relations Coordinator, or 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 address wrongful conduct as soon as possible and to provide multiple, flexible options for doing so. An employee is always free to address a conduct issue directly with the person who allegedly committed wrongful conduct or to contact a colleague, supervisor, unit executive, judge, chief judge, or other individual to discuss or address the situation. This Plan provides the following additional options, and employees may choose the option(s) that best fit their needs and comfort level.

- 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 Rights.** All options for resolution 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.

- 1. Confidentiality.** All individuals involved in the processes under this Plan must protect the confidentiality of the allegations of wrongful conduct. Information will be shared only to the extent necessary and only with those whose involvement is necessary to address the situation. An assurance of confidentiality must yield when there is reliable information of wrongful conduct that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity of the Judiciary.

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 must take appropriate action when they learn of reliable information of wrongful conduct, such as sexual, racial, or other discriminatory harassment, which 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 and the Presiding Judicial Officer must be impartial and may not act as an advocate for either party. The EDR Coordinator or Presiding Judicial Officer must recuse if he or she participated in, witnessed, or was otherwise involved with the conduct or employment action giving rise to the claim. Recusal of these individuals is also required if the matter creates an actual conflict or the appearance of a conflict.
- 3. Right to representation.** Both the employee and the employing office responsible for providing any remedy have the right to be represented by an attorney or other person of their choice at their own expense. Another employee may assist the employee or employing office if doing so will not constitute a conflict of interest or unduly interfere with his or her duties, as determined by the assisting employee's appointing officer.
- 4. Interim Relief.** An employee, including a law clerk or other chambers employee, who pursues any of the options under this Plan may request transfer, an alternative work arrangement, or administrative leave if the employee alleges egregious conduct by a supervisor, unit executive, or judge that makes it untenable to continue working for that person. Any such

request must be made to the unit executive or chief judge, as appropriate, to determine appropriate interim relief, if any, taking into consideration the impact on any employing office.

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 Section C. An employee may also file a complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364.

C. Specific Options

1. **Informal Advice.** An employee may contact an EDR Coordinator, a Workplace Relations Coordinator, 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;
 - conducting a preliminary investigation, including interviewing persons alleged to have violated rights under this Plan and witnesses to the conduct;
 - engaging in voluntary mediation between the persons involved; and/or
 - resolving the matter by agreement.
 - a. To pursue this option, an employee must contact the EDR Coordinator and complete a Request for Assisted Resolution form (Appendix 2). An employee asserting any claim of abusive conduct must first use assisted resolution before filing a formal complaint. Filing a Request for Assisted Resolution form does not 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 must be notified and will be responsible for coordinating any assisted resolution actions and/or taking any other action required or appropriate under the circumstances. See Rules for Judicial-Conduct and Judicial-Disability Proceedings.

c. If the allegations concern the conduct of an employee, the EDR Coordinator will coordinate assisted resolution and must notify the appropriate unit executive(s). The unit executive is responsible for 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 must notify the Chief Judge, who is responsible for assessing the allegation(s) and addressing the matter as appropriate.

d. The unit executive or Chief Judge 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.

f. The parties by mutual assent or the EDR Coordinator in his or her discretion will determine when to conclude the assisted resolution process. If assisted resolution is not successful in resolving the matter, the EDR Coordinator will advise 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 with the Court's EDR Coordinator to address a claim of wrongful conduct.

a. To file a complaint, an employee must submit a Formal Complaint form (Appendix 3) to the Court's EDR Coordinator 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 extend this 180-day

deadline unless the Chief Judge 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 the assisted resolution process 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 Judge (or the next most-senior active judge if the Chief Judge is the subject of the complaint) who will oversee the EDR complaint process.

If a judge becomes the subject of both a complaint under this Plan and a complaint under the Judicial Conduct and Disability Act, the Chief Circuit Judge 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 the need for any necessary or appropriate interim relief.

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 who will appoint a Presiding Judicial Officer. The Presiding Judicial Officer will 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).

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 (the 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 the nature and substance of the complaint allegations.

The Presiding Judicial Officer will provide for appropriate investigation and discovery, allow for settlement discussions, determine any written submissions to be provided by the parties, determine if a hearing is needed, determine the time, date, and place of the hearing, issue a written decision, and, if warranted, order remedies.

iii. **Disqualification and Replacement.** Either party may seek disqualification of the EDR Coordinator or the Presiding Judicial Officer by written request to the Chief Judge explaining why the individual should be disqualified.

If the Presiding Judicial Officer is disqualified, the Chief Judge 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).

iv. **Response.** The respondent 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 the complainant.

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. 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 complainant and respondent 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. **Case preparation.** The complainant may use official time to prepare his or her case, so long as it does not unduly interfere with the performance of duties.

vii. **Extensions of time.** Any request for an extension of time must be in writing. The Presiding Judicial Officer may extend any of the deadlines set forth in this EDR Plan for good cause, except for the deadline to issue a written decision, which may only be extended by the Chief Judge.

viii. **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.

ix. **Notice of Written Decision.** The EDR Coordinator or Presiding Judicial Officer will immediately send a copy of the written decision to the parties, the Chief Judge, 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 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 and issue a written decision 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 either 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 filing of the complaint 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.** The complainant and respondent have the right to present witnesses and documentary evidence and to examine adverse witnesses.

iv. **Record of Proceedings.** A verbatim record of the hearing must be made and will be the official record of the proceeding. This may be a digital recording or a transcript.

v. **Written Decision.** The Presiding Judicial Officer will make findings of fact and conclusions of law and issue a written decision no later than **60 days** after the conclusion of the hearing, unless an extension for good cause is granted by the Chief Judge.

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 take into consideration the impact on the employing office. The Chief Judge and employing office must take appropriate action to carry out the remedies ordered in the written decision, subject to any applicable policies or procedures.

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 satisfied²;
- 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.³

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.

i. **Review of Decision (Appeal).** The complainant and/or the respondent may appeal the final decision of the Presiding Judicial Officer to the Circuit Judicial Council. A written Request for Review of Decision (Request for Review) must be submitted to the Circuit Executive, as Secretary of the Council, within **30 days** of the date of the decision (Appendix 4). The EDR Coordinator will inform the parties of the procedures for seeking review. If the Request for Review is incomplete or unclear, the Circuit Executive will give the person requesting review **10 days** to correct any deficiencies. The Circuit Executive will contact the appropriate EDR Coordinator to get a copy of the complete written record of the case.

² **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.

³ 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.

The Council will review an appeal of a final decision issued by a Presiding Judicial Officer. If a member of the Council served as the Presiding Judicial Officer, that judge will be disqualified and will not participate in the review of the final decision. Within **45 days** of receiving the Request for Review and a copy of the complete written record of the case, the Council will conduct a review and issue a written decision. In addition to reviewing the written record, the Council may request additional information from the parties if the written record appears to be incomplete. The final decision of the Presiding Judicial Officer will be affirmed if supported by substantial evidence and the proper application of legal principles. The Circuit Chief Judge may extend the period of review for an additional **30 days** for good cause. Decisions of the Council are final and are not reviewable.

V. 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, the Court and employing offices must adhere to the following:

- A. **Adopt and Implement an EDR Plan.** All courts must adopt and implement an EDR Plan based on the Model EDR Plan. Courts may join with others to adopt consolidated EDR Plans. Any modification of the Model EDR Plan (1) may expand, but should not diminish or curtail, any of the rights or remedies afforded employees under the Model EDR Plan, and (2) must be approved by the Circuit Judicial Council if substantive changes are made. A copy of each EDR Plan and any subsequent modifications must be submitted to 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 file except as necessary to implement an official personnel action.

Final decisions under this Plan will be made available to the public free of charge upon written request to the EDR Coordinator or the Circuit Executive. The EDR Coordinator will provide a copy of the Presiding Judicial Officer's final decision if an appeal is not filed. The Circuit Executive will provide a copy of the Council's decision if an appeal is filed. Individual names and other identifying information will be removed before the Presiding Judicial Officer's final decision or the Council's decision is released to the public.

- C. **EDR Coordinators.** The Chief Judge will designate two EDR Coordinators. 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 set forth in the EDR Interpretive Guide and Handbook.

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

1. **Prominently post** on their internal and external 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 the EDR Coordinators, the Workplace Relations Coordinators, 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 this EDR Plan by contacting any of the EDR Coordinators and/or the national Office of Judicial Integrity; (c) identifies the names and contact information of the EDR Coordinators, the Workplace Relations Coordinators, and the national Office of Judicial Integrity; and (d) states where the EDR Plan can be found on the Court’s websites.

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

4. conduct training annually for all judges and employees, including chambers staff, to ensure they are aware of the rights and obligations under the EDR Plan and the options available for reporting wrongful conduct and seeking relief.

E. Reporting. Courts and employing offices will provide annually to the Administrative Office 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 process; (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.

F. Appendices

1. Definitions
2. Request for Assisted Resolution
3. Formal Complaint Form
4. Request for Review of Decision Sample Form
5. Posters

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

Effective date: December 31, 2019

APPENDIX 1

DEFINITIONS

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 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.

EDR Coordinator: A court employee, other than a judge or unit executive, designated by the Chief Judge to coordinate all of the options for resolution provided for in this Plan. The EDR Coordinator provides confidential advice and guidance (See § IV.B.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 trains and advises employees of their rights under this Plan. Additional information on the EDR Coordinator's responsibilities may be found in the EDR Interpretive Guide and Handbook.

Employee: All employees of a Court. This 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.

Employing Office/Respondent: The office of the Court, or federal public defender's office, that is responsible for providing any appropriate remedy. The Court is the employing office for judges and chambers employees.

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 that provides 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 the JNet and on uscourts.gov.

Parties: The employing office and the employee who has filed a request for assisted resolution or a formal complaint.

Protected Category: Race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over),⁴ or disability.

Unit Executive: 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 circuit mediator, or circuit librarian.

Workplace Relations Coordinators: Circuit employees who coordinate workplace conduct activities in the circuit. In the D.C. Circuit, they provide employees with an alternative informal venue to obtain advice and to make complaints about workplace misconduct. They also provide informal advice about the rights and protections afforded under the EDR Plan, the Judicial Conduct and Disability Act, and any other circuit processes. The Workplace Relations Coordinators train employees serving on the Employee Sounding Board and former law clerks serving on the Law Clerk Advisory Group. They also facilitate annual workplace conduct training for judges and court employees.

⁴ 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.

APPENDIX 2

**U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT
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

Name of Person Requesting Assisted Resolution_____

Address_____

Phone Numbers_____

Email Addresses_____

Employing Office_____

Job Title_____

Date of Interview (for applicants interviewed but not hired)_____

Date(s) on which the alleged incident(s) took place_____

Summary of the actions or incidents for which you seek Assisted Resolution (attach additional pages if needed)_____

Names and contact information of any witnesses to the actions or incidents for which you seek Assisted Resolution (attach additional pages if needed)_____

Describe the assistance or corrective action you would like to have (attach additional pages if needed)_____

Identify the alleged wrongful conduct you experienced (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)

If you have an attorney or another person who represents you, provide the name, address, phone numbers, and email addresses_____

I acknowledge that this Request for Assisted Resolution 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).

Signature _____

Date _____

Date Reviewed by EDR Coordinator _____

EDR Coordinator Name _____

EDR Coordinator Signature _____

Court Claim ID (CADC-AR-YY-Number) _____

APPENDIX 3

**U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT
FORMAL COMPLAINT FORM**

Name of Person Filing a Complaint (Complainant)_____

Address_____

Phone Numbers_____

Email Addresses_____

Employing Office_____

Job Title_____

Date of Interview (for applicants interviewed but not hired)_____

Date(s) on which the alleged incident(s) took place_____

Summary of the actions or incidents for which you are filing a Complaint (attach additional pages if needed)_____

Describe the remedy or corrective action you would like to have (attach additional pages if needed)_____

Identify, and provide contact information for, any persons who were involved in this matter, who were witnesses to the actions or incidents, or who can provide relevant information concerning the Complaint (attach additional pages if 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. 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)

If you have an attorney or another person who represents you, provide the name, address, phone numbers, and email addresses_____

- I have attached copies of any documents that relate to my Complaint (such as emails, notices of discipline or termination, memos, 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:

Signature_____

Date_____

Date Reviewed by EDR Coordinator_____

EDR Coordinator Name_____

EDR Coordinator Signature_____

Court Claim ID (CADC-FC-YY-Number)_____

APPENDIX 4

**U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT
REQUEST FOR REVIEW OF DECISION (APPEAL)**

This form (or any written request including the information requested in this form) may be used when submitting a Request for Review of the Presiding Judicial Officer's final decision. A Request for Review must be made within 30 days of the date of the final decision. The Circuit Judicial Council will review the Presiding Judicial Officer's final decision.

Name _____

Address _____

Phone Numbers _____

Email Addresses _____

Name of Presiding Judicial Officer _____

Please attach a copy of the Presiding Judicial Officer's final decision and state the reason(s) you believe the decision was made in error. Attach additional pages if necessary.

Signature _____

Date _____

Submit your written Request for Review and a copy of the Presiding Judicial Officer's final decision to Betsy Paret, Circuit Executive, U.S. Courts of the D.C. Circuit, Room 4728, 333 Constitution Avenue, NW, Washington, DC 20001.

APPENDIX 5

**U.S. COURT OF APPEALS FOR THE D.C. CIRCUIT
POSTERS**

How to Address Wrongful Conduct in the Workplace

INFORMAL ADVICE

To request advice about a workplace concern, contact your Employment Dispute Resolution (EDR) coordinators, Workplace Relations Coordinators, 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 a Presiding Judicial Officer
- An investigation and/or hearing if appropriate
- Written decision
- Appeal rights



Contact Information:

Steven Gallagher, EDR Coordinator
Circuit Executive's Office
202-216-7341

Dina Gold, EDR Coordinator
Circuit Mediation Programs
202-216-7365

Carolyn Lerner, Workplace Relations Coordinator
Circuit Mediation Programs
202-216-7342

Robert Fisher, Workplace Relations Coordinator
Circuit Mediation Programs
202-216-7343

National Office of Judicial Integrity
Jill Langley, Judicial Integrity Officer
202-502-1604

AO_OJI@ao.uscourts.gov

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. See D.C. Circuit Confidentiality Policy [LINK]



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 the JNet.

Employees may confidentially report workplace discrimination, harassment, abusive behavior, or retaliation to an EDR Coordinator, Workplace Relations 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.

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 a representative or 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.