Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace

Judicial Council Approved: December 27, 2018
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Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace

I. INTRODUCTION

The Ninth Circuit is committed to a workplace that fosters respect, fairness, dignity, and tolerance. The Ninth Circuit's Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace ("the EDR Policy" or "the Policy"), is designed to assure that these values are a part of the culture of the Ninth Circuit as a workplace. The goal is to eliminate misconduct, including discriminatory, harassing, demeaning, and bullying behavior.

The Policy describes types of conduct that are prohibited in the workplace, and then sets out options for addressing or resolving such conduct. The Policy outlines the Ninth Circuit's mechanisms for (i) informal advice; (ii) assisted resolution of workplace issues; and (iii) formal resolution of workplace complaints.[1]

The Policy also seeks to encourage the reporting of workplace misconduct and reduce barriers to reporting, which include fear of retaliation, concern about reputational harm, and the belief that an issue will not be resolved even if it is reported. The Ninth Circuit recognizes the courage that is needed to report misconduct, and continues to encourage early reporting as the best way to address and prevent systemic, harmful conduct. The Policy prohibits retaliation against anyone who reports misconduct, whether the person experiences the misconduct directly or is a bystander. The Policy seeks to provide safe and accessible ways of reporting misconduct.

II. SCOPE OF COVERAGE

This Policy applies to all courts and court units within the Ninth Circuit, including District Courts, Bankruptcy Courts and Clerks of the District and Bankruptcy Courts, as well as United States Probation and Pretrial Services Offices and Federal Public Defenders. For ease of reference, all judges, judicial officers, court unit heads, and their staffs (including law clerks, externs, interns, and volunteers) are referred to as "Employees" in the Policy. This Policy covers conduct and actions that take place both on and off work premises.

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[1] This Policy has been approved by the Ninth Circuit Judicial Council and supersedes all previous versions of the circuit Employment Dispute Resolution plan.

Any modification of this Policy by a court or court unit must be consistent with the rights and procedures in this Policy and must be approved by the Judicial Council of the Ninth Circuit.

III. COVERED CONDUCT[2]

A. Equal Employment and Anti-Discrimination Rights

Employees are prohibited from engaging in discrimination, harassment, bullying, and retaliation, which are actions or behaviors that are unwelcomed, illegal, unfair, demeaning, or offensive. Discrimination and harassment are actions or behaviors directed against or toward an Employee, or group of Employees, based upon the Employee's race, sex or gender (including pregnancy, gender identity, gender expression, marital status, and parenthood), color, creed, national origin, citizenship, ancestry, age (at least 40 years of age at the time of the claimed discrimination), disability, religion, sexual orientation, genetic information, or past, current, or prospective service in the uniformed forces, in addition to any other status or characteristic protected under applicable federal law. Conduct need not be illegal to be Covered Conduct under this Policy. The rights and protections of Chapter 1 of the EEO Plan (Appendix 2) shall apply to Employees.

B. Family and Medical Leave Rights

Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381-6387, applies to Employees in the manner prescribed in Volume 12, Chapter 9, Section 920.45.20 of the *Guide to Judiciary Policy*.

C. Employment and Reemployment Rights of Members of the Uniformed Services

An employing office shall not discriminate against an eligible Employee or deny an eligible Employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301-4335.

[2] This Policy also applies to additional workplace rights that are incorporated in Appendices 1 and 2.

D. Explanation of Types of Misconduct: Discrimination, Harassment, Bullying, and Retaliation

Discrimination: Discrimination comes in many forms. It generally arises as an adverse employment-related action, such as a demotion or an unfair evaluation, or action that negatively affects an Employee's workplace environment, which is sometimes referred to as a "hostile workplace environment."

Harassment (including sexual harassment), bullying, and retaliation can all be forms of discrimination. Each is described below. The categories listed in this section are illustrative, not exhaustive. Nothing in this Policy should be interpreted as a limitation on what the Ninth Circuit considers to be discrimination or harassment. Further, conduct need not be directed toward a specific individual or group of individuals to be considered discrimination or harassment.

Harassment: Harassment, which may be a form of discrimination, is unwelcome conduct that is based on any of the categories of Covered Conduct. Harassment can include physical, verbal, non-verbal, or psychological behavior that interferes with work performance or creates a hostile or offensive work environment. Examples of harassment include offensive jokes, remarks, slurs or name-calling; viewing or display of inappropriate images, pictures, videos or cartoons; or disparaging comments.

Sexual harassment is a form of harassment based on sex or gender. Like harassment, sexual harassment can include physical, verbal, or non-verbal behavior. Examples of sexual harassment include offensive remarks about an individual's sex or gender; unwelcome sexual advances; requests for sexual favors; repeated sexual advances or jokes; inappropriate touching or physical contact; displaying sexually suggestive posters, cartoons, or drawings; leering; making sexual gestures; or any other conduct of a sexual nature, when any of the following occur:

- Submission to the advance, request, or conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the advance, request, or conduct is used as a basis for employment decisions; or

- Such advance, request, or conduct has the purpose or effect of substantially or unreasonably interfering with an Employee's work performance by creating an intimidating, hostile, or offensive work environment.

Bullying: Bullying includes repeated mistreatment involving abusive conduct that is threatening, oppressive, or intimidating, and interferes with an individual's ability to do one's job. It can be physical, verbal, non-verbal, or psychological and can involve work assignments and social ostracism as well as demeaning treatment and comments. Bullying is not consistent with a workplace that aims to treat all individuals fairly and with respect.

Retaliation: An Employee who asserts rights or participates in the filing or processing of any report or claim under this Policy has the right to be free from retaliation, coercion, or interference. Retaliatory behavior can include, but is not limited to, unwarranted reprimands; unfair downgrading of personnel evaluations; transfers to less desirable positions; verbal, physical, or psychological abuse; and altered or less convenient work schedules.

IV. DIRECTOR OF WORKPLACE RELATIONS

The Director of Workplace Relations will serve as the primary contact for Employees who experience or witness workplace misconduct and wish to discuss or report such misconduct. The duties of the Director of Workplace Relations include (i) providing information to Employees regarding the rights and protections under this Policy; (ii) providing guidance to Employees seeking options for resolution of workplace issues covered under this Policy; (iii) coordinating EDR proceedings; (iv) coordinating training for judges and Employees; (v) recording and resolution of complaints under this Policy; (vi) compiling periodic reports regarding implementation of this Policy; and (vii) collecting and analyzing data related to this Policy. The Director of Workplace Relations will act as a neutral point of contact to ensure a safe, fair, and discreet reporting environment.

In addition to the circuit Director of Workplace Relations, each court or court unit may designate an EDR Coordinator to assist with the resolution of workplace concerns. The duties of an EDR Coordinator may include (i) providing information to Employees regarding the rights and protections afforded under this Policy; (ii) facilitating training opportunities for Employees within the court or court unit; (iii) engaging in Assisted Resolution to

Employees; (iv) compiling court unit reports of misconduct allegations; and (v) other duties as assigned by the court or court unit, so long as they do not conflict with the duties of the Director of Workplace Relations.

V. COMMITMENT TO REPORT WORKPLACE MISCONDUCT

Employees share the responsibility for keeping the workplace free of discrimination, harassment, bullying, retaliation, and other misconduct. To implement this Policy effectively, it is imperative that Employees report instances of misconduct immediately. Employees may reach out to a supervisor, a local EDR Coordinator, the Director of Workplace Relations, or any other resource for assistance. However, at their option, Employees may report directly to the Director of Workplace Relations. Any Employee (including supervisors and local EDR Coordinators) who receives a report or inquiry about misconduct should advise the Director of Workplace Relations.

VI. OPTIONS FOR RESOLUTION

Employees who experience or witness discrimination, harassment, bullying, retaliation, or any other Covered Conduct have several options. These options include (i) requesting informal advice, (ii) seeking assisted resolution, or (iii) filing a formal complaint.

These options are not mutually exclusive. However, not all options can guarantee strict confidentiality, so Employees should choose the avenues that best fit their needs and comfort level. For a strictly confidential conversation, Employees are encouraged to contact the Director of Workplace Relations with any questions or simply to discuss ways in which to proceed. Nothing in this Policy prevents an Employee from addressing the situation directly with the person whose behavior is of concern if they are comfortable doing so, or from contacting a colleague, supervisor, chief judge, judge, local EDR Coordinator, or other individual to discuss or address the situation.

A. Informal Advice

An Employee may contact the Director of Workplace Relations to request advice about a workplace concern. The purpose of this option is to provide an outlet for confidential advice and guidance on how an Employee can address workplace issues. An Employee may request anonymity, confidentiality, or that no action be taken following the inquiry. The Director of Workplace Relations

will adhere to the Employee's request unless the conduct is physically threatening or so pervasive as to present unsafe working conditions for the Employee or other Employees.

The advice could cover a range of topics, including:

- providing information regarding the rights and protections afforded under this Policy;
- providing perspective on the conduct described, including whether it violates this Policy;
- coaching on handling discriminatory or harassing conduct as it is happening;
- immediate options for further reporting the conduct or lodging a complaint; and
- possible options and procedures to consider given the circumstances.

In addition to contacting the Director of Workplace Relations for informal advice, an Employee may also contact the Judiciary Workplace Conduct Counselor, an employee of the Administrative Office of the U.S. Courts who staffs the federal judiciary workplace hotline, the Ninth Circuit Employee Assistance Program (EAP) for personal counseling, or, for ethics advice, a member of the Codes of Conduct Committee. Like the Director of Workplace Relations, these individuals are professionals who have been trained in the court's policies and practices and are outside the Employee's chain of command.

B. Assisted Resolution

In addition to, or in lieu of, seeking Informal Advice, an Employee can seek Assisted Resolution of workplace issues.

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

- interviewing witnesses to the conduct;
- discussion with the source of the conduct;
- conducting a preliminary investigation report
- crafting a resolution of the situation; and
- voluntary mediation between the parties.

Because this option may lead to a preliminary investigation that may include discussing the issue with the source of the conduct, confidentiality and

anonymity are not guaranteed. However, information about the complaint will be shared only on a "need to know" basis to ensure fairness to all parties and to minimize disruption to the workplace environment.

To pursue this option, an Employee should contact the Director of Workplace Relations and/or the local EDR Coordinator, who will assist the Employee in completing a "Request for Assisted Resolution under EDR Policy" (Appendix 3). The Request for Assisted Resolution form includes (1) a summary of the incident or decision giving rise to the dispute; (2) a list of any witnesses to the conduct; and (3) the desired outcome of reporting the conduct.

The Director of Workplace Relations will coordinate options for resolution with the local chief judge or court unit executive, depending on whether the source of the conduct is a judge or an Employee. At all stages of the process, the Director of Workplace Relations will ensure that no conflict of interest exists with the decision maker for the employing office.

If Assisted Resolution is successful in resolving the Employee's concerns, a written Acknowledgement of Resolution will be signed by the parties and retained by the Director of Workplace Relations. If Assisted Resolution is not successful in resolving the matter, the Director of Workplace Relations will advise the Employee of rights under this Policy, including the option to file a formal complaint.

C. Formal Complaint and Hearing

An Employee may also initiate a formal dispute resolution process. This option involves the filing of a formal complaint, which leads to an investigation and possibly a hearing. Appendix 4 is a summary of the timeline for a formal complaint.

Filing Complaint: To initiate this process, an Employee must file a "Complaint under the EDR Policy" (Appendix 5) with the Director of Workplace Relations or local EDR Coordinator within 180 calendar days of the alleged misconduct. Once this process is initiated, the Employee becomes known as the "Complainant," and the Employing Office becomes known as the "Respondent."

After a Complaint has been filed, a Hearing Officer will be assigned to the matter. For Complaints against Employees, including supervisors or court unit executives, the Hearing Officer will be the chief judge of the court of the employing office or a designee. For Complaints against judges, the Hearing

Officer is the chief circuit judge or a designee.[3] If the chief circuit judge is the subject of the Complaint, the circuit Judicial Council shall designate an alternative Hearing Officer to oversee the hearing process.

Investigation: The Hearing Officer or a designee will investigate the allegations in the Complaint thoroughly, promptly, and confidentially to the extent that is reasonable under the circumstances. Because the investigation may include interviews of known witnesses, confidentiality and anonymity cannot be guaranteed.

Hearing: Once the investigation is complete, the Hearing Officer will determine whether there are material factual issues or remedies for resolution. If the Hearing Officer determines that there are no remaining issues for resolution, the Hearing Officer will resolve the Complaint via a written decision. Otherwise, the Hearing Officer will proceed with a hearing decision.

The Hearing Officer will determine the time, place, and manner of conducting the hearing.

The following provisions shall apply to hearing procedures:

- The hearing shall take place no later than 60 calendar days after the filing of the Complaint. No later than 30 calendar days before the hearing date, written notice of the hearing shall be given to the Complainant, the Respondent, and the head of the office from which relief is being sought.

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[3] With respect to misconduct by a judge, the Employee may also file a Judicial Misconduct Complaint under the Judiciary Conduct & Disability Act ("the Act"). 28 U.S.C. §§ 351-364.

If a judge becomes the subject of both an EDR Complaint and a judicial misconduct complaint under the Judicial Conduct and Disability Act, the Judicial Council of the Ninth Circuit or its designee, which may include the chief judge of the circuit, will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial Disability Proceedings, and, as practicable, this EDR Policy. In doing so, the council or its designee, who may include the chief judge of the circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

- The scope of the hearing shall generally be limited to a review and discussion of the documents and other written evidence submitted, rather than a full evidentiary hearing or trial. However, at the discretion of the Hearing Officer, witnesses may be presented.

- At the hearing, the Complainant and the employing office are permitted to be represented by counsel.

- A verbatim record of the hearing must be kept and shall be the sole official record of the proceeding.

- In reaching a decision, the Hearing Officer shall be guided by judicial and administrative decisions under relevant rules and statutes.

- Remedies may be provided in accordance with this Policy where the hearing officer finds that the Complainant has established by a preponderance of the evidence that a substantive right protected by this Policy has been violated.

- The final written decision of the Hearing Officer must be issued no later than 30 calendar days after the conclusion of the hearing.

- All parties, and any aggrieved individual, shall be provided with a copy of the written decision.

The Hearing Officer may extend for good cause any of the deadlines in this Policy. All extensions of time granted will be made in writing and become part of the record.

A Complainant or Respondent may appeal the Hearing Officer's final decision within 30 calendar days of the date of the decision. Appeals must be made in writing to the Executive Committee of the Judicial Council of the Ninth Circuit. The Executive Committee's decision is final.

Remedies:[4] Any remedies imposed by the Hearing Officer should be tailored as closely as possible to the specific violation involved. For Covered Conduct under this Policy, remedies may include, but are not limited to:

- required counseling or training for the Respondent;
- an oral or written reprimand to the Respondent;
- loss of salary or benefits for the Respondent;
- suspension, probation, demotion, or termination for the Respondent;
- an apology;
- placement of a Complainant in a position previously denied;
- placement of a Complainant in a comparable alternative position;
- reinstatement to a position from which the Complainant was previously removed;
- prospective promotion of a Complainant;
- priority consideration of a Complainant for a future promotion or position;
- back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
- records modification and/or expungement;
- "equitable" relief, such as temporary stays of adverse actions;
- granting of family and medical leave; and
- accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.

Remedies that are not legally available include:

- payment of attorney's fees (except as authorized under the Back Pay Act);
- compensatory damages;
- punitive damages; and
- overtime pay.

Record-keeping: The Director of Workplace Relations shall retain all notes, reports, files, and other documents created or submitted in connection with this Policy. Records necessary for statistical or reporting purposes shall be

[4] Consistent with the Constitution of the United States and the Judicial Conduct & Disability Act, certain remedies are unavailable where a judge is the Respondent.

stripped of any personally identifiable information. Records created in connection with this Policy, shall not be: (1) filed in any Employee's personnel folder, except as necessary to implement an official personnel action, or (2) made available to the public or to other Ninth Circuit personnel. However, the Hearing Officer may determine that all or portions of the decision be made available to the public.

VII. ANNUAL REPORT

The Director of Workplace Relations will prepare an annual report for the fiscal year for the Judicial Council, indicating:

1. The number and type of alleged violations for which Informal Advice was provided.

2. The number and type of alleged violations for which Assisted Resolution was requested.

3. The number and type of Complaints filed.

4. The number and type of hearings conducted.

5. The number and type of final decisions rendered reflecting the number for which some relief was granted.

6. With respect to all the data supplied in items 1 through 5 above, the allegations or Complaints shall be reported according to the section of this Policy that is involved and the type(s) of discrimination alleged.

Appendices Attached:

1. Additional Workplace Protections
2. Ninth Circuit Equal Employment Opportunity Plan
3. Request for Assisted Resolution under EDR Policy
4. Timeline for EDR Complaint Process
5. Complaint under EDR Policy
6. Petition for Review Procedures and Sample Form

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Appendix 1

Additional Workplace Protections

I. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

No "employing office closing" or "mass layoff" (as defined below) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff that results from the absence of appropriated funds.

Definitions

A. The term "employing office closing" means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

B. The term "mass layoff" means a reduction in force which:
   1. is not the result of an employing office closing; and
   2. results in an employment loss at the single site of employment during any 30-day period for
      a. (i) at least 33 percent of the employees (excluding any part-time employees); and
         (ii) at least 50 employees (excluding any part-time employees), or
      b. at least 500 employees (excluding any part-time employees).

   See 29 U.S.C. § 2101.

II. OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

Each employing office shall implement a program to provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service

("USPS") to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.

III. POLYGRAPH TESTS

Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

IV. WHISTLEBLOWER PROTECTION

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take an adverse employment action with respect to any employee (excluding applicants for employment) because of any disclosure of information by the latter employee to -

A. the appropriate federal law enforcement authority, or
B. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, which that employee reasonably and in good faith believes evidences a violation of any law, rule, or regulation, or other conduct that constitutes gross mismanagement, a gross waste of funds, or a substantial and specific danger to public health or safety, provided that such disclosure of information -

    1. is not specifically prohibited by law,
    2. does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide to Judiciary Policy*, Vol. 20, Ch. 8), and
    3. does not reveal information that would endanger the security of any federal judicial officer.

Definition - For purposes of this section, an "adverse employment action" means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee's job status, compensation, terms, or responsibilities, or the employee's working conditions.

Appendix 2

NINTH CIRCUIT EQUAL EMPLOYMENT OPPORTUNITY PLAN[1]

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, sex or gender (including pregnancy, gender identity, and gender expression), color, creed, national origin, citizenship, ancestry, age (at least 40 years of age at the time of the claimed discrimination[2]), disability, religion, sexual orientation, genetic information, or past, current or prospective 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 Plan. Each court 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 Plan. All Complaints under this plan shall be covered by the procedures in Section VI of the Ninth Circuit EDR Policy.

Court 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 labor 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.

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[1] This plan was originally adopted in December 1997 and approved and amended in June 1998, November 2000, and June 2014 by the Judicial Council of the Ninth Circuit. This plan supersedes the Court of Appeals and the Circuit Executive's former EEO Plan.

[2] Special provision for probation and pretrial services officers – The age discrimination provision shall not apply to the initial hiring or mandatory separation of probation and pretrial services officers and officer assistants. *See* Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17. Additionally, probation and pretrial services officers must meet all fitness for duty standards, and compliance with such standards does not, in and of itself, constitute discrimination on the basis of disability.

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.

II. Annual Report

Court unit executives must submit an annual report to the chief circuit judge. 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. The report will be the same report as that submitted annually to the Administrative Office of the United States Courts.

III. Objectives

When the court unit executive deems it necessary or desirable, he or she 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 plan shall be made available to all employees and furnished, upon request, to applicants for positions of employment.

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Appendix 3

REQUEST FOR ASSISTED RESOLUTION UNDER EDR POLICY

Submitted under the Procedures of the Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace

Prior to completing this form, please refer to the EDR Policy.

1. Full name of person requesting Assisted Resolution: _____

2. Mailing Address:
   Email Address:

3. Home Phone: (_____)_____Work Phone: (_____) _____

4. If you are an employee with the Court of Appeals or Circuit Executive's Office, state the following:
   Court Unit in which employed:_____
   Job Title _____

5. Name and address of the office from which you seek resolution of your dispute:
   _____
   _____

6. Identify the Section(s) of the EDR Policy under which your Request for Assisted Resolution is being filed.

   ☐ Section III.A - Equal Employment Opportunity & Anti-Discrimination Rights
   - ☐ Race
   - ☐ Color
   - ☐ Sex or Gender (may include: pregnancy, gender identity, gender expression, marital status, parenthood, sexual harassment, biological sex)
   - ☐ Bullying
   - ☐ Religion or creed
   - ☐ National Origin, citizenship, or ancestry
   - ☐ Age
   - ☐ Disability
   - ☐ Sexual Orientation
   - ☐ Genetic information

☐ Section III.B - Family and Medical Leave Rights
☐ Section III.C - Employment and Reemployment Rights of Members of the Uniformed Services
☐ Section III.D - Retaliation
☐ Appx. 1, Section I - Worker Adjustment and Retraining Notification Rights
☐ Appx. 1, Section II - Occupational Safety and Health Protections
☐ Appx. 1, Section III - Polygraph Tests
☐ Appx. 1, Section IV - Whistleblower Protection Provision

7. Date(s) of alleged incident or decision giving rise to this dispute: _____

8. Please summarize the actions or occurrences giving rise to this dispute. (If insufficient space, use the reverse side or an attachment):

_____

_____

9. Please list any witnesses to the actions or occurrences giving rise to this dispute:

10. What corrective action do you seek in this matter?

_____

11. I acknowledge that this Request will be kept confidential to the extent possible and that the Director of Workplace Relations or EDR Coordinator may share confidential information on a need to know basis to attempt resolution of this matter as provided in the EDR Policy.

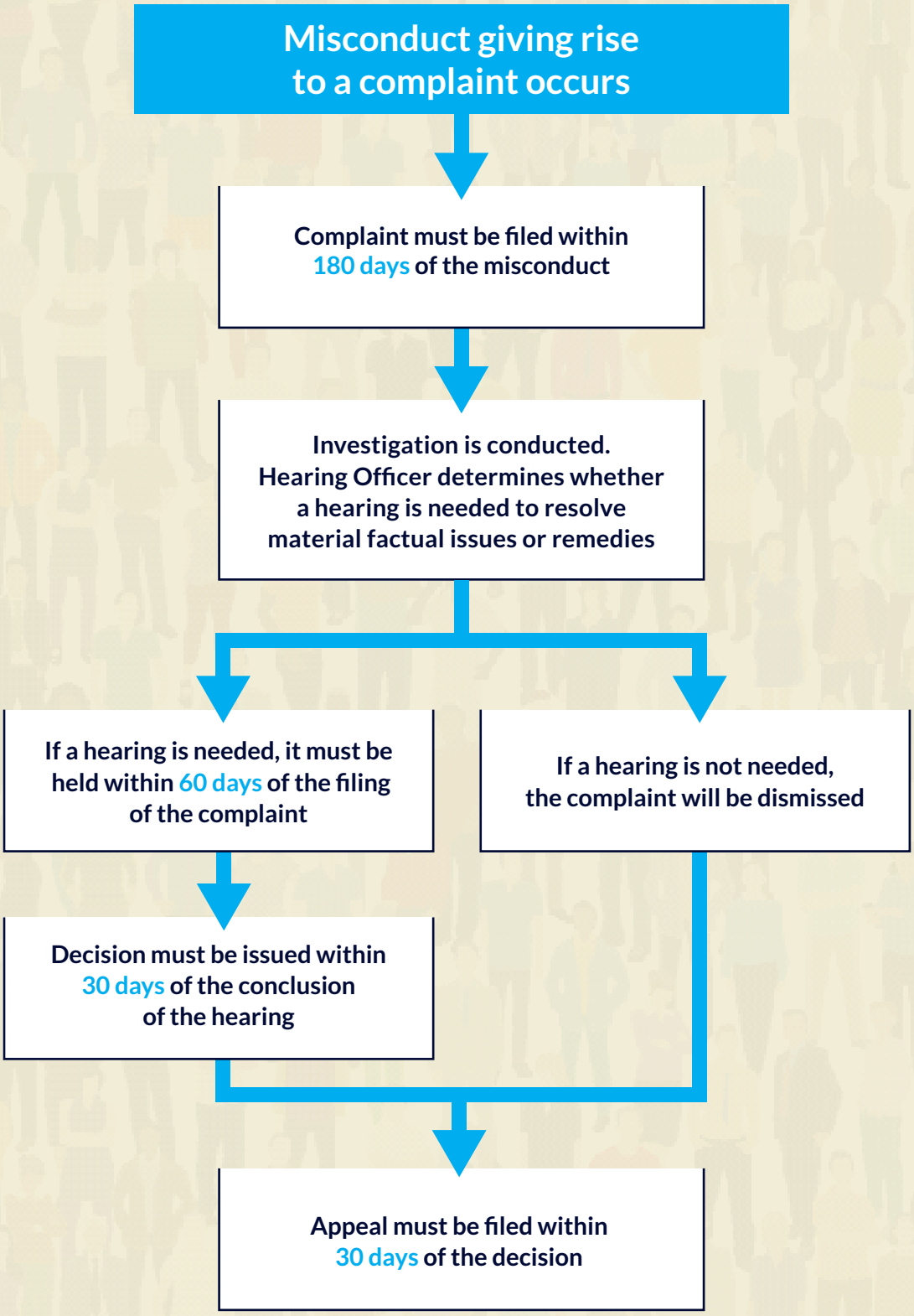
☐ Yes ☐ No

This Request for Assisted Resolution is submitted by: _____

_____ _____
Signature Date

Director of Workplace Relations Signature:_____Date of Receipt: _____

Timeline for EDR Complaint Process



Appendix 5

COMPLAINT UNDER EDR POLICY

Submitted under the Procedures of the Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace

Prior to completing this form, please refer to the EDR Policy.

1. Full name of person filing complaint: _____

2. Mailing Address: _____
   Email Address: _____

3. Home Phone: (_____)_____Work Phone: (_____) _____

4. If you are an employee with the Court of Appeals or Circuit Executive's Office, state the following:
   Court Unit in which employed:_____
   Job Title _____

5. Name and address of the Employing Office against whom this complaint is filed: (all complaints must be filed against an "Employing Office," and, except in the case of a judge, not an individual):

   _____
   _____
   _____

6. Identify the Section(s) of the EDR Policy under which your complaint is being filed.

   ☐ Section III.A - Equal Employment Opportunity & Anti-Discrimination Rights
   - ☐ Race
   - ☐ Color
   - ☐ Sex or Gender (may include: pregnancy, gender identity, gender expression, marital status, parenthood, sexual harassment, biological sex)
   - ☐ Bullying
   - ☐ Religion or creed
   - ☐ National Origin, citizenship, or ancestry
   - ☐ Age
   - ☐ Disability
   - ☐ Sexual Orientation
   - ☐ Genetic information

- ☐ Section III.B - Family and Medical Leave Rights
- ☐ Section III.C - Employment and Reemployment Rights of Members of the Uniformed Services
- ☐ Section III.D - Retaliation
- ☐ Appx. 1, Section I - Worker Adjustment and Retraining Notification Rights
- ☐ Appx. 1, Section II - Occupational Safety and Health Protections
- ☐ Appx. 1, Section III - Polygraph Tests
- ☐ Appx. 1, Section IV - Whistleblower Protection Provision

7. Date(s) of alleged violation: _____

8. Date on which Informal Advice was requested, if any: _____
   Date on which Informal Advice was completed: _____
   Date on which Assisted Resolution was requested, if any: _____
   Date on which Assisted Resolution was concluded: _____

9. Name of person who served as Director of Workplace Relations on this matter: _____

10. Name of all other Circuit personnel who worked with you on this matter: _____

11. Please summarize the actions or occurrences giving rise to your complaint. Explain in what way you believe your rights under the EDR Policy were violated. Identify all persons who participated in this matter or who can provide relevant information concerning your complaint, including persons who witnessed the actions or occurrences giving rise to your complaint. (If there is insufficient space below, you may attach additional pages.)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

[Please attach a copy of any documents that relate to your complaint, such as an application form, resume, letters, notices of discipline, or termination, etc.]

12. What corrective action do you seek from your complaint? _____

_____
_____
_____
_____
_____
_____

13. Do you have an attorney or any other person who represents you in this matter?

☐ Yes ☐ No

If yes, please provide the following information concerning that person:
Name: _____
Address: _____
Work Phone: (_____)_____ Fax (_____) _____
Email: _____

14. I acknowledge that this Complaint will be kept confidential to the extent possible and that the Director of Workplace Relations or EDR Coordinator may share confidential information on a need to know basis to attempt resolution of this matter as provided in the EDR Policy.

☐ Yes ☐ No

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

_____ _____
Signature Date

Appendix 6

PROCEDURES FOR REVIEW OF EDR HEARING OFFICER DECISION BY THE EXECUTIVE COMMITTEE OF THE JUDICIAL COUNCIL OF THE NINTH CIRCUIT

I. Scope of the Rules

These rules govern procedures for petitioning for review of a decision, or summary dismissal, of a Ninth Circuit Employment Dispute Resolution Policy and Commitment to a Fair and Respectful Workplace ("the EDR Policy") complaint rendered by a "Hearing Officer" (see the EDR Policy, Section VI.C). Such review is conducted by the Executive Committee of the Judicial Council of the Ninth Circuit ("Executive Committee").

II. Filing of Petition for Review

A. *Filing the Petition for Review* -- A party aggrieved by a final decision of the Hearing Officer or by summary dismissal of a complaint, may petition for review of that decision or summary dismissal by filing a petition for review to which is attached a copy of the decision of the Hearing Officer (or a 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, single-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 delivered to the Circuit Executive at the following address:

Office of the Circuit Executive	Parcel Delivery:
Assistant Circuit Executive - EDR Policy	95 Seventh Street
P.O. Box 193939	San Francisco, CA 94103
San Francisco, CA 94119	Fax (415) 355-8901

Simultaneously, a copy of the petition (and all attachments thereto) must be served on the opposing party, and proof of such service shall be included with the petition filed with the Executive Committee.

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 Hearing 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 request is received no later than the required filing date, and 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 Hearing 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 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 decision or summary dismissal of the Hearing 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 not to 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.

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

[see next page for form]

Name of Petitioning Party or Counsel
Address
Telephone #
Fax #

Name of Court in Which Hearing Officer's Decision Was Issued

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

Notice is hereby given that (name the party petitioning for review), (petitioners) in the above named case, hereby petition for review to the Executive Committee of the Judicial Council for the Ninth Circuit from the decision (or summary dismissal of the complaint) by Judge (name of Hearing Officer) entered in this matter action on the _____day of_____, (20___).

Attached to this petition is a copy of the Hearing Officer's 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 this_____day of_____, (20_).

(s)_____
(Representing name of party)

Approved by the Ninth Circuit Judicial Council on_____.