

**ELEVENTH CIRCUIT COURT OF APPEALS
EMPLOYMENT DISPUTE RESOLUTION PLAN**

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, fairness, tolerance, and dignity that is 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”) identifies specific types of wrongful conduct in the workplace that are actionable under the Plan, including discrimination and harassment based on a protected category, abusive conduct, and retaliation against an employee based on the employee’s exercise of protected conduct. The Plan provides options for the reporting and resolution of allegations of wrongful conduct. Early action is the best way to maintain a professional, respectful, and safe work environment. All judges, employing offices, and employees 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 former employees may seek relief under this Plan. The term “employee” includes law clerks; chambers employees; paid and unpaid interns, externs, and other volunteers; and federal public defender employees, as well as 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, outside investigators, service providers, community defender employees, volunteer mediators, and any person not identified above as an employee.

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, prior to the filing of a claim under this Plan, an employee may pursue a grievance under this court's Grievance Policy or a request for administrative review under this court's Adverse Action Plan. When a Formal Complaint and an Adverse Action claim are pending at the same time, the Presiding Judicial Officer shall determine whether one of these actions shall be stayed pending resolution of the other action. An employee, however, may not pursue both a claim under the Adverse Action Plan and a Request for Assisted Resolution.

The proceedings under this Plan do not establish individual liability for any person involved in the proceedings.

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. 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 that occurs during or arises out of 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.
- B.** Wrongful conduct includes conduct that would violate the following laws 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; Whistleblower Protection Provision; Uniformed Services Employment and Reemployment Rights Act of 1994; Worker Adjustment and Retraining Notification Act; Occupational Safety and Health Act; and Employee Polygraph Protection Act of 1988. *See Guide*, Vol. 12, Ch. 2. Wrongful conduct also includes abusive conduct, as that term is defined in Appendix 1.

- C.** In particular, as further defined in Appendix 1, wrongful conduct includes:
1. A discriminatory adverse employment action against an employee based on a protected category that is set out in the above-listed statutes or otherwise in this Plan;
 2. Harassment of an employee based on a protected category that is set out in the above statutes or otherwise in this Plan;
 3. Retaliation based on an employee’s exercise of rights under this Plan;
 4. Abusive conduct; and
 5. Actions that would violate the above statutes.
- D.** 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.
- E.** 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.
- F.** Each employee of the court is and will continue to be an “AT-WILL” employee, unless otherwise provided by law.

G. Special Provision Relating to Pregnancy and Leave. Notwithstanding the prohibition on discrimination based on pregnancy, any leave requested by an employee based on pregnancy is subject to the particular leave policy which is applicable to that employee.

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. In addition, supervisors, unit executives, and judges should take appropriate action when they learn of reliable information of wrongful conduct, which action may include informing the appropriate Chief Judge.

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 believe 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 the employee’s or alleged wrongdoer’s 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 Formal

Complaint, is a Request for 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 automatically extend the time period within which a Formal Complaint claiming wrongful conduct must be filed, and an employee may file a Formal 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 all parties.

1. **Confidentiality.** Court officials administering the processes covered by this Plan should protect the confidentiality of those processes to the greatest extent possible and should share information only to the extent necessary to determine the appropriate resolution of a 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. The EDR Coordinator should inform any employee seeking information concerning these EDR processes about the confidentiality provisions of the Plan.

Confidentiality obligations set out 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 by a judge, supervisor, or other person.

2. **Impartiality.** All investigations, hearings, and other processes under this Plan must be conducted in a thorough, fair, and impartial manner. Those administering the processes set out in this Plan must be impartial and may not act as an advocate for any party. The EDR Coordinator 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 or Presiding Judicial Officer 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 next most senior judge. Such written request shall specify why the individual should be disqualified.

If the Presiding Judicial Officer is disqualified, the individual empowered to make the disqualification decision will designate another judge to serve as Presiding Judicial Officer. If the Chief Judge is disqualified, or is unavailable to serve, the next most senior judge shall designate the Presiding Judicial Officer. If the EDR Coordinator is disqualified, the Chief Judge will appoint one of the court's other EDR Coordinators or an EDR Coordinator from another court (with the consent of the respective Chief Judge of that court). The Circuit Director of Workplace Relations can provide assistance in such a case.

3. **Right to Representation.** An individual invoking the dispute resolution procedures of this Plan or an individual who has allegedly engaged in wrongful conduct 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 who alleges 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 of their jobs. 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 and the general functions to which that time will be devoted. If the allegations of wrongful conduct are being made through the Assisted Resolution processes, this determination shall be made by the EDR Coordinator or Circuit Director of Workplace Relations overseeing Assisted Resolution. If the allegations of wrongful conduct are being made through 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 to

the claimant's allegations is not required to request permission to utilize duty hours for that purpose.

7. **Extensions of Time.** Prior to the appointment of a Presiding Judicial Officer, the Chief Judge of the court in which an employee dispute has arisen may extend any deadlines in this Plan for good cause. When a Complaint has been filed alleging wrongdoing by a judge, the Chief Circuit Judge may likewise extend deadlines prior to the appointment of a Presiding Judicial Officer. Once a Presiding Judicial Officer is appointed, the power to extend deadlines for good cause rests with that Officer. The Chief Circuit Judge has the authority to extend all deadlines in the Request for Review of Decision process. Deadlines can be extended *sua sponte* or after consideration of a written request submitted by a party.
8. **Dismissal of Claim.** At the request of any party, on the recommendation of the EDR Coordinator or Circuit Director of Workplace Relations, or on his or her own initiative, the Chief Judge or the Presiding Judicial Officer may at any time in the proceedings dismiss in writing a claim made in a Complaint 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 previously resolved Complaint, is frivolous, or fails to state a claim upon which relief may be granted.
9. **Records.** At the conclusion of proceedings under this Plan, all papers, files, transcripts, and reports will be filed with the court's primary EDR Coordinator, who will preserve the records as directed in the *Guide to Judiciary Policy*. No papers, files, transcripts, 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.**

a. Assisted Resolution is an interactive, flexible process that may include, for example:

- discussing the matter with the person whose behavior is of concern, with the assistance of the EDR Coordinator or the Circuit Director of Workplace Relations;
- 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.

b. To pursue this option, an employee must submit to any of their court's EDR Coordinators or to the Circuit Director of Workplace Relations completed "Request for Assisted Resolution" (Appendix 2) and "Contact Information" (Appendix 8) forms. **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 the Chief Judge or Presiding

Judicial Officer grants an extension of time for good cause, as permitted in § IV.C.3.a.

- c. If the allegations concern the conduct of a judge, the Chief Judge must be notified and will be responsible for coordinating any Assisted Resolution and/or taking any other action required or appropriate under the circumstances. If the allegations concern the conduct of a Chief Judge, the next most senior active judge 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.*
- d. If the allegations do not concern the conduct of a judge, the EDR Coordinator or Circuit Director of Workplace Relations will oversee Assisted Resolution and must notify the appropriate unit executive, who will represent the position of the employing office in the Assisted Resolution process, assess the allegation(s), and take appropriate steps to resolve the matter. The Chief Judge may designate a person other than the unit executive to represent the employing office if the Chief Judge deems that to be appropriate.
- e. The Chief Judge, EDR Coordinator, or Circuit Director of Workplace Relations responsible for overseeing Assisted Resolution, as indicated in (c) and (d) 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.
- f. If Assisted Resolution is successful in resolving the matter, the employee who sought Assisted Resolution and the employing

office will so acknowledge in writing. The documentation of the resolution must be signed by the employee, the employee's legal counsel, if any, and the member of the employing office who is authorized to resolve the matter on the employing office's behalf. 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.

- g.** By mutual assent, the employee who sought Assisted Resolution and the employing office may agree that the Assisted Resolution process should be concluded. Otherwise, the person overseeing the Assisted Resolution process, in his or her discretion, will determine when to conclude the Assisted Resolution process.
- h.** If, at the end of the Assisted Resolution process, the employee and the employing office have not resolved the employee's claim that forms the basis of the Request for Assisted Resolution, the person overseeing the Assisted Resolution process shall provide them 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.** *Form.* To file a Complaint, an employee must submit the "Formal Complaint" (Appendix 3) and "Contact Information" (Appendix 8) forms to any of their 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.** *Abusive Conduct.* An employee asserting any claim of abusive conduct must first utilize the Assisted Resolution process before filing a Formal Complaint.
- c.** *Complaints By Circuit Court, District Court, and Bankruptcy Court Employees Alleging Wrongful Conduct by a Non-Judge.* The employee filing the Complaint is called the Complainant. The Respondent is the employing office in which the complaining employee works (or has been interviewed for a position). The unit executive for that employing office will represent the office in the proceedings unless the Chief Judge deems it appropriate to designate a different person to do so.

The circuit court includes the following unit executives for their respective employing offices: the circuit executive, the clerk of court, the senior staff attorney, the circuit librarian, and the chief circuit mediator.

A judge is the unit executive for chambers staff.

- d.** *Complaints Alleging Wrongful Conduct by a Judge.*

A judge is considered to be the employing office for chambers staff and will be the Respondent in any Complaint by chambers staff. A Complaint from a non-chambers employee that accuses a judge of wrongful conduct must name as Respondents both the judge and the employing office of the non-chambers employee.

The EDR Coordinator must immediately provide a copy of a Complaint naming a judge as a Respondent to the judge, to the Chief Circuit Judge (or the next most-senior active circuit judge, if the allegation is against the Chief Circuit Judge), and

to the Circuit Director of Workplace Relations. If a district or magistrate judge is named as a Respondent in a Complaint, the EDR Coordinator must provide a copy of the Complaint to the Chief District Judge. If a bankruptcy judge is named as a Respondent, the EDR Coordinator must provide a copy of the Complaint to the Chief Bankruptcy 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 Chief Circuit Judge will determine the appropriate procedure for coordinating the adjudication of both complaints, which may include holding one claim in abeyance while adjudicating the other claim, 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. The Chief Circuit Judge should consider whether any interim relief is necessary.

e. *Complaints By Federal Public Defender and Bankruptcy Administrator Office Employees*

Federal public defenders and bankruptcy administrators are the unit executives for their respective employees, as well as the Respondents in any Complaint filed by an employee. Federal public defenders, bankruptcy administrators, and their employees are subject to the EDR Plan of the Eleventh Circuit, not the EDR Plan of the district in which they work.

4. Formal Complaint Procedures and Procedural Rights

- a.** *Appointment of Presiding Judicial Officer.* Upon receipt of a Complaint alleging wrongdoing by a non-judge, the EDR Coordinator will immediately send a copy of the Complaint to the Chief Judge of the court and to the Circuit Director of Workplace Relations. The Chief Judge of the court will appoint a judge from within the court at issue as the Presiding Judicial Officer or will request that the Chief Circuit Judge appoint a

judge from another court (with the consent of the respective Chief Judge of that court).

If a judge has been named as a Respondent in the Complaint, the Chief Circuit Judge shall determine which member of the Judicial Council, or other judicial officer, will act as the Presiding Judicial Officer.

- b.** *Disqualification and Replacement.* A party may seek disqualification of the EDR Coordinator or the Presiding Judicial Officer by following the procedure in § IV.B.2.
- c.** *Parties to the Complaint Proceeding.* The term “party” includes not only the Complainant, but also the employing office and any employee who has allegedly engaged in wrongful conduct against the Complainant. All parties have a right to reasonable notice of the charges and an opportunity to respond.
- d.** *Docket.* The EDR Coordinator shall maintain a docket of all proceedings after a Complaint has been filed and shall forward that docket to the Circuit Director of Workplace Relations each month.
- e.** *Response.* The Presiding Judicial Officer shall provide a copy of the Complaint to the employing office at issue. Unless the Chief Judge of the court has determined that another person should represent the employing office, it is the unit executive for the employing office who shall represent that office and who shall file a response to the Complaint with the EDR Coordinator within 30 days of receiving the Complaint.

The EDR Coordinator shall immediately send the employing office’s response to the Presiding Judicial Officer and to the Complainant.

f. *Notification To Employee Accused of Wrongful Conduct*

The Presiding Judicial Officer will review both the Complaint and the Respondent's Response to determine whether the Complaint alleges that a particular employee(s) other than the Respondent (as represented by the Unit Executive) engaged in wrongful conduct against the Complainant. If, based on that review, the Presiding Judicial Officer is uncertain whether the Complainant intends to accuse the employee(s) of wrongful conduct that would be cognizable under this Plan, the Presiding Judicial Officer may interview the Complainant in order to clarify the allegations. **Any interview must be transcribed.**

Following clarification, through interviews or otherwise, the Presiding Judicial Officer shall provide any employee accused of wrongful conduct with a copy of the Complaint and the Respondent's Response and shall inform the employee(s) of his or her right to respond and participate in the proceedings, if the employee chooses to do so. That response shall be filed by the employee accused of wrongful conduct within 30 days of the date the Complaint and Respondent's Response were sent, and the EDR Coordinator shall immediately send it to the Presiding Judicial Officer and to the other parties.

- g. *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 Presiding Judicial Officer will determine what evidence and written arguments, if any, are necessary for a fair and complete assessment of the allegations and response. The Presiding Judicial Officer will direct, to the extent appropriate, any or all of the following: investigation and discovery; interviews; settlement discussions; the filing of written submissions by the parties; and a hearing, if needed. Local funds must be used to pay for any expenses incurred during this process, but any expenditure of funds must be approved by the

appropriate Chief Judge. All interviews and any hearing must be transcribed.

- h.** *Written Decision.* At the conclusion of all proceedings deemed appropriate by the Presiding Judicial Officer, the latter shall issue a written decision, and, if warranted, order appropriate remedies. It is the goal of this Plan that all Complaints be thoroughly and fairly evaluated by the Presiding Judicial Officer. Arbitrary time limits for the adjudication of such Complaints are not consistent with that goal. Nevertheless, the Presiding Judicial Officer shall endeavor to expeditiously process and resolve the Complaint. Further, the EDR Coordinator shall maintain a docket of all proceedings after a Complaint has been filed and shall forward that docket to the Circuit Director of Workplace Relations each month.
- i.** *Established Precedent.* In reaching a decision, the Presiding Judicial Officer should be guided by Supreme Court and Eleventh Circuit precedent that interprets the statutory counterpart of the alleged wrongful conduct (*e.g.*, Title VII, Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Americans with Disabilities Act of 1990 and the Rehabilitation Act of 1973; the Family and Medical Leave Act of 1993; etc.). Although application of the Federal Rules of Evidence and federal procedural rules is not mandatory, those rules will likely provide sound guidance in most circumstances and a Presiding Judicial Officer is free to insist on compliance with them to the extent that compliance would not otherwise be at odds with provisions of the EDR Plan. The standard of proof for facts underlying all claims is a preponderance of the evidence standard, which requires proof that, more likely than not, a particular fact is true.
- j.** *Notice of Written Decision.* The EDR Coordinator or Presiding Judicial Officer shall distribute the written decision as required

under Appendix 6. The EDR Coordinator will inform the parties of appeal rights, procedures, and deadlines.

- 5. 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.
 - a.** 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 on other appropriate grounds. Prior to doing so, the Presiding Judicial Officer must notify the parties and give the Complainant an opportunity to show cause why the Complaint should not be dismissed; the Respondent shall be given an opportunity to respond and the Complainant to reply.
 - b.** After completion of investigation and discovery, as well as the transcription of any interviews, the Presiding Judicial Officer may, on his or her own initiative or at the request of a party, issue a proposed written decision if the Presiding Judicial Officer determines that there is no genuine dispute as to any material fact and that, based on the undisputed facts, either the Complainant or the Respondent is entitled to judgment as a matter of law without the need for a hearing. The non-prevailing party shall be given 30 days to respond to the proposed decision. The prevailing party shall be given 30 days to reply to that response; the non-prevailing party shall be given 14 days to file a reply.
 - c.** Upon the written approval of the Presiding Judicial Officer and the Chief Judge, the parties may enter into a written settlement. The Chief Judge must approve in writing any settlement that

calls for the expenditure of any funds from the court's budget (decentralized funds) or from the Administrative Office's budget (centralized funds).

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

- a. *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.
- b. *Right to Present Evidence.* All parties have the right to legal representation, to present evidence, and to examine and cross-examine witnesses. Prior to the hearing, the parties shall be provided with transcriptions of all interviews.
- c. *Record of Proceedings.* A verbatim written record of the hearing must be made.
- d. *Written Decision.* Following a transcription of all hearing and interview testimony, the Complainant shall be given 30 days to file a pleading setting out the reasons why the Complainant should prevail and receive relief. The employing office and any other party shall be given 30 days to respond to that pleading, and the Complainant shall be given 14 days to reply. Thereafter, the Presiding Judicial Officer shall issue a written final decision that will include findings of fact and conclusions of law. The final decision shall be distributed as described in Appendix 6. The EDR Coordinator shall inform the parties of appeal rights, procedures, and deadlines.

7. Remedies.

- a. When the Presiding Judicial Officer finds that the Complainant has established by a preponderance of the evidence that the

employing office has engaged in wrongful conduct against the Complainant, 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.

- b.** 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.
- c.** 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. The Chief Judge must approve in writing 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).

 - 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.

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, in accordance with any applicable policies and procedures, whether further action 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 alleging a procedural or substantive error may seek review of a Presiding Judicial Officer’s final decision, as set out below. The standard governing a substantive review of the Presiding Judicial Officer’s decision is whether the decision has properly applied legal principles and is supported by substantial evidence.
- B. Record.** The EDR Coordinator shall be responsible for submitting the complete record of the proceeding to the Circuit Executive for use by the Judicial Council.
- C. Time, place, and manner of filing a Request for Review of Decision and Response.** Within 30 days of the date of the letter transmitting the final decision of the Presiding Judicial Officer, a party who seeks to appeal the decision may file with the Judicial Council a completed Request for Review of Decision form (Appendix 4), as well as a completed “Contact Information” form (Appendix 8). These forms may be served by an email sent to the EDR Coordinator and the Circuit Director of Workplace Relations. If the party seeking review instead mails the Request for Review, the forms must be received within 30 days of the letter transmitting the final decision. The Chief Circuit Judge or the latter’s designee may grant an extension of time for good cause.
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 Presiding Judicial Officer and to any party who participated in the proceedings below.
 2. Receipt of Request for Review of Decision that is not in proper form or is 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 refile the corrected Request for Review with the Circuit

Executive within 14 days of the date the Request was returned. Failure to file a compliant form within the required period of time will result in dismissal of the Request for Review of Decision, absent a showing of good cause for the failure, as determined by the Chief Circuit Judge.

b. A Request for Review that is not filed with the Circuit Executive within the above-described 30-day deadline may be considered only upon a showing of good cause for the delay, as determined by the Chief Circuit Judge.

3. Other parties shall be allowed 30 days to respond to the Request for Review, and the filer of the Request shall be allowed 14 days to reply to any response. Extensions may be granted by the Chief Circuit Judge or the latter's designee. A response or reply may be filed by emailing the same to the EDR Coordinator and the Circuit Director of Workplace Relations or by mail. If sent by mail, the pleading must be received by the deadline.

D. Evidence. Evidence that was not before the Presiding Judicial Officer will not be considered.

E. Review of Presiding Judicial Officer's Written Decision.

1. Once the time for responses and replies has expired, and the Circuit Director of Workplace Relations has determined that the complete record, including hearing and interview transcripts, has been submitted, 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 final decision of the Presiding Judicial Officer; (4) the Request for Review, and (5) any response and reply.

2. Neither the Presiding Judicial Officer nor any party should communicate with any member of the EEO Committee or the Judicial Council about the pending matter.

3. The Judicial Council EEO Committee shall consider the entire record and recommend to the Judicial Council whether the decision made by the Presiding Judicial Officer below should be affirmed.
4. A complained-of judge, the Presiding Judicial Officer who entered the decision that determined the matter which is under review by the Council, and the Chief District Judge from the district in which the Complaint arose are disqualified from participating in deliberations or decisions by the Judicial Council.
5. The Circuit Executive shall transmit to all Judicial Council non-disqualified members the Committee's recommendation along with a ballot that asks (a) whether the Judicial Council member recuses himself or herself from participating in the consideration of the Request, (b) whether the decision of the Presiding Judicial Officer below should be affirmed or reversed, or (c) whether the Judicial Council should discuss the Request for Review. A member's ballot should be submitted within 21 days of transmittal of the EEO Committee's recommendation.
6. A non-disqualified member of the Council who votes to discuss the Request shall submit a memo indicating why the judge believes discussion would be helpful. Any other member who wishes to discuss the matter shall do so via memorandum within 14 days thereafter. Following the final submission on the matter, the Judicial Council will be re-pollled.

F. Decision by Judicial Council.

1. The Judicial Council may enter an order (a) affirming the Presiding Judicial Officer's decision; (b) reversing that decision; (c) remanding for further investigation or findings; or (d) directing additional corrective action, including remedies set forth in § IV.C.7. 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 the conclusions reached by the Judicial Council. The order shall be accompanied by any separate or dissenting statements by members of the Council.
3. The Circuit Director of Workplace Relations shall distribute the final decision as described in Appendix 6 and shall inform the parties that the Council's decision is final.
4. The Circuit Executive shall transmit a copy of the order to the Chief Circuit Judge and maintain a summary record that clearly identifies the nature of the proceeding and the disposition reached.

G. Withdrawal of Request for Review. A party may withdraw a Request for Review at any time before the Judicial Council acts on the Request; thereafter, the Request may be withdrawn only with the approval of the Judicial Council.

H. 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 this 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 this 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 non-substantive modifications. 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 primary EDR Coordinator, who will preserve the records as directed in the *Guide to Judiciary Policy*. 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 the procedures established in Appendix 6 of the Eleventh Circuit Judicial Council Model EDR Plan.
- D. EDR Coordinators.** The Chief Judge of the court will designate both a primary EDR Coordinator and at least one alternate EDR Coordinator for the court. The Chief Judge of the court may reassign an EDR matter claim to a non-disqualified EDR Coordinator if he or she deems that appropriate under the circumstances, or may utilize an EDR Coordinator from another court, with the approval of the appropriate Chief Judge.

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 EDR Coordinators 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. reporting to the Administrative Office of the United States Courts the information listed in § VI.F.;

5. recommending to the court modifications to this Plan and suggestions for improvement in implementation; and
6. Sending to the Chief Judge of the court for information purposes a copy of any Appendix 2, 3, or 4 form that comes into his or her possession.

The persons serving as EDR Coordinators on the effective date of this Plan shall automatically become the initial EDR Coordinators 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, the Circuit Director of Workplace Relations, and the national Office of Judicial Integrity.
2. **prominently display** in every employing office:
 - the posters set forth in Appendix 5; and
 - an Anti-Discrimination and Anti-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 for all judges, chambers staff, and employees who have not previously received training, as well as conduct annual training for all judges, chambers staff, and employees 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. Moreover, the Chief Judge can offer or require additional training when he or she believes that to be prudent. The Circuit Director of Workplace Relations will advise all chief judges and all EDR Coordinators of training opportunities provided by the Administrative Office of the United States Courts on topics concerning EDR matters, sound management practices, and civility in the workplace.

F. 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. Courts shall submit other reports as requested by the Circuit Director of Workplace Relations.

G. Appendices Attached:

1. Definitions
2. Request for Assisted Resolution Form
3. Formal Complaint Form
4. Request for Review of Decision (Appeal) Form
5. Posters
6. Procedures for Public Disclosure of a Final Decision Resolving an EDR Complaint
7. Special Procedures for Federal Public Defender Organization Staff Members
8. Contact Information Form

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

Effective date: 20 February 2025