SIXTH CIRCUIT
FEDERAL PUBLIC DEFENDER ORGANIZATION
EMPLOYMENT DISPUTE RESOLUTION PLAN

I. INTRODUCTION

Both the Judiciary and Federal Public Defender Organizations ("FPDOs") are equally committed to creating and sustaining a workplace of respect, civility, fairness, tolerance, and dignity—a workplace free from discrimination and harassment. These values are not only essential to the practice of law but are also critical to the efficient and effective representation of indigent persons by FPDOs. Like all elements of the Judiciary, FPDOs are committed to the principles established by this Plan and are committed to holding Federal Public Defenders ("FPDs") and their Employees to the highest standards. All FPDs and Employees are expected to treat each other consistent with these standards in the workplace.

This Plan is intended to support these principles by providing options for the reporting and resolution of allegations of wrongful conduct in the workplace, including such behaviors as discrimination; sexual, racial, or other discriminatory harassment; abusive conduct; and retaliation. Early action is the best way to maintain a safe work environment. All FPDOs, FPDs, and Employees have a responsibility to promote workplace civility, prevent harassment or abusive conduct, and to take appropriate action upon receipt of reliable information indicating a likelihood of wrongful conduct under this Plan. *See* CODE OF CONDUCT FOR FEDERAL PUBLIC DEFENDER EMPLOYEES, Cannon 3(C). This Plan is promulgated by the Sixth Circuit Judicial Council and the United States Court of Appeals for the Sixth Circuit ("COA") for implementation by each FPDO within the Circuit, pursuant to their respective authorities under 18 U.S.C. § 3006A(g)(2)(A).

This Plan applies to all FPDOs, FPDs, current and former employees (including all FPDO law clerks, paid and unpaid interns, externs, and other volunteers), and applicants for FPDO employment who have been interviewed. The following persons cannot seek relief under this Plan: FPDs,[1] Criminal Justice Act ("CJA") Panel Attorneys and applicants, private investigators and other retained service providers (including expert witnesses), community defenders employees, volunteer mediators, and any other non-Employees not specified above. *See* Appendix 1 for full definitions. This Plan covers work related wrongful conduct that takes place on and off work premises.

[1] FPDs are covered by the United States Court of Appeals for the Sixth Circuit EDR Plan. FPDs may seek relief under that Plan.

II. WRONGFUL CONDUCT

A. This Plan prohibits wrongful conduct which occurs during the period of employment or, for an applicant, during the interview process. Wrongful conduct includes:

- Discrimination;
- Sexual, racial, and other discriminatory harassment;
- Abusive conduct; and
- Retaliation (including retaliation as described in the Whistleblower Protection Provision in the *Guide to Judiciary Policy*, Vol. 12, § 220.10.20(c)).

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

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

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

See *Guide*, Vol. 12, Ch. 2.

B. Discrimination: 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 or color;
- Sex, gender, or gender identity;
- Sexual orientation;
- Marital status;
- Pregnancy;
- Religion;
- National origin;
- Age (40 years and over); and
- Disability.

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

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

Abusive conduct does not include communications and actions conveyed in a respectful manner and reasonably related to performance management, including but not limited to: Instruction, corrective or constructive criticism, and performance evaluation; performance improvement Plans; duty assignments and changes to duty assignments; office structure, organization, or reorganization; progressive discipline; and adverse action.

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

III. REPORTING WRONGFUL CONDUCT

The Judiciary, including FPDOs, 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, FPD, Circuit Executive, COA or FPDO Employment Dispute Resolution ("EDR") Coordinator,[2] Chief

[2] The Circuit Director of Workplace Relations may function as an EDR Coordinator to provide all options for resolution (*see* Appendix 1).

Circuit Judge, Circuit Director of Workplace Relations ("DWR"), or the national Office of Judicial Integrity. *See* Code of Conduct for Federal Public Defender employees, Canon 3(C). Employees are also encouraged to report wrongful conduct in the workplace by non-Employees. Confidentiality requirements do not prevent any Employee from revealing or reporting wrongful conduct. *See* Plan §§ IV(B)(2) and (3).

IV. OPTIONS FOR RESOLUTION

The goal of the Judiciary and FPDO 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 an office colleague, supervisor, FPD, or other individual to discuss or address the situation. This Plan provides the following additional options, and Employees may choose the option(s) that best fit their needs and comfort level.

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

1. **Informal Advice;**

2. **Assisted Resolution; and**

3. **Formal Complaint.**

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

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

   No person in the role of EDR Coordinator, the Circuit DWR, 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.g.iii. of this Plan shall not disclose any information or records obtained during 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, Circuit DWR, or Office of Judicial Integrity. (see § V.B.).

Confidentiality obligations in the Code of Conduct for Federal Public Defender Employees concerning use or disclosure of confidential information received in the course of official duties, including attorney-client and work-product privileged information, do not prevent nor should they discourage, Employees from reporting or disclosing wrongful conduct, including sexual, racial, or other forms of discriminatory harassment by the FPD, a Judge, a supervisor, or other person.

Supervisors, FPDs, and Circuit Executives must take appropriate action when they learn of reliable information of wrongful conduct, such as sexual, racial, or other discriminatory harassment, which may include informing the Chief Circuit Judge.

2. **Attorney-Client and Work-Product Obligations**. All individuals involved in the processes under this Plan must protect attorney-client and work-product privileged communications. See Code of Conduct for Federal Public Defender Employees, Canon 3(D).

3. **Impartiality**. All investigations, hearings, and other processes under this Plan must be conducted in a thorough, fair, and impartial manner. The COA or FPDO EDR Coordinator, the Circuit DWR, and the Presiding Judicial Officer must be impartial and may not act as an advocate for either Party. The EDR Coordinator, Circuit DWR, 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.

4. **Right to representation**. Both the Employee and the FPDO 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 FPDO if doing so will not constitute a conflict of interest or unduly interfere with their duties, as determined by the assisting Employee's appointing officer.

5. **Interim Relief**. An Employee who pursues any of the options under this Plan may request transfer, an alternative work arrangement, or administrative leave if the Employee alleges egregious conduct by a supervisor or the FPD that makes it untenable to continue working for that person. Any such request must be made to the FPD (or Chief Circuit Judge, if the FPD is the subject of the allegations) to determine appropriate interim relief, if any, taking into consideration the impact on the FPDO.

6. **Allegations Involving a Third Party**. An Employee alleging that a third party, including a Judge, Clerk of Court, or other Court Employee, has engaged in wrongful conduct and who reports the wrongful conduct to the FPDO, may—if the FPDO fails to take appropriate action—use any of the options for resolution from an FPDO as set forth in Section C. An FPDO is obligated to take appropriate action when an Employee alleges wrongful conduct by anyone, including a Judge.

   An FPD may file a complaint regarding wrongful conduct by a Judge with the Chief Circuit Judge, in accordance with the COA's EDR Plan. *See* Plan, fn 1.

   An Employee or FPD 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 a COA or FPDO EDR Coordinator, Circuit DWR, 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 pursing a Formal Complaint under the Judicial Conduct and Disability Act, or any other processes.

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

   - Discussing the matter with the person whose behavior is of concern;
   - Conducting a preliminary investigation, including interviewing persons alleged to have violated rights under this Plan and witnesses to the conduct;
   - Engaging in voluntary mediation between the persons involved; and/or
   - Resolving the matter by agreement.

   a. To pursue this option, an employee must contact a COA or FPDO EDR Coordinator, or the Circuit DWR, and complete a "Request for Assisted Resolution" (Appendix 2). When an Employee completes Appendix 2 and chooses

to use a FPDO EDR Coordinator to facilitate resolution, and when the Employee so consents, the EDR Coordinator may notify the Circuit DWR of the request. The Circuit DWR may then serve as a resource for the EDR Coordinator to facilitate resolution at the EDR Coordinator's request.

When an Employee completes Appendix 2 and chooses to use the Circuit DWR to facilitate resolution, the Circuit DWR may notify the FPDO EDR Coordinator when appropriate, or upon the request of the Employee.

The Judiciary and FPDO encourage early reporting and action on wrongful conduct and strongly encourages Employees alleging claims under the EDR Plan to first use Assisted Resolution before filing a Formal Complaint. An Employee asserting any claim of abusive conduct must first use Assisted Resolution before filing a Formal Complaint. Filing a Request for Assisted Resolution does not toll (extend) the time for filing a formal complaint under § IV.C.3 unless one of the Parties requests, and the Chief Circuit 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 and the Employee seeks assistance from the FPDO, the Chief Circuit 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, including notice to the Chief District Judge. *See, e.g.*, Rules for Judicial-Conduct and Judicial-Disability Proceedings.

c. If the allegations concern the conduct of an Employee (not the FPD), the COA or FPDO EDR Coordinator or Circuit DWR will coordinate Assisted Resolution and must notify the FPD. The FPD is responsible for assessing the allegation(s) and taking appropriate steps to resolve the matter. If the allegations concern the conduct of the FPD, the COA or FPDO EDR Coordinator or Circuit DWR must notify the Chief Circuit Judge, who is responsible for assessing the allegation(s), including whether the FPD had the information and opportunity to resolve the allegations, and addressing the matter as appropriate.

d. Consistent with an FPDO Employee's ethical obligation to protect attorney-client and work product privileged information, Employees shall redact privileged information and client's personal identifiable information ("PII"), including case numbers, from all communications during the request and process of Assisted Resolution.

e. The FPD or Chief Circuit Judge, as indicated in (b) and (c) above, may deny the Request for Assisted Resolution at any time if he or she concludes it is frivolous; it does not allege violations of the rights or protections in this Plan; the alleged conduct arises out of the same facts and circumstances and was resolved by a

previous EDR Complaint or other claim process or procedure; or on other appropriate grounds.

f. If Assisted Resolution is successful in resolving the matter, the Parties will so acknowledge in writing.

g. The Parties by mutual assent, or the COA or FPDO EDR Coordinator, or Circuit DWR, in their discretion, will determine when to conclude the Assisted Resolution process. If Assisted Resolution is not successful in resolving the matter, the COA or FPDO EDR Coordinator or Circuit DWR will advise the Employee of their rights to file a Formal Complaint under this Plan 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 either the COA or FPDO EDR Coordinator or the Circuit DWR to address a claim of wrongful conduct. When an Employee files a Formal Complaint with a COA or FPDO EDR Coordinator, the COA or FPDO EDR Coordinator must notify the Circuit DWR. When an Employee files a Formal Complaint with the Circuit DWR, the Circuit DWR may notify the FPDO EDR Coordinator when appropriate or upon the Employee's request.

a. Formal Complaint. To file a Formal Complaint, an Employee must submit a "*Formal Complaint*" by use of Appendix 3, submitted to a COA or FPDO EDR Coordinator, or the Circuit DWR, within either 180 days of the alleged wrongful conduct, or within 180 days of the time the Employee becomes aware of, 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 Circuit Judge or the Presiding Judicial Officer grants an extension of time for good cause. "Good cause" may be shown when the FPD and the Employee wanting to complain have been working together to resolve the subject(s) of the complaint on their own, or using Informal Advice or Assisted Resolution, but need additional time to sufficiently address and complete those processes. If the Parties agree that some additional time may be helpful in resolving the subject of the complaint without a formal complaint, they should do so in writing, asking the Chief Circuit Judge or Presiding Judicial Officer to extend the 180-day deadline by a specific number of days required to informally resolve the issues.

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

c. The Parties. The Employee filing the Complaint is called the Complainant. The Party responding to the Complaint is the FPDO that is responsible for providing

any appropriate remedy and is called the Respondent. The Complaint is not filed against any specific person or individual(s), but against the FPDO.

d. Complaint(s) Regarding a Judge. An Employee alleging that a Judge has engaged in abusive conduct or harassment may file a Complaint under this Plan to seek remedy from the FPDO, only if the FPDO failed to reasonably try to prevent and promptly correct the abusive conduct or harassment. Otherwise, there is no recognized remedy against the FPDO under this Plan for wrongful conduct by a Judge. The EDR Coordinator receiving a Formal Complaint for wrongful conduct by a Judge must immediately provide a copy of that complaint to the Chief Circuit Judge or their designee, who will oversee the EDR Complaint Process. If the Chief Circuit Judge is the subject of the Complaint, the EDR Coordinator shall forward the Complaint to the next most-senior active Circuit Judge, pursuant to 28 U.S.C. § 45, 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 District Judge or Chief Bankruptcy Judge (unless the Chief District Judge or Chief Bankruptcy Judge is the subject of the Complaint, in which case the Complaint shall be provided to the Chief Circuit Judge only).

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

e. Privileged, Confidential and Personal Information. Consistent with a Complainant's ethical obligation to protect attorney-client and work-product privileged information, and PII, Complainant shall file a Complaint that is redacted to protect such information, along with personal identifying client information, including case numbers.

f. Formal Complaint Procedures and Procedural Rights:

i. <u>Appointment of Presiding Judicial Officer</u>. Upon receipt of a Complaint, the EDR Coordinator will immediately send a copy of the Complaint to the Chief Circuit Judge, who will appoint a Presiding Judicial Officer. The Presiding Judicial Officer will be a Judge in the Circuit Court of Appeals or, when

appropriate, a Judge from another Court[3] other than the District Court where the FPDO is located (with the consent of the respective Chief Judge of that Court).

ii. Presiding Judicial Officer. The Presiding Judicial Officer oversees the Complaint Proceeding. The Presiding Judicial Officer will provide a copy of the Complaint to the FPD against whose FPDO the Complaint has been filed (Respondent), except when the Presiding Judicial Officer determines for good cause that the circumstances dictate otherwise. The Presiding Judicial Officer must provide the individual alleged to have violated rights under this Plan notice that a Complaint has been filed and the nature and substance of the Complaint allegations.

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

The Presiding Judicial Officer may, on the Presiding Judicial Officer's own initiative, stay a Formal Complaint proceeding, for up to sixty (60) days unless for good cause shown. If the FPDO (Respondent) asserts there has been no prior opportunity to address the conduct alleged, the FPDO (Respondent) may, in writing, request a stay. In either instance the Presiding Judicial Officer will only determine whether to grant the stay after providing the Complainant an opportunity to be heard and to show good cause for not granting the stay. A stay in the proceedings can provide the FPDO an opportunity to assess the allegation and take appropriate action. If the matter is successfully resolved, the Parties may enter an agreed written settlement approved by the Presiding Judicial Officer pursuant to § IV.C.3.g.iii.

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

If the Presiding Judicial Officer is disqualified, the Chief Circuit Judge will designate another Judge to serve as Presiding Judicial Officer pursuant to subsection IV.C.3.f.i. above. If the EDR Coordinator is disqualified, the Chief Circuit Judge will appoint the Circuit DWR or one of the alternate EDR

[3] Court of Appeals, District Court, Bankruptcy Court, Court of Federal Claims, and Court of International Trade, or any court created by an Act of Congress in a territory invested with any jurisdiction of a district court of the United States.

Coordinators or, if available and with the consent of the respective Chief Judge or FPDO, an EDR Coordinator from another Court or FPDO.

iv. Response. The Respondent may file a response to the Complaint with the EDR Coordinator within **30 days** of receiving the Complaint. The Respondent must protect attorney-client and work-product privileges in any response. The EDR Coordinator must immediately send the response to the Presiding Judicial Officer and to the Complainant.

v. Investigation and Discovery. The Presiding Judicial Officer will ensure that the allegations are thoroughly, impartially, and fairly investigated, and may use outside trained investigator if warranted. The investigation may include interviews with persons alleged to have violated rights under this Plan and witnesses, review of relevant records, and collecting documents or other records. The Presiding Judicial Officer will provide for such discovery to the Complainant and Respondent as is necessary and appropriate. The Presiding Judicial Officer will also determine what evidence and written arguments, if any, are necessary for a fair and complete assessment of the allegations and response.

vi. Case Preparation. The Complainant may use official time to prepare their case, so long as it does not unduly interfere with the performance of duties.

vii. Extension 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 ECR Plan for good cause, except for the deadline to issue a written decision, which may only be extended by the Chief Circuit Judge.

viii. Established Precedent. In reaching a decision, the Presiding Judicial Officer should be guided by judicial and administrative decisions under relevant rules and statutes, as appropriate. The Federal Rules of Evidence and any federal procedural rules do not apply.

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

g. 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:

1. The Complaint is untimely filed, is frivolous, fails to state a claim, or does not allege violations of the rights or protections in this Plan;

2. 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

3. On other appropriate grounds.

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.

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

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

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

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

iii. Right to Present Evidence. The Complainant and Respondent have the right to present witnesses and documentary evidence and to examine adverse witnesses.

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

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

i. Remedies. When the Presiding Judicial Officer finds that the Complainant has established by a preponderance of the evidence (more likely than not) that a substantive right protected by this Plan has been violated, the Presiding Judicial Officer may direct the FPDO 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 shall take into consideration the impact of such remedies on the FPDO. The Chief Circuit Judge and/or FPDO (Respondent) must take appropriate action to carry out the remedies ordered in the written decision, subject to any applicable policies or procedures.

Allowable remedies may include:

i. Placement of the Complainant in a position previously denied;

ii. Placement of the Complainant in a comparable alternative position;

iii. Reinstatement to a position from which the Complainant was previously removed;

iv. Prospective promotion of the Complainant;

v. Priority consideration of the Complainant for a future promotion or position;

vi. Back pay and associated benefits when the statutory criteria of the Back Pay Act are satisfied.[4]

vii. Records modification and/or expungement;

viii. Granting of family and medical leave;

[4] *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, allowance, 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. Other than the Back Pay Act, monetary damages are not available as a remedy. The Presiding Judicial Officer may award attorney's fees only if the statutory requirements of the Back Pay Act are satisfied.

ix. Any reasonable accommodation(s); and

x. Any other appropriate remedy(ies) to address the wrongful conduct.[5]

j. Review of Decision (Appeal). The Complainant and/or the Respondent may appeal the decision to the Sixth Circuit Court Judicial Council by submitting in writing a Request for Review of Decision setting forth the grounds for appeal within **30 days** of the date of the decision under procedures established by the Sixth Circuit Judicial Council. *See* Appendix 4. The Circuit DWR 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. Any decision and implementation of remedies remains inchoate pending expiration of the period to provide notice of appeal, or resolution of any appeal, whichever occurs first.

V. FEDERAL PUBLIC DEFENDER ORGANIZATION OBLIGATIONS

To ensure that employees are aware of the options provided by this Plan, and that the Plan is effectively implemented, FPDOs in the Sixth Circuit must adhere to the following:

A. Adopt and Implement an EDR Plan. All Sixth Circuit FPDOs must collectively adopt and implement the Sixth Circuit Federal Public Defender Organization EDR Plan. Any local FPDO modifications or variances from this Plan: (1) May expand, but may not diminish or curtail, any of the rights or remedies afforded Employees under this Plan; and (2) Must be approved by the Sixth Circuit Judicial Council. A copy of this Plan and notice of adoption by

[5] The issue in an EDR Complaint is whether the FPDO 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.

each Sixth Circuit FPDO must be filed with the Circuit DWR and 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 FPDO EDR Coordinator. No papers, files, or reports relating to an EDR matter will be filed in an Employee's personnel folder, except as necessary to implement an official personnel action.

C. EDR Coordinator. Each Sixth Circuit FPDO will designate both a primary FPDO EDR Coordinator and at least one alternate FPDO EDR Coordinator. An FPDO with insufficient staffing to support training both a primary FPDO EDR Coordinator and an Alternate FPDO EDR Coordinator may instead use an EDR Coordinator from another Sixth Circuit FPDO or may use the Sixth Circuit DWR as an alternate FPDO EDR Coordinator with the approval of the appropriate FPD, or the Chief Circuit Judge, respectively. An Employee may choose the FPDO EDR Coordinator or the Circuit DWR with whom the Employee wishes to seek Informal Advice, request Assisted Resolution, or file a Formal Complaint.

An FPDO EDR Coordinator must be an FPDO Employee. An FPD 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 FPDOs must:

1. **Prominently Post Notice**. Courts and FPDOs must prominently post on their internal and external main homepages a direct link labeled "*Your Employee Rights and How to Report Wrongful Conduct*" to:

    a. The entire EDR Plan with all Appendices and relevant contact information;

    b. The Judicial Conduct and Disabilities Act, the Rules for Judicial Conduct and Judicial-Disability Proceedings, and the Judicial Conduct and Disability Complaint Form; and

    c. Contact information for all of the COA and FPDO EDR Coordinators, Circuit DWR, and the national Office of Judicial Integrity.

2. **Prominently Display Rights in the Workplace**:

    a. The posters set forth in Appendix 5; and

    b. An Anti-Discrimination and Harassment Notice that:

1. States discrimination and/or harassment based on race, color, sex, gender, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability.

2. Explains Employees can report, resolve, and seek remedies for discrimination, harassment, or other wrongful conduct under the EDR Policy by contacting FPDO EDR Coordinators and/or the Circuit DWR, COA EDR Coordinators, and/or the national office of Judicial Integrity;

3. Identifies the names and contact information of FPDO EDR Coordinators, the Circuit DWR, COA EDR Coordinators, and the national Office of Judicial Integrity; and

4. States where the EDR Plan can be located on the FPDO website.

3. Ensure that each new Employee receives an electronic or paper copy of the EDR Plan and acknowledges in writing that they have read the EDR Plan; and

4. Conduct training annually for all Employees to ensure that they are aware of their rights and obligations under the EDR Plan and the options available for reporting wrongful conduct and seeking relief.

E. Reporting. FPDOs will, at least annually, provide data to the Administrative Office of the United States Courts and to the Chief Circuit Judge 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);

4. The rights under this Plan that were found by decision to have been violated.

FPDOs 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.

As to any incident for reporting above which necessarily contains or refers to attorney-client or work-product privileged information inherently involved in the Complaint, hearing or

resolution process, FPDOs will report the incident as required above, but should redact privileged information where applicable.

F. Case Assignment due to Potential Conflict. An Employee who filed or was the subject of a Request for Assisted Resolution or Formal Complaint (whether pending or concluded) and who is assigned to appear before a Judge who assessed and addressed the Request for Assisted Resolution, who served as Presiding Judicial Officer of the Formal Complaint, or who was involved with allegations made in a Request for Assisted Resolution or a Formal Complaint, may request that the FPD reassign the case to another lawyer. The FPD has full discretion to determine whether reassignment of the case is appropriate under the circumstances.

G. Appendices Attached:

1. Definitions;

2. Request for Assisted Resolution;

3. Formal Complaint Form;

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

5. Posters.

Effective date: _____, 2022

DEFINITIONS
Appendix 1

Circuit Director of Workplace Relations (DWR): A circuit Employee who coordinates workplace conduct issues and the implementation of all court and FPDO EDR Policies within the circuit. The scope of duties generally may include but is not necessarily limited to: providing Informal Advice, coordinating Assisted Resolution, and assisting with the Formal Complaint process under any EDR Plan within the circuit; assisting in training the EDR Coordinators within the circuit; providing or arranging for training throughout the circuit on workplace conduct, discrimination, and sexual harassment; and collecting and analyzing statistical data and other information relevant to workplace conduct matters. The Circuit DWR may function as an EDR Coordinator and provide all Options for Resolution for Employees.

FPDO EDR Coordinator: An FPDO EDR Coordinator is an FPDO Employee, other than the FPD, designated by the FPDO to assist with Informal Advice, Assisted Resolution, and Formal Complaint matters. FPDO EDR Coordinators may provide confidential advice and guidance (*see* § IV.B.1.) if an Employee seeks Informal Advice; coordinate the Assisted Resolution process, including any necessary investigation; and accept Formal Complaints under this Policy for filing and assists the Presiding Judicial Officer in the Complaint proceeding, as directed. The FPDO EDR Coordinator maintains and preserves all court files pertaining to matters initiated and processed under this EDR Policy. FPDO EDR Coordinators assist the FPDO in meeting their 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 current and former employees of FPDOs, all FPDO law clerks, paid and unpaid interns, externs, and other volunteers, and applicants for employment who have been interviewed.

FPDO/Respondent: The FPDO responsible for providing any appropriate remedy.

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

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

Parties: The FPDO and the Employee who has filed a request for Assisted Resolution or a Formal Complaint.

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

REQUEST FOR ASSISTED RESOLUTION
Appendix 2

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

Submitted under the Procedures of the Sixth Circuit Federal Public Defender organization Employment Dispute Resolution Plan

District: _____

Full name of party submitting form: _____

Your mailing address:

Your email address(s):

Your phone number(s):

Office in which you are employed or applied to: _____

Name and address of FPDO from which you seek assistance:

Your job title (or job title applied for): _____

Date(s) of interview(s) (*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 may be necessary):

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

Describe the assistance or corrective action you seek:

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

☐ **Discrimination based on (*Check All that apply*)**
- ☐ **Race**
- ☐ **Color**
- ☐ **Sex**
- ☐ **Gender**
- ☐ **Gender Identity**
- ☐ **Pregnancy**
- ☐ **Parenthood**
- ☐ **Sexual Orientation**
- ☐ **Religion**
- ☐ **National Origin**
- ☐ **Age (over 40)**
- ☐ **Disability**

☐ **Harassment based on (*check all that apply*):**
- ☐ **Race**
- ☐ **Color**
- ☐ **Sex**
- ☐ **Gender**
- ☐ **Gender Identity**
- ☐ **Pregnancy**
- ☐ **Parenthood**
- ☐ **Sexual Orientation**
- ☐ **Religion**
- ☐ **National Origin**
- ☐ **Age (over 40)**
- ☐ **Disability**

- ☐ **Abusive Conduct**
- ☐ **Retaliation**
- ☐ **Whistleblower protection**
- ☐ **Family and Medical Leave**
- ☐ **Armed Forces Service and Reemployment Rights**
- ☐ **Worker Adjustment and Retraining**
- ☐ **Occupational Safety and Health**
- ☐ **Polygraph protection**
- ☐ **Other (describe below)**

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

- ☐ **Yes**
- ☐ **No**

If "Yes" 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 Plan (*see* EDR Plan § IV.B.1.).

Your Signature: _____ Date Submitted: _____

This Request for Assisted Resolution reviewed by EDR Coordinator/Sixth Circuit Director of Workplace Relations on:

EDR Coordinator/Circuit Director of Workplace Relations Name:

_____

_____ _____

EDR Coordinator/Circuit DWR Signature Date

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

FORMAL COMPLAINT FORM
Appendix 3

Submitted under the Procedures of the Federal Public Defender Organization Employment Dispute Resolution Plan

District: _____

Full Name of Person Submitting this Form (Complainant): _____

Your mailing address:

Your email address(s):

Your phone number(s):

Office in which you are employed or applied to: _____

Name and address of FPDO from which you seek assistance:

Your job title (or job title applied for): _____

Date(s) of interview(s) (*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 may be necessary):

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*):

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

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

☐ **Discrimination based on (*Check All that apply*)**
- ☐ **Race**
- ☐ **Color**
- ☐ **Sex**
- ☐ **Gender**
- ☐ **Gender Identity**
- ☐ **Pregnancy**
- ☐ **Sexual Orientation**
- ☐ **Religion**
- ☐ **National Origin**
- ☐ **Age (over 40)**
- ☐ **Disability**

☐ **Harassment based on (*check all that apply*):**
- ☐ **Race**
- ☐ **Color**
- ☐ **Sex**
- ☐ **Gender**
- ☐ **Gender Identity**
- ☐ **Pregnancy**
- ☐ **Sexual Orientation**
- ☐ **Religion**
- ☐ **National Origin**
- ☐ **Age (over 40)**
- ☐ **Disability**

☐ **Abusive Conduct**

- **I have already sought assisted resolution for this Abusive Conduct Clam.**
- **My request for assisted resolution for Abusive Conduct was submitted on:_____**
- **My request for Assisted Resolution for Abusive Conduct was resolved on:_____**

Describe Resolution:

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

☐ **Family and Medical Leave**
☐ **Retaliation**
☐ **Whistleblower protection**
☐ **Armed Forces Service and Reemployment Rights**
☐ **Worker Adjustment and Retraining**
☐ **Occupational Safety and Health**
☐ **Polygraph protection**
☐ **Other (describe below)**

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

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

☐ **Yes**
☐ **No**

If "Yes" please provide name, mailing address, email address and phone number(s):

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

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

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

Complainant Signature: _____ Date Submitted: _____

Complaint Reviewed by EDR Coordinator On: _____

EDR Coordinator Full Printed Name:_____

_____ _____
EDR Coordinator/Circuit DWR Signature Date

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

REQUEST FOR REVIEW OF DECISION (APPEAL)
APPENDIX 4

Submitted under the Procedures of the
Sixth Circuit FPDO Employment Dispute Resolution Plan

1. A Complainant and/or Respondent aggrieved by the decision of a Chief Judge or Presiding Judicial Officer, on an EDR Formal Complaint filed in any Court of the Sixth Circuit, may request review of the Presiding Judicial Officer's decision.

2. The Request for Review of the Presiding Judicial Officer's decision must be filed in writing with the Circuit Executive within 30 days of receipt of the challenged ruling. The Appendix 4 form should, but is not required to, be used in filing a Request for Review. In any event, the Request for Review should include the information requested by the Appendix 4 form.

3. Upon receipt of notice of the filing of a Request for Review, the EDR Coordinator for the involved FPDO shall promptly transmit to the Circuit Executive the complete record of the Complaint.

4. After the record is received by the Circuit Executive, the Chief Judge of the Circuit shall appoint a panel composed of three members of the Judicial Council to review the Complaint and its disposition. The panel shall be empowered to act for and on behalf of the Judicial Council.

5. The panel shall consider the record of the Complaint and such other information or evidence as it deems appropriate, and shall rule thereon within 30 days, if possible. Panel action shall be by majority vote and the panel shall be guided by the substantial evidence standard of review. Decisions by the panel shall be in writing.

6. Either party may request final review of the panel's decision by the Judicial Council. Such request must be filed in writing with the Circuit Executive within 14 days of receipt of the challenged ruling. The Judicial Council may, in its discretion, accept or deny the request for final review.

7. If the Judicial Council accepts the request for final review, it may enter an order (a) affirming the original decision or summary dismissal; (b) directing further investigation; or (c) directing Corrective action including remedies set forth in Section IV.C.3.i of this Plan. Judicial Council action shall be by majority vote and shall be guided by the substantial evidence standard of review.

8. Any decision by the Judicial Council, including a decision to deny the request for final review, shall be in writing and shall be final and conclusive and not subject to further review by the Judicial Council, judicial appeals, or otherwise.

REQUEST FOR REVIEW

SAMPLE FORM

Name of Requesting Party _____

Address_____

Phone Number(s) _____

Email Address_____

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

_____

_____, Requesting Party v.

_____, Responding Party

Request for Review of Decision on Formal Complaint

Notice is hereby given that_____, (Requesting Party) in the above-named case, hereby requests review by the Judicial Council for the Sixth Circuit from the decision by Presiding Judicial Officer_____entered in this matter on the_____day of_____, 20___.

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

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

Submitted this _____day of _____, 20___.

Signature of Requesting Party _____

Signature of Counsel, if any _____

Approved by the Sixth Circuit Judicial Council on _____.

UNITED STATES COURTS

You Have Options

How to Address Wrongful Conduct in the Workplace

INFORMAL ADVICE

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

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

ASSISTED RESOLUTION

Contact an EDR Coordinator 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

Contact an EDR coordinator to file a formal complaint.

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

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

Confidentiality

All options for resolution are intended to respect 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.

CONTACT INFORMATION

FPDO, [District] EDR Coordinator:
First Last Name
Phone
Email

Sixth Circuit Director of Workplace Relations:
Kelly Roseberry
kelly_roseberry@ca6.uscourts.gov
(513) 564-7203

National Office of Judicial Integrity
Michael Henry, Judicial Integrity Officer
michael_henry@ao.uscourts.gov
(202) 502-1604

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 required

Hearing

The Presiding Judicial Officer determines if a hearing is needed.

DECISION

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

Effective Date: [Month DD, YYYY]

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

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 EDRCoordinator, Circuit Director of Workplace Relations, or the Judicial Integrity Officer, Jill B. Langley, at 202-502-1604.

Protection from Unlawful Discrimination

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

Protection from Harassment

Prohibits sexual harassment, discriminatory harassment, and abusive conduct.

Protection for Exercising Workplace Rights

Prohibits intimidation, retaliation, or discrimination against employees who exercise their employment rightsor 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 ofan office closing or of a mass layoff atleast 60 days in advance of the event.

Hazard-Free Workspaces

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

Polygraph Testing Prohibition

Restricts the use and the results of polygraph testing.

Effective Date: [Month DD, YYYY]

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