DEFINITIONS
APPENDIX 1

Abusive Conduct: As defined below, "harassment" is a form of discriminatory action against an employee that is undertaken based on a protected characteristic of that employee, such as race, sex, color, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (if the employee is 40 years of age or over), or disability. The standard for "abusive conduct" requires the same level of egregious and hostile conduct that would be required to demonstrate harassment, but to prove abusive conduct an employee does not have to prove that the actions in question were taken because of a protected characteristic of the employee. Further, abusive conduct does not include a discriminatory adverse employment action that is based on an employee's protected characteristic.

Like harassment, abusive conduct is a pattern of demonstrably egregious and hostile conduct that creates an abusive work environment. Such an environment occurs when a reasonable person would conclude that the employee's workplace is permeated with intimidation, threatening conduct, ridicule, or insult that is so severe or pervasive as to alter the terms or conditions of employment. Further, the claimant must subjectively perceive the work environment as being abusive.

The Judiciary expects outstanding performance by and hard work from its employees, and it has a long-standing reputation for achieving that level of excellence. Accordingly, abusive conduct does not include communications and actions reasonably related to the supervision of an employee's performance and designed to ensure that employees live up to the high expectations of their positions, including but not limited to: instruction, corrective criticism, and evaluation; performance improvement plans; duty assignments and changes to duty assignments; office organization; progressive discipline; and adverse actions.

Circuit Director of Workplace Relations: A Circuit employee who coordinates workplace conduct issues and the implementation of all court EDR Plans within the Circuit. The Circuit Director of Workplace Relations can provide Informal Advice and Assisted Resolution under any EDR Plan within the Circuit; assist in training the EDR Coordinators within the Circuit; provide or arrange for training throughout the Circuit on workplace conduct issues; and collect and analyze statistical data and

other information relevant to workplace conduct matters. The precise scope of duties will be determined by the Circuit Executive.

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

Court: The court (court of appeals, district courts, and bankruptcy courts) in which is located the employing office that would be responsible for redressing, correcting, or abating a violation of rights under this EDR Plan.

Chief Judge of the Court: The term "Chief Judge of the court" refers to the Chief Judge of the particular court at issue; that is, either the Chief Circuit Judge, the Chief District Judge, or the Chief Bankruptcy Judge.

Days: Calendar days.

Discriminatory Adverse Employment Action: A discriminatory adverse employment action is an action that is taken based on an employee's protected category and that causes harm to the employee with respect to an identifiable term or condition of employment. Protected categories include race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (if the employee is 40 years of age or over), disability, or any other protected category identified in the federal statutes listed at II.B. of this Plan. As distinguished from harassment or abusive conduct, a discriminatory adverse employment action occurs when the Respondent takes a tangible employment action that harms the employee. A tangible job action involves a disadvantageous change in an employee's compensations, terms, conditions, or privileges of employment, such as hiring, firing, failing to promote, reassignment, or a decision causing a change in benefits. *See generally Muldrow v. City of St. Louis, Missouri*, 144 S.Ct. 967, 974 (2024); *Vance v. Ball State University*, 570 U.S. 421, 429 (2013); *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742, 761–62 (1998).

EDR Coordinator: A court employee designated by the Chief Judge of the court to coordinate all of the options for resolution provided for in this Plan. A judge or unit executive cannot serve as an EDR Coordinator. The EDR Coordinator provides confidential advice and guidance if an employee seeks Informal Advice; coordinates

the Assisted Resolution process, which may include conducting an investigation; accepts Formal Complaints under this Plan for filing; and assists the Presiding Judicial Officer in Complaint proceedings. The EDR Coordinator maintains and preserves all court files pertaining to matters initiated and processed under this EDR Plan. The EDR Coordinator assists the court in meeting its obligations under this Plan to train and advise employees of their rights under this Plan, as well as to post the Plan as directed.

Employee: All employees of a court, except as provided below. The term "employee" includes unit executives and their staffs; judicial chambers employees; staff law clerks; federal public defenders; bankruptcy administrators; and paid and unpaid interns, externs, and other volunteer employees. The term "employee" also includes applicants for employment who have been interviewed and former employees.

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

Employing Office/Unit Executive/Respondent: The employing office is the entity within the court in which a complaining employee works (or has been interviewed for a position). The unit executive is the person who heads the employing office and who will typically be the person most directly involved in or responsible for the employment decisions relating to employees in that office. The employing office will be the Respondent in any Complaint filed by an employee in that employing office, and the unit executive for that office will represent that office during the Complaint process, absent a decision by the chief judge of the court that another person should represent the employing office.

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

A judge is both the employing office and the unit executive for chambers staff and shall be named as a Respondent for any Complaint filed by a member of chambers staff. If a judge is accused in a Complaint of wrongful conduct under the EDR Plan by a non-chambers staff member, in addition to the latter's unit executive, the judge shall also be named as a Respondent.

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

Final Decision: See Appendix 6 for the full definition of a "final decision."

Harassment: Harassment (other than "sexual harassment," which is separately described below) means actions taken or comments directed at an employee based on the employee's protected category. Protected categories include race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (if the employee is 40 years of age or over), disability, or any other protected category identified in the federal statutes listed at II.B. of this Plan. Harassment is a pattern of demonstrably egregious and hostile conduct that creates an abusive work environment. Such an environment occurs when a reasonable person would conclude that the employee's workplace is permeated with intimidation, threatening conduct, ridicule, or insult that is so severe or pervasive as to alter the terms or conditions of employment. Further, the claimant must subjectively perceive the work environment as being abusive.

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

Discriminatory harassment also includes sexual harassment. Sexual harassment involves:

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

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

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

Judge: A judge appointed under Article III of the Constitution, a United States bankruptcy judge, or a United States magistrate judge.

Office of Judicial Integrity: The office within the Administrative Office of the United States Courts that can 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 to Assisted Resolution: The employing office and the employee who sought Assisted Resolution.

Parties to a Complaint: The employing office, the employee who has filed a Formal Complaint, and any employee or judge who has allegedly engaged in wrongful conduct directed toward the employee who has filed a Complaint.

Protected Category: Race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over),[1] disability, or any other protected category identified in the federal statutes listed at II.B. of this Plan.

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

Respondent: See definition for "Employing Office/Unit Executive/Respondent."

Retaliation: Retaliation refers to a materially adverse action taken against an employee for opposing, reporting, or asserting a claim of wrongful conduct under this Plan, or for testifying, assisting, or participating in an investigation or proceeding concerning such a claim. Retaliation is itself wrongful conduct. A materially adverse action is one that well might have dissuaded a reasonable worker from making or supporting a charge of discrimination or other wrongful conduct. *See Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 68 (2006).

Unit Executive: See definition for "Employing Office/Unit Executive/Respondent."