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 Policy 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 Policy. *See* Code of Conduct for Judicial Employees, Canon 3(C).

This Policy applies to all Judges, current and former Employees (including all law clerks; chambers employees; paid and unpaid interns, externs, and other volunteers; and probation and pretrial services employees), and applicants for employment.[1] The following persons cannot seek relief under this Policy: Judges, applicants for judicial appointment, federal public defender employees, Criminal Justice Act panel attorneys and applicants, investigators and service providers, community defender employees, volunteer mediators, and any other non-Employees not specified above. *See* Appendix 1 for full definitions of Judges and Employees. This Policy covers conduct and actions that take place on and off work premises.

[1] Employees of courts within the Ninth Circuit, which have had an EDR Policy specific to their court approved by the Judicial Council of the Ninth Circuit on or after October 22, 2020, are subject to the applicable local court EDR Policy rather than this Ninth Circuit Policy.

II. WRONGFUL CONDUCT

A. **This Policy** prohibits wrongful conduct that occurs during the period of employment or the application process.[2] Wrongful conduct includes:

- Discrimination;
- sexual, racial, and other discriminatory harassment;
- abusive conduct; and
- retaliation (including retaliation as described in the Whistleblower Protection Provision in *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.

[2] The rights and protections of Chapter 1 of the EEO Policy (Appendix 6) shall apply to Employees.

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, gender expression, marital status, pregnancy, parenthood or caregiver status,[3] sexual orientation, religion, creed, ancestry, national origin, citizenship, genetic information, age (40 years and over),[4] disability, or service in the uniformed forces.

C. **Discriminatory harassment** occurs when a person covered by this Policy is subject to discriminatory[5] 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. Sexual harassment is a form of harassment based on sex or gender.

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,

[3] A "caregiver" is a person who provides direct care to a spouse, domestic partner, child (biological, adoptive, step, or foster child, a legal ward, or child to whom the employee stands *in loco parentis*), parent, sibling, grandparent, or grandchild.
[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.
[5] "Discriminatory" means based on the following Protected Categories: race, color, sex, gender, gender identity, gender expression, marital status, pregnancy, parenthood or caregiver status, sexual orientation, religion, creed, ancestry, national origin, citizenship, genetic information, age (40 years and over), disability, or service in the uniformed forces.

or rejection of, sexual advances.

D. **Abusive Conduct** is ordinarily 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 conveyed in a respectful manner and reasonably related to performance management, including but not limited to: instruction, corrective 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 Policy; 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,[6] Chief Judge, Chief Circuit Judge, the Office 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.

[6] A staff member of the Office of Workplace Relations may function as an EDR Coordinator to provide all the Options for Resolution (*see* Appendix 1).

Supervisors, Unit Executives, and Judges must take appropriate action when they learn of reliable information of wrongful conduct, which may include informing the appropriate Chief Judge.

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 Policy provides the following additional options, and Employees may choose the option(s) that best fit their needs and comfort level.

A. Policy Options. This Policy 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 Policy 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.

No person in the role of EDR Coordinator, the Office of Workplace Relations, or the Office of Judicial Integrity shall be compelled to disclose any conversations, testify, or provide information obtained through Informal Advice except as described in § IV.B.1.

Any persons or Party involved in mediation or settlement discussion under §§ IV.C.2. or IV.C.3.f.iii. of this Policy shall not disclose any information or records obtained during the mediation or settlement process except as necessary to consult with the Party or Parties involved. Records made of mediation discussions, including notes and documents provided in preparation for mediation, are strictly confidential and will not be filed with the EDR Coordinator, Office of Workplace Relations, or Office of Judicial Integrity (*see* § V.B.).

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.

2. **Impartiality.** All investigations, hearings, and other processes under this Policy must be conducted in a fair and impartial manner. The EDR Coordinator, the Office of Workplace Relations, and the Presiding Judicial Officer must be impartial and may not act as an advocate for either Party. The EDR Coordinator, staff member of the Office of Workplace Relations, or Presiding Judicial Officer must recuse if they participated in, witnessed, or were 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 the Employee's 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 Policy 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, the Office 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 Policy, the Judicial

Conduct and Disability Act, and any other processes;

- providing perspective on conduct described, including whether it violates the Policy;
- 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 Policy, 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 Policy 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 an EDR Coordinator or the Office of Workplace Relations and complete a "Request for Assisted Resolution" (Appendix 2).[7] An Employee asserting any claim of abusive conduct is strongly encouraged to use Assisted Resolution before filing a Formal Complaint, but is not required to do so. Filing a Request for

[7] When an Employee completes a Request for Assisted Resolution form and chooses to use a local EDR Coordinator to facilitate resolution, the local EDR Coordinator must notify the Office of Workplace Relations of the request. The Office of Workplace Relations may serve as a resource for the EDR Coordinator to facilitate resolution at the EDR Coordinator's request.

When an Employee completes a Request for Assisted Resolution form and chooses to use the Office of Workplace Relations to facilitate the resolution, the Office of Workplace Relations may notify the local EDR Coordinator when appropriate or upon request of the Employee.

Assisted Resolution does not toll (extend) the time for filing a Formal Complaint under § IV.C.3 unless one of the Parties requests, and the Chief Judge or Presiding Judicial Officer grants, an extension of time for good cause, as permitted in § IV.C.3.a.

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

c. If the allegations concern the conduct of an Employee, the EDR Coordinator or the Office of Workplace Relations 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 or the Office of Workplace Relations 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 they were to conclude it is frivolous; it does not allege violations of the rights or protections in this Policy; 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. If Assisted Resolution is not successful in resolving the matter, the EDR Coordinator or the Office of Workplace Relations will advise the Employee of the Employee's 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 or the Office of Workplace Relations to address a claim of wrongful conduct.[8]

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

b. An Employee asserting any claim of abusive conduct is strongly encouraged to use Assisted Resolution before filing a Formal Complaint but is not required to do so.

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.

[8] When an Employee files a Formal Complaint form with a local EDR Coordinator, the local EDR Coordinator must notify the Office of Workplace Relations of the Complaint. The Office of Workplace Relations may serve as a resource for the EDR Coordinator upon the EDR Coordinator's request.

When an Employee files a Formal Complaint form with the Office of Workplace Relations, the Office of Workplace Relations may notify the local EDR Coordinator when appropriate or upon request of the Employee.

d. **Complaint Regarding a Judge**. An Employee alleging that a Judge has engaged in wrongful conduct may file a Complaint under this Policy. For Complaints against Judges, the Presiding Judicial Officer is the Chief Circuit Judge or a designee. If the Chief Circuit Judge is the subject of the Complaint, the Circuit Judge who is next in precedence to become Chief Circuit Judge, pursuant to 28 U.S.C. § 45, shall designate an alternative Presiding Judicial Officer to oversee the hearing process. The EDR Coordinator must promptly provide a copy of the Complaint to the Chief Circuit Judge (or the next Circuit Judge in precedence to become Chief Circuit Judge, if the allegation is against the Chief Circuit Judge), who will oversee the EDR Complaint process. If a District, Magistrate, or Bankruptcy Judge is the subject of the Complaint, the EDR Coordinator must also provide a copy of the Complaint to the Chief Judge of the appropriate district or bankruptcy Court (unless the Chief District Judge or Chief Bankruptcy Judge is the subject of the Complaint, in which case the Complaint would not be given to that Judge).

If a Judge becomes the subject of both a Complaint under this Policy 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 Policy. 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 promptly send a copy of the Complaint to the Chief Judge of the Court, who will appoint a Presiding

Judicial Officer. The Presiding Judicial Officer will be either: (1) a Judge from another Court in the Circuit (with the consent of the respective Chief Judge of that Court), including from the Circuit Panel of Presiding Judicial Officers;[9] or, (2) when appropriate, a Judge of the Court from which the Complaint arises. In determining whether appointment of a Judge of the Court from which the Complaint arises is appropriate, the Chief Judge should consider input from the Complainant. In the event that no Presiding Judicial Officer who is without an actual or perceived conflict, or who otherwise wishes to recuse themselves in accordance with § IV.B.2., is available from the Circuit, the Chief Judge may appoint a Judge from another circuit.

ii. *Presiding Judicial Officer.* The Presiding Judicial Officer oversees the Complaint proceeding. The Presiding Judicial Officer will provide a copy of the Complaint to the head of the Employing Office against which the Complaint has been filed (Respondent), except when the Presiding Judicial Officer determines for good cause that the circumstances dictate otherwise. The Presiding Judicial Officer shall provide the individual alleged to have violated rights under this Policy written notice of the Complaint and the nature and substance of the allegations, unless the Presiding Judicial Officer determines, in writing, that extraordinary circumstances require temporary delay of such notice. Any delay shall be narrowly tailored.[10]

The Presiding Judicial Officer will provide for appropriate investigation and discovery, allow for settlement discussions,[11] and

[9] The Panel of Presiding Judicial Officers ("Panel") will consist of Court of Appeals, district, magistrate, and bankruptcy judges located throughout the Circuit, who will be available to serve as a Presiding Judicial Officer. All members of the Panel will be appointed by the Chief Circuit Judge.

[10] A determination by the Presiding Judicial Officer to not provide notice to the individual alleged to have violated rights under this Policy does not preclude the Respondent from sharing information with that person and/or taking appropriate action, subject to the confidentiality provisions set forth in Section IV.B.1.

[11] The Employing Office may request in writing a stay, or the Presiding Judicial Officer may on the Presiding Judicial Officer's own initiative stay a Formal Complaint proceeding up to 60 days (unless

determine any written submissions to be provided to 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.

An individual alleged to have violated rights under this Policy shall be afforded a reasonable opportunity to reply to the allegations prior to issuance of a written decision, except where the Complaint is resolved on procedural grounds unrelated to the merits.

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, pursuant to § IV.C.3.e.i.

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 or circuit (with the consent of the respective Chief Judge of that Court or circuit.).

If the Chief Judge recuses, the Judge who is next in precedence to become Chief Judge shall designate a Presiding Judicial Officer, pursuant to § IV.C.3.e.i.

extended for good cause), if the Employing Office asserts that there has been no prior opportunity to address the conduct alleged, or for purposes of engaging in settlement discussions or other forms of alternative dispute resolution. The Presiding Judicial Officer will determine whether to grant the stay after providing the Complainant an opportunity to respond. A stay in the proceedings can provide the Employing Office an opportunity to assess the allegations and take appropriate action. If the matter is successfully resolved, the Parties may enter into an agreed written settlement approved by the Presiding Judicial Officer pursuant to § IV.C.3.f.iii. If the matter is not resolved during the stay, the stay of proceedings will be lifted, and the Formal Complaint will proceed under § IV.C.3.

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 promptly 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 impartially and fairly investigated, and may use outside trained investigators if warranted. The investigation may include interviews with the Parties, persons alleged to have violated rights under this Policy, 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 their 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 Policy 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 promptly send a copy of the written decision to the Parties and the Chief Judge of the Court. The EDR Coordinator or Presiding Judicial Officer will send a copy of the written decision (with appropriate redactions as determined by the Presiding Judicial Officer) to any individual alleged to have violated rights protected by this Policy, if the Complaint was resolved after investigation or hearing, or if the Presiding Judicial Officer otherwise determines it is necessary. 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 Policy; 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. The Presiding Judicial Officer will issue a written decision within a reasonable amount of time, not to exceed 60 days after providing the Parties notice and opportunity to respond to the determination to resolve the matter without a hearing.

ii. After completion of investigation and discovery, the Presiding Judicial Officer may, on the Presiding Judicial Officer's 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. The Presiding Judicial Officer will issue a written decision within a reasonable amount of time, not to exceed 60 days after

providing the Parties notice and opportunity to respond to the determination to resolve the matter without a hearing.

iii. The Parties may enter into an agreed written settlement if approved in writing by the Presiding Judicial Officer, and by the Chief Judge if necessary.[12]

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 **90 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, subject to the discretion of the Presiding Judicial Officer.

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

[12] The Respondent must determine whether Chief Judge approval is necessary for the Respondent to agree to the settlement.

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 Policy 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 any Employing Office. The Chief Judge and Employing Office (Respondent) must take appropriate action to carry out the remedies ordered in the written decision, subject to any applicable policies or procedures.

If the Presiding Judicial Officer directs the Employing Office to provide remedies to the Complainant, within 30 days of the issued written decision, the Employing Office must provide to the Office of Workplace Relations a summary of what action was or will be taken to carry out the ordered remedies and must provide a summary at the conclusion of the imposed remedies. The Employing Office must provide status updates as requested by the Office of Workplace Relations.

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[13];
- 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.[14]

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 decision to the Judicial Council of the Ninth Circuit by submitting in writing a Petition for Review of Decision setting forth the grounds for appeal within **30 days** of the date of the decision under procedures established by the Judicial Council of the Ninth Circuit (Appendix 4). The EDR

[13] *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.

[14] 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.

Coordinator will inform the Parties of the procedures for seeking review. The decision will be reviewed based on the record created by the Presiding Judicial Officer and will be affirmed if supported by substantial evidence and the proper application of legal principles.

V. COURT AND EMPLOYING OFFICE OBLIGATIONS

To ensure that Employees are aware of the options provided by this Policy, and that the Policy is effectively implemented, Courts and Employing Offices must adhere to the following:

A. **Adopt and Implement EDR Policy.** All Courts must adopt and implement an EDR Policy based on this EDR Policy. Courts may join with others to adopt consolidated EDR Policies. Any modification of this EDR Policy (1) may expand, but should not diminish or curtail, any of the rights or remedies afforded Employees under this EDR Policy, and (2) must be approved by the Judicial Council of the Ninth Circuit. A copy of each EDR Policy and any subsequent modifications must be filed with the Administrative Office.

B. **Records.** At the conclusion of informal or formal proceedings under this Policy, all papers, files, and reports will be filed with the EDR Coordinator and the Office of Workplace Relations. 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.

Final decisions under this Policy will be made available to the public, appropriately redacted, in accordance with procedures established by the Judicial Council of the Ninth Circuit.

All EDR Formal Complaint Final Decisions shall be made available to the public, free of charge, upon written request to the Office of Workplace Relations. An EDR Final Decision is either the dispositive written decision of the Presiding Judicial Officer, if no Petition for Review of Decision was filed, or, if a Petition for Review of Decision was filed, the dispositive

decision of the Executive Committee of the Ninth Circuit Judicial Council. Before an EDR Final Decision is made public, individual names and other identifying information must be redacted.

C. EDR Coordinators. The Chief Judge will designate both a primary EDR Coordinator and, if available, at least one alternate EDR Coordinator for the Court.[15] A Court may use an EDR Coordinator from another Court, or may use the Office of Workplace Relations as an alternate EDR Coordinator, if necessary, with the approval of the appropriate Chief Judge. An Employee may choose the EDR Coordinator with whom the Employee wishes to seek Informal Advice, request Assisted Resolution, or file a Complaint under this EDR Policy.

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 main homepages a direct link labeled "Your Employee Rights and How to Report Wrongful Conduct," to:

   - the entire EDR Policy 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 the Court's EDR Coordinators (internal homepage only), the Office of Workplace Relations, and the national Office of Judicial Integrity.

[15] A team of EDR Coordinators or multiple EDR Coordinators would satisfy the requirement to designate a primary and alternate EDR Coordinator.

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, gender expression, marital status, pregnancy, parenthood or caregiver status, sexual orientation, religion, creed, ancestry, national origin, citizenship, genetic information, age (40 years and over), disability, or service in the uniformed forces is prohibited; (b) explains that Employees can report, resolve, and seek remedies for discrimination, harassment, or other wrongful conduct under the EDR Policy by contacting any of the Court's EDR Coordinators and/or the Office of Workplace Relations, and/or the national Office of Judicial Integrity; (c) identifies the names and contact information of all Court EDR Coordinators, the Office of Workplace Relations, and the national Office of Judicial Integrity; and (d) states where the EDR Policy can be located on the Court's website.

3. ensure that each new Employee receives an electronic or paper copy of the EDR Policy and acknowledge in writing that the Employee has read the Policy; and

4. conduct training annually for all Judges and Employees, including chambers staff, to ensure that they are aware of the rights and obligations under the EDR Policy and the options available for reporting wrongful conduct and seeking relief. The Chief Judge must ensure that all Judges, Unit Executives, and chambers staff have completed their annual training, and each Unit Executive must ensure that their respective employees have completed their annual training.

E. Reporting. Courts and Employing Offices will provide annually, to the

Administrative Office of the United States, 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 Policy or other complaint; (2) the number and type of alleged violations for which Complaints under this Policy were filed; (3) the resolution of each Complaint under this Policy (dismissed or settled prior to a decision, or decided with or without a hearing); and (4) the rights under this Policy 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.

Chief Judges and Unit Executives (or their designee) will provide annually, to the Office of Workplace Relations, confirmation of compliance with § V.D., including the links required by § V.D.1.

F. Appendices Attached:

1. Definitions
2. Request for Assisted Resolution
3. Formal Complaint Form
4. Procedures for Review of EDR Presiding Judicial Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit (Appeal)
5. Posters
6. Ninth Circuit Equal Employment Opportunity (EEO) Policy

This Policy supersedes all prior Equal Employment Opportunity and Employment Dispute Resolution Policies.

_____	_____
Honorable Amanda K. Brailsford Chief District Judge	Honorable Noah G. Hillen Chief Bankruptcy Judge
_____	_____
Date	Date

DEFINITIONS
APPENDIX 1

Court: The Court (Court 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 Policy is located. In the case of disputes involving probation and pretrial services, "Court" refers to the appropriate District Court.

EDR Coordinator: A Court Employee or staff member of the Office of Workplace Relations, other than a Judge or Unit Executive, designated by the Chief Judge to coordinate all of the Options for Resolution provided for in this Policy. 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 Policy 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 Policy. The EDR Coordinator assists the Court in meeting its obligations under this Policy to train and advise employees of their rights under this Policy, and to post the Policy as directed. 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; and 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 that is responsible for providing any appropriate remedy. The Court is the Employing Office of 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 an Act of Congress in a territory that is invested with any jurisdiction of a district court of the United States.

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

Office of Workplace Relations: The Office of Workplace Relations serves the Ninth Circuit and includes the Director of Workplace Relations. The Office coordinates workplace conduct issues and the implementation of all Court EDR Policies within the circuit. The scope of duties generally may include: provide Informal Advice, coordinate Assisted Resolution, and assist with the Formal Complaint process under any EDR Policy within the circuit; assist in training the EDR Coordinators within the circuit; provide or arrange for training throughout the circuit on workplace conduct, discrimination, and sexual harassment; and collect and analyze statistical data and other information relevant to workplace conduct matters. A staff member of the Office of Workplace Relations may function as an EDR Coordinator and provide all Options for Resolution for Employees.

Panel of Presiding Judicial Officers: The Panel of Presiding Judicial Officers ("Panel") will consist of Court of Appeals, district, magistrate, and bankruptcy judges throughout the Circuit. A Chief Judge will appoint a Panel member judge to oversee the Formal Complaint process. All appointments of member judges are made by the Chief Circuit Judge, and composition and term lengths are at the discretion of the Chief Circuit Judge.

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, gender expression, marital status, pregnancy, parenthood or caregiver status, sexual orientation, religion, creed, ancestry, national origin, citizenship, genetic information, age (40 years and over),[16] disability, or service in the uniformed forces.

Unit Executive: Circuit Executive, district court executive, clerk of court, chief probation officer, chief pretrial services officer, bankruptcy administrator, bankruptcy appellate panel clerk, senior staff attorney, chief circuit mediator, or circuit librarian.

[16] 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.

REQUEST FOR ASSISTED RESOLUTION
APPENDIX 2

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

Submitted under the Procedures of the Ninth Circuit Employment Dispute Resolution Policy

Court: _____

Full name of person submitting the form: _____

Your mailing address:

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

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

Your job title/job title applied for: _____

Date of interview (*for interviewed applicants only*): _____

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

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

Names and contact information of witnesses to the actions or occurrences for which you seek Assisted Resolution:
Describe the assistance or corrective action you seek:

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

☐ Discrimination based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Gender expression
- ☐ Marital status
- ☐ Pregnancy
- ☐ Parenthood
- ☐ Caregiver
- ☐ Sexual orientation
- ☐ Religion
- ☐ Creed
- ☐ Ancestry
- ☐ National origin
- ☐ Citizenship
- ☐ Genetic information
- ☐ Age
- ☐ Disability
- ☐ Service in the uniformed forces

☐ Harassment based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Gender expression
- ☐ Marital status
- ☐ Pregnancy
- ☐ Parenthood
- ☐ Caregiver
- ☐ Sexual orientation
- ☐ Religion
- ☐ Creed
- ☐ Ancestry
- ☐ National origin
- ☐ Citizenship
- ☐ Genetic information
- ☐ Age
- ☐ Disability
- ☐ Service in the uniformed forces

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

Protection ☐ Other (describe)

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

☐ Yes

☐ No

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

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

Your signature _____

Date submitted: _____

Request for Assisted Resolution reviewed by EDR Coordinator/Director of Workplace Relations on _____

EDR Coordinator/Director of Workplace Relations name _____

EDR Coordinator/Director of Workplace Relations signature _____

FORMAL COMPLAINT FORM
APPENDIX 3

Submitted under the Procedures of the Ninth Circuit Employment Dispute Resolution Policy

Court: _____

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

Your mailing address: _____

Your email address: _____

Your phone number(s): _____

Office in which you are employed or applied to: _____

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

Your job title/job title applied for: _____

Date of interview (*for interviewed applicants only*): _____

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

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

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

Identify, and provide contact information for, any persons who were involved in this matter, who were witnesses to the actions or occurrences, or who can provide

relevant information concerning the Complaint (*attach additional pages as needed*):

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

☐ Discrimination based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Gender expression
- ☐ Marital status
- ☐ Pregnancy
- ☐ Parenthood
- ☐ Caregiver
- ☐ Sexual orientation
- ☐ Religion
- ☐ Creed
- ☐ Ancestry
- ☐ National origin
- ☐ Citizenship
- ☐ Genetic information
- ☐ Age
- ☐ Disability
- ☐ Service in the uniformed forces

☐ Harassment based on (*check all that apply*):
- ☐ Race
- ☐ Color
- ☐ Sex
- ☐ Gender
- ☐ Gender identity
- ☐ Gender expression
- ☐ Marital status
- ☐ Pregnancy
- ☐ Parenthood
- ☐ Caregiver
- ☐ Sexual orientation
- ☐ Religion
- ☐ Creed
- ☐ Ancestry
- ☐ National origin
- ☐ Citizenship
- ☐ Genetic information
- ☐ Age
- ☐ Disability
- ☐ Service in the uniformed forces

☐ 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)

Date on which Assisted Resolution was requested: _____

Date on which Assisted Resolution concluded: _____

Do you have an attorney who represents you?

☐ Yes

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

☐ No

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

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

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

Complainant signature _____

Date submitted _____

Complaint reviewed by EDR Coordinator/Director of Workplace Relations on _____

EDR Coordinator/Director of Workplace Relations name _____
EDR Coordinator/Director of Workplace Relations signature_____

PROCEDURES FOR REVIEW OF EDR PRESIDING JUDICIAL OFFICER DECISION BY THE EXECUTIVE COMMITTEE OF THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT (APPEAL) APPENDIX 4

I. Scope of the Rules

These rules govern procedures for petitioning for review a decision, or summary dismissal of a Ninth Circuit Employment Dispute Resolution Policy Complaint rendered by a Presiding Judicial Officer (*see* § IV.C.3.e.ii). Such review is conducted by the Executive Committee of the Judicial Council of the Ninth Circuit ("Executive Committee").

II. Filing Petition for Review

A. Filing the Petition for Review. A Party aggrieved by the final decision of the Presiding Judicial Officer or by summary dismissal of a Complaint, may petition for review of that decision or summary dismissal by filing a Petition for Review ("Petition") to which is attached a copy of the decision of the Presiding Judicial Officer (or copy of the summary dismissal).

B. Form of Petition and Supporting Arguments. The Petition shall be in accordance with Form 1, which follows these procedures. Included in the Petition or as an attachment to the Petition shall be a statement, not to exceed 10 pages in length (8 ½ x 11 white paper, double-spaced, singled-sided) setting forth the basis for the Petition and all arguments and information supporting the petition. The Petition must be filed with the Executive Committee in a timely manner as set forth in Section III below.

C. Serving the Petition for Review. The petitioning Party must serve the Petition on the Executive Committee by having it emailed to the Office of Workplace Relations at workplacedirector@ce9.uscourts.gov.

The Petition may also be delivered to the Office of Workplace Relations at the following address:

Office of Workplace Relations
P.O. Box 193939
San Francisco, CA 94119
Parcel Delivery

Office of Workplace Relations
95 Seventh Street
San Francisco, CA 94103

Upon receipt, the Office of Workplace Relations will serve a copy of the Petition (and all attachments thereto) on the opposing Party.

III. Filing Deadlines

A. Time for Filing a Petition for Review. A Petition for Review must be submitted to the Executive Committee no later than 30 days following the date of the final decision of the Presiding Judicial Officer or following the date of a summary dismissal of the Complaint.

B. Requests for Extension of Time. The Executive Committee may extend the time to file a Petition for Review and for any other filing specified in these procedures, provided the petitioner shows good cause or excusable neglect.

C. Determining Time Periods. The word "days" in all filing deadlines in these procedures shall mean calendar days, except that if the deadline date occurs on a Saturday, Sunday, or holiday, the deadline shall be extended to the next following Monday or court business day respectively.

IV. Consideration by the Executive Committee

A. General. All reviews will be conducted by the members of the Executive Committee, and shall be based on the decision of the Presiding Judicial Officer or the summary dismissal of a Complaint and any documents submitted by the Parties in response to the directive of the Executive Committee as outlined below.

B. Scope of the Record and Documents to be Considered. Within 20 days following receipt of the Petition for Review, the Executive Committee shall notify the Parties concerning what, if any, additional information, i.e., record (e.g., hearing transcript), documents and/or briefs, may be submitted for its consideration. Unless notified by the Executive Committee of its request for additional information, neither Party is to submit further information.

C. Oral Argument. Oral argument will normally not be permitted but may be ordered by the Executive Committee. Either Party may request such argument in writing filed within 7 days following filing of the Petition as part of the petition (in the case of the party filing the Petition) or (in the case of the Respondent) in a letter submitted no later than 7 days from receipt of the Petition, setting forth the specific reasons why such argument is necessary, and why adequate argument cannot be made in written form. If granted, oral argument, may, at the sole discretion of the Executive Committee, be conducted via teleconference using video and/or audio technology.

D. Standard of Review. The written decision or summary dismissal of the Presiding Judicial Officer shall be affirmed if supported by substantial evidence.

E. Summary Disposition. If at any time prior to the final submission of the case for review, the Executive Committee determines that the basis(es) of the request for review are so insubstantial as to not justify further proceedings, the Court may issue an appropriate dispositive order.

F. Form of Final Review. The Executive Committee shall issue its decision in writing within a reasonable amount of time, not to exceed 90 days of receipt of the Petition for Review by the Executive Committee.

Attachment: Sample Petition for Review to the Executive Committee of the Judicial Council of the Ninth Circuit from Presiding Judicial Officer's Decision

[*see* next page for Form 1]

Name of Petitioning Party or Counsel
Address
Telephone #
Fax #
Email

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

A.B., Petitioner v. C.D., Respondent	Petition for Review of Decision in (or Summary Dismissal of) Employment Dispute Resolution Policy Complaint

Notice is hereby given that (name of Party petitioning for review), (Petitioner) in the above named case, hereby submits this Petition for Review to the Executive Committee of the Judicial Council of the Ninth Circuit from the final decision (or summary dismissal of the Complaint) by Judge (name of Presiding Judicial Officer) entered in this matter action on the _____ day of _____, (20__).

Attached to this Petition is a copy of the Presiding Judicial Officer's Final Decision (or summary dismissal of the Complaint).

The basis(es) of this Petition for Review is (reason why review is requested—this basis(es) may be included as an attachment).

Submitted on this ___ day of _____, (20__).

(s)

_____

(Representing name of Party)

POSTERS
APPENDIX 5

UNITED STATES COURTS

You Have Options

How to Address Wrongful Conduct in the Workplace

INFORMAL ADVICE

To request advice about a workplace concern, contact your Employment Dispute Resolution (EDR) coordinator, Circuit Director of Workplace Relations, or the Office of Judicial Integrity.

They can provide you with advice and guidance on how to address the issue including:

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

ASSISTED RESOLUTION

Contact an EDR Coordinator or Circuit Director of Workplace Relations 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

The Complaint must be filed within **180 days** of the alleged violation or the discovery of the violation.

This formal process includes:

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

Confidentiality

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

Contact Information:

Informal Advisors
Brent Flock, Deputy Chief U.S. Probation Officer
(208) 334-9105
brent_flock@idp.uscourts.gov

Lauri Thompson, Career Law Clerk
(208) 334-9239
lauri_thompson@id.uscourts.gov

Jeff Severson, Cheif Deputy Clerk
(208) 334-9464
jeff_severson@id.uscourts.gov

EDR Coordinator (Assisted Resolution)
Addisyn Cheney, HR Specialist
(208) 334-9342
addisyn_cheney@id.uscourts.gov

Office of Workplace Relations
415-355-8914
workplacedirector@ce9.uscourts.gov

Office of Judicial Integrity
202-502-1604
AO_OJI@ao.uscourts.gov

UNITED STATES COURTS

Your Rights

In a Federal Judiciary Workplace

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

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

Employees may confidentially report workplace discrimination, harassment, abusive behavior, or retaliation to an EDR Coordinator, Office of Workplace Relations, or the Judicial Integrity Officer Michael Henry.

Protection from Unlawful Discrimination

Prohibits discrimination in personnel actions based on race, color, sex, gender, gender identity, gender expression, marital status, pregnancy, parenthood or caregiver status, sexual orientation, religion, creed, ancestry, national origin, citizenship, genetic information, age (40+), disability, service in the uniformed forces.

Protection from Harassment

Prohibits sexual harassment, discriminatory harassment, and abusive conduct.

Protection for Exercising Workplace Rights

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

Family and Medical Leave

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

Protection for Veterans and Members of the Uniformed Services

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

Notification of Office Closings and Mass Layoffs

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

Hazard-Free Workspaces

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

Polygraph Testing Prohibition

Restricts the use and the results of polygraph testing.

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

UNITED STATES COURTS

The Employment Dispute Resolution Formal Complaint Process

File a Complaint

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

Gather Information

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

Hearing

The Presiding Judicial Officer determines if a hearing is needed.

DECISION

RIGHTS

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

APPEAL

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

NINTH CIRCUIT EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY
APPENDIX 6

I. Statement of Policy

Each Court and court unit will promote equal employment opportunity to all persons or classes of persons regardless of their race, color, sex, gender, gender identity, gender expression, marital status, pregnancy, parenthood or caregiver status, sexual orientation, religion, creed, ancestry, national origin, citizenship, genetic information, age,[17] disability, or service in the uniformed forces, in addition to any other status or characteristic protected under applicable federal law. All facets of employment such as recruitment, hiring, work assignments, compensation, benefits, education, disciplinary actions, terminations, training, promotion, advancement, and supervision are included in the EEO Policy. Each Unit Executive will promote a Court or office environment free of discrimination and harassment. Along with Employees (as defined in the EDR Policy), applicants for employment and former employees are covered by this EEO Policy. All Complaints under this EEO Policy shall be covered by the procedures in § IV.C.3. of the Ninth Circuit Employment Dispute Resolution Policy.

Unit Executives must ensure that appropriate vacancies (with the exception of chambers law clerk and judicial assistant vacancies) are publicly announced to attract candidates who represent the make-up of persons available in the relevant job market and that all hiring and other employment decisions are based solely on job-related factors. Job postings may be published solely to internal staff in certain circumstances, such as budgetary constraints; career ladder promotions; reassignments; and accretion of duties. Reasonable efforts should be made to see that the skills, abilities, and potential of each Employee are identified and developed, and that all Employees are given equal opportunities for promotions by being offered, when the work of the Court permits, and within the limits of available resources, cross-training, reassignments, special assignments, and outside job-related training.

[17] 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.

II. Annual Report

Unit Executives must submit an annual report to the Chief Circuit Judge via the Office of Workplace Relations. The report will describe any significant achievements in providing equal employment opportunities, identify areas where improvements are needed, and explain factors inhibiting achievement of equal employment opportunity objectives.

III. Objectives

When the Unit Executive deems it necessary or desirable, the Unit Executive will develop annual objectives that reflect improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan (report) explaining how those objectives will be achieved.

IV. Distribution and Public Notice

Copies of this EEO Policy shall be made available to all Employees and furnished, upon request, to applicants for positions of employment.