

DEFINITIONS

APPENDIX 1

Abusive Conduct: Abusive conduct is a pattern of demonstrably egregious and hostile conduct not based on a protected category that is so severe or pervasive as to alter the terms and conditions of employment and create an abusive working environment. Abusive conduct is conduct that a reasonable person would consider to be threatening, oppressive, and intimidating. 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. Further, abusive conduct does not include an adverse employment action.

Adverse Employment Action: An adverse employment action is an action that materially affects the terms, conditions, or privileges of employment, such as hiring, firing, or a failure to promote.

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 scope of duties will be determined by the Circuit Executive, but generally a Circuit Director of Workplace Relations may 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, discrimination, and sexual harassment; and collect and analyze statistical data and other information relevant to workplace conduct matters.

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 one making a claim.

Court: The court (courts of appeals, district courts, bankruptcy courts, Court of Federal Claims and Court of International Trade, or of any court created by an Act

of Congress in a territory that is invested with any jurisdiction of a district court of the United States) in which the employing office that would be responsible for, and capable of, ordering redress, correction, or abatement of a violation of rights under this EDR Plan is located. In the case of disputes involving employees of the federal public defender, “court” refers to the appropriate court of appeals. In the case of disputes involving probation and pretrial services, “court” refers to the appropriate district court.

Days: Calendar days.

Disability: Disability means: (1) a physical or mental impairment that substantially limits one or more of the major life activities of an employee; (2) a record of such an impairment, or (3) being regarded as having such an impairment. *See* 42 U.S.C. §12102(1).

Discriminatory Adverse Employment Action: An adverse employment action that is based on the employee’s membership in a protected category: race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over), or disability taken against an employee because he or she is a member of a protected category.

EDR Coordinator: A court employee designated by the Chief Judge 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 (see § IV.C.1) if an employee seeks Informal Advice; coordinates the Assisted Resolution process, including any necessary investigation; accepts Complaints under this Plan for filing; and assists the Presiding Judicial Officer in the Complaint proceeding, as directed. The EDR Coordinator maintains and preserves all court files pertaining to matters initiated and processed under this EDR Plan. The EDR Coordinator assists the court in meeting its obligations under this Plan to train and advise employees of their rights under this Plan, and 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 assistants and other chambers employees; law clerks; federal public defenders, chief probation officers and chief pretrial services officers and their respective staffs; court reporters

appointed by a court; and paid and unpaid interns, externs, and other volunteer employees. It also includes former employees who were terminated or removed from employment, but who did not have a reasonable opportunity to raise their claim during the period of employment. The term “employee” also includes applicants for employment who have been interviewed. Absent extraordinary circumstances, an employee will be considered to have been provided a reasonable opportunity to raise a claim if the employee was provided notice of the termination/removal and the reasons for it, was given at least two-weeks to respond, and was notified that any claim under this Plan must be made prior to termination.

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, investigators and 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/Respondent: The office of the court, or Federal Public Defender Office, that is responsible for providing any appropriate remedy. For purposes of coverage under this EDR Plan, the court is treated as the employing office of the clerk of the court, the chief of pretrial services office, and the chief probation officer. The clerk of the court is treated as the employing officer of court reporters and courtroom deputies. Depending on the identity of the decision maker(s) or the identity of the person or persons with the power to provide a remedy for the adverse action being alleged, the clerk of the court, the court, or the supervising judge is treated as the employing officer of pro se law clerks. The chief of pre-trial services and the chief probation officer are treated as the employing officer of all staff in their respective offices. Federal public defenders, bankruptcy administrators, and their staffs are subject to the EDR Plan of the Eleventh Circuit, rather than the EDR Plans of the district in which they serve. The court is the employing office of judges and chambers employees.

Final Decision: A final decision is a decision by a Presiding Judicial Officer that resolves a Complaint, with or without a hearing. A final decision of the Judicial Council shall include any resolution of a Request for Review of Decision. The term

“final decision” does not include any decisions made or resolutions reached during the Informal Advice or Assisted Resolution processes.

Harassment: Harassment, other than sexual harassment, means actions taken or comments directed at an employee based upon the latter’s status as a member of a protected group. Discriminatory harassment occurs when a workplace is permeated with discriminatory intimidation, ridicule, and insult so severe or pervasive as to alter the conditions of the employment and create an abusive working environment.

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

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

Office of Judicial Integrity: The office of the Administrative Office 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 employing office, the employee who has filed a request for Assisted Resolution or a Formal Complaint, and any employee who has allegedly violated the rights of the complaining employee.

Protected Category: Race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age (40 years and over),³ or disability.

Retaliation: Retaliation refers to an adverse employment action taken against an employee for opposing, reporting, or asserting a claim of wrongful conduct under this Plan. Retaliation is itself wrongful conduct. Notwithstanding this prohibition,

³ 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.

a court and its designees are not precluded from taking appropriate responsive action when an employee, in bad faith, makes a vexatious or knowingly false claim. A vexatious claim is a claim without foundation made for the purpose of harassment or to undermine the orderly operation of the court.

Sexual Harassment: Sexual harassment includes:

1. unsolicited and unwelcomed verbal comments, gestures, or physical contact of a sexual nature that are severe or pervasive enough to alter the conditions of employment and create an abusive working environment, and
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 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 an employment action, implicitly or explicitly, conditioned on submission to sexual advances.

Unit Executive: Unit executive refers to the person most directly involved in or responsible for the employment decisions relating to employees in the particular unit and includes, e.g., the circuit executive, district court executive, clerk of court, chief probation officer, chief pretrial services officer, federal public defender, bankruptcy administrator, bankruptcy appellate panel clerk, senior staff attorney, chief preargument/conference attorney/circuit mediator, or circuit librarian.