

NINTH CIRCUIT EMPLOYMENT DISPUTE RESOLUTION POLICY AND COMMITMENT TO A FAIR AND RESPECTFUL WORKPLACE FOR NINTH CIRCUIT FEDERAL PUBLIC DEFENDERS AND STAFF

I. INTRODUCTION

The Ninth Circuit is committed to a workplace fostering 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”) for Ninth Circuit Federal Public Defenders and Staff is designed to assure these values are a part of the Ninth Circuit Federal Defender and Staff workplace culture. The goal is to eliminate misconduct, including discriminatory, harassing, demeaning, and bullying behavior.

The Policy describes types of prohibited workplace conduct, 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 an issue will not be resolved even if reported. The Ninth Circuit recognizes the courage 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.

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

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AND COMMITMENT TO A FAIR AND RESPECTFUL WORKPLACE
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II. SCOPE OF COVERAGE

This Policy applies to all Federal Public Defenders Offices. For ease of reference, all Federal Public Defenders (FPDs), Assistant Federal Public Defenders (AFPDs), and FPD office employees including law clerks, externs, interns, and volunteers (Support Staff Employees) are referred to as “Employees” in the Policy. This Policy covers conduct and actions taking place both on and off work premises.

This Policy for FPDs is promulgated by the United States Court of Appeals pursuant to its authority under 18. U.S.C. § 3006(g)(2)(A) to appoint and remove FPDs.

Complaint procedures for AFPDs and Support Staff Employees differ somewhat from those applicable to the FPDs themselves. These distinctions are set forth in the appropriate sections of this Policy.

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

III. COVERED CONDUCT²

A. Equal Employment and Anti-Discrimination Rights

Employees are prohibited from engaging in discrimination, harassment, bullying, and retaliation, that is actions or behaviors which are unwelcomed, illegal, unfair, demeaning, or offensive (Covered Conduct). 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, and gender expression), color, creed, national origin, citizenship, ancestry, age (at least 40 years old at the time of the claimed

² This Policy also applies to additional workplace rights incorporated in Appendices 1 and 2.

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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. EEO Plan (Appendix 2) Chapter 1's rights and protections must 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 as prescribed in the *Guide to Judiciary Policy*, Volume 12, Chapter 9, § 920.20.35.

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

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

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

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 negatively affecting an Employee's workplace environment, sometimes called 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.

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

Sexual harassment is a harassment form based on sex or gender. Like harassment, sexual harassment can include physical, verbal, or nonverbal behavior. Sexual harassment examples 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:

- An employment term or condition explicitly or implicitly requires submitting to the advance, request, or conduct;
- Employment decisions are based upon submitting to or rejecting the advance, request, or conduct; or
- Such advance, request, or conduct substantially or unreasonably interferes with an Employee's work performance by creating an intimidating, hostile, or offensive work environment.

Bullying: Bullying includes repeated mistreatment involving threatening, oppressive, or intimidating abusive conduct 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 inconsistent with any workplace aiming to treat all individuals fairly and with respect.

Retaliation: An Employee who, under this Policy, asserts rights or participates

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in the filing or processing any report or claim has the right to be free from retaliation, coercion, or interference. Retaliatory behavior includes, 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 (DWR) serves as a contact for Employees who experience or witness workplace misconduct and wish to discuss or report such misconduct. The DWR's duties include:

- (i) providing Employees information regarding this Policy's rights and protections;
- (ii) providing Employees seeking guidance options for resolving workplace issues covered under this Policy;
- (iii) coordinating EDR proceedings;
- (iv) coordinating training for judges, FPDs, and Employees;
- (v) recording any complaint resolution under this Policy;
- (vi) compiling periodic reports regarding this Policy's implementation; and
- (vii) collecting and analyzing data related to this Policy.

The DWR acts as a neutral point of contact to ensure a safe, fair, and discreet reporting environment.

In addition to the Circuit's DWR, each FPDO may designate an EDR Coordinator to assist with resolving workplace concerns. The EDR Coordinator's duties may include:

- (i) providing information to Employees on this Policy's rights and protections;
- (ii) facilitating FPDO Employee training opportunities;
- (iii) engaging in Assisted Resolution for and with Employees;
- (iv) assisting in the Formal Complaint and Hearing Process;

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- (v) compiling FPDO misconduct allegation reports; and
- (vi) other duties as assigned by the FPD, so long as they do not conflict with the DWR's duties.

V. REPORTING WORKPLACE MISCONDUCT COMMITMENT

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 Employees report instances of misconduct immediately. Employees may reach out to a supervisor, a local EDR Coordinator, the DWR, or any other resource for assistance. However, at their option, Employees may report directly to the DWR. Any Employee (including supervisors and local EDR Coordinators) receiving a report or inquiry about misconduct may also advise the DWR.

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 guarantee strict confidentiality, so Employees should choose the avenues best fitting their needs and comfort level. 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, for example, a colleague, supervisor, local EDR coordinator, chief judge, judge, or other individual to discuss or address the situation. 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.

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A. Informal Advice

An Employee may contact the DWR to seek advice about a workplace concern. This option provides 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 DWR 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 include:

- providing information on this Policy's rights and protections;
- 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 DWR for informal advice, an Employee may also contact the Judiciary Workplace Conduct Counselor (an Administrative Office of the U.S. Courts employee who staffs the federal judiciary workplace hotline), the Ninth Circuit Employee Assistance Program (EAP) for personal counseling, or, for ethics advice, a Codes of Conduct Committee member. Like the DWR, these individuals are professionals 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.

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

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

Because this option may lead to a preliminary investigation and that may include discussing the issue with the conduct source, confidentiality and anonymity are not guaranteed. However, complaint information will be shared only on a “need to know” basis to ensure fairness to all parties and to minimize disrupting the workplace environment.

To pursue this option, an Employee should complete a *Request for Assisted Resolution under EDR Policy* form (Appendix 3) and may contact the local EDR Coordinator and/or the DWR for help with the form. The *Request for Resolution* form asks for:

- (1) a summary of the incident or decision giving rise to the dispute;
- (2) a list of any witnesses to the conduct,
- (3) the desired outcome of reporting the conduct, and
- (4) when applicable, whether the Employee would like the DWR or the local EDR Coordinator to facilitate Assisted Resolution.

When an Employee completes a *Request for Assisted Resolution* form and chooses to use a local EDR Coordinator to facilitate resolution, the local EDR Coordinator may notify the DWR of the *Request*. At the EDR Coordinator’s request, the DWR may serve as a resource for the EDR Coordinator in facilitating resolution.

When an Employee completes a *Request for Assisted Resolution* form and chooses to use the DWR to facilitate resolution, the DWR may notify the local EDR Coordinator when appropriate and upon the Employee’s consent.

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The DWR or EDR Coordinator will coordinate resolution options with the FPD when the conduct source is an Employee, and with the Chair of the Standing Committee on Federal Public Defenders (FPD Standing Committee) or the full FPD Standing Committee when the conduct source is a judge. At all process stages, the DWR will ensure no conflict of interest exists with the decision maker for the employing FPDO.

If Assisted Resolution successfully resolves the Employee's concerns, the parties will sign a written *Acknowledgement of Resolution* which the EDR Coordinator and DWR will retain, or which may be sent to the DWR if handled locally. If Assisted Resolution does not successfully resolve the matter, the DWR or local EDR Coordinator will advise the Employee of this Policy's rights, including an option to file a formal complaint.

C. Formal Complaint and Hearing

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

Filing Complaint: To initiate this process, an Employee must file a *Complaint under the EDR Policy* (Appendix 5) with the local EDR Coordinator or DWR within 180 calendar days of the alleged misconduct. Once initiating this process, the Employee becomes known as the "Complainant," and the individual whose conduct is at issue becomes known as the "Respondent."

1. Employee complaints about the FPD's actions or decisions: The *Complaint* must be referred to the Chair of the FPD Standing Committee to hear the matter or to appoint a designee to hear the *Complaint*. The FPD has the right to respond to the *Complaint*. This response should be submitted to the Chair of the FPD Standing Committee or designated reviewing official within 15 days of receiving the *Complaint*.
2. FPD Complaints: FPDs must file their complaints with the Chair of the

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FPD Standing Committee. Formal complaints against the FPD Standing Committee by the FPD, based on FPD Standing Committee actions or decisions, must be referred to the chief circuit judge to appoint a designee to function in lieu of the FPD Standing Committee for the FPD-filed *Complaint*.

Hearing Officer: Once a *Complaint* is filed, a Hearing Officer will be assigned to the matter. With a Support Staff Employee-filed *Complaint*, the Hearing Officer is the FPD. If the *Complaint* is based on the FPD's actions or decisions, the Hearing Officer is the FPD Standing Committee. If the *Complaint* is filed by the FPD or an FPD applicant, the Hearing Officer is the Chair of the FPD Standing Committee or his/her designee. If the FPD's complaint is based on the FPD Standing Committee's actions or decisions, the chief circuit judge's designee is the Hearing Officer.

For *Complaints* against judges, the Hearing Officer is the chief circuit judge or a designee.³ If the chief circuit judge is the *Complaint's* subject, the Circuit Judicial Council shall designate an alternate Hearing Officer to oversee the hearing process.

Investigation: The Hearing Officer will investigate the *Complaint* allegations thoroughly, promptly, and confidentially to the extent reasonable under the circumstances. Because the investigation may include interviewing known

³ With any *Complaint* alleging a judge's misconduct, 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 is the subject of both an EDR *Complaint* and a *Judicial Misconduct Complaint* under the Judiciary Conduct and Disability Act, the Judicial Council of the Ninth Circuit or its designee, which may include the Circuit chief judge, will craft a procedure to determine 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 Circuit chief judge, may determine that all or part of the EDR claim must be abated until while first resolving the *Judicial Misconduct Complaint*.

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witnesses, confidentiality and anonymity cannot be guaranteed.

Hearing: Once investigation is completed, the Hearing Officer will determine whether there are material factual issues or remedies to resolve. If the Hearing Officer determines no remaining issues exist to resolve, the Hearing Officer will resolve the *Complaint* via written decision. Otherwise, the Hearing Officer will decide after a hearing.

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

The following provisions must apply to hearing procedures:

- The hearing must take place no later than 60 calendar days after the *Complaint* is filed. No later than 30 calendar days before the hearing date, the Hearing Officer must send written notice of the hearing to the Complainant, the Respondent, and the head of the FPDO from which relief is sought. Such Notice may be by email or regular mail.
- The hearing's scope will generally be limited to reviewing and discussing documents and other written evidence submitted, rather than a full testimonial evidentiary hearing or trial. However, at the Hearing Officer's discretion, parties may present witnesses.
- At the hearing, the Complainant and the employing FPDO may be represented by counsel.
- A verbatim record of the hearing must be kept and will be the proceeding's sole official record.
- In reaching a decision, the Hearing Officer must be guided by judicial and administrative decisions under relevant rules and statutes.

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- The Hearing Officer may provide remedies under this Policy when the Hearing Officer finds the Complainant established by a preponderance of the evidence the Respondent violated a substantive right protected by this Policy.
- The Hearing Officer's final written decision must be issued no later than 30 calendar days after the hearing's conclusion.
- The Hearing Officer must provide all parties and any aggrieved individual a copy of the written decision.

The Hearing Officer may extend for good cause any deadlines within this Policy. All time extensions will be granted 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 decision date. 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 the Hearing Officer imposes 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 the Respondent attend and complete counseling or training;
- an oral or written reprimand to the Respondent;
- the Respondent's loss of salary or benefits;
- Respondent's suspension, probation, demotion, or termination;
- the Respondent's verbal or written apology;
- placing a Complainant in a position previously denied;
- placing a Complainant in a comparable alternative position;

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

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- reinstating a Complainant to a position from which the Complainant was previously removed;
- Complainant's prospective promotion;
- priority consideration of a Complainant for a future promotion or position;
- back pay and associated benefits, including attorney's fees, when the Back Pay Act, 5 U.S.C. § 5596, statutory criteria are satisfied;
- modifying and/or expunging records;
- "equitable" relief, such as temporary adverse action stays;
- granting family and medical leave; and
- accommodating disabilities through a specialized equipment purchase or restructuring duties and/or work hours, or other appropriate action.

Remedies not legally available include:

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

Recordkeeping: The DWR must keep all notes, reports, files, and other documents created by or submitted to the DWR in connection with this Policy. Records necessary for statistical or reporting purposes must be stripped of any personally identifiable information or information protected by attorney-client or work product privileges. Records created in connection with this Policy must 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. In reaching that decision, the Hearing Officer must remove any protected attorney-client or work product privileged information inherently involved in the *Complaint* or hearing process.

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VII. ANNUAL REPORT

The DWR will prepare a fiscal year annual report for the Judicial Council. For all the data supplied in items 1 through 5 below, the allegations or *Complaints* must be reported to the Policy section(s) involved and the type(s) of discrimination alleged, as well as indicate:

1. The number and type of alleged violations the DWR provided Informal Advice.
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 the DWR conducted or has information were conducted.
5. The number and type of final decisions the DWR has information were rendered, reflecting the number for which some relief was granted.

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 FPDO serves affected employees written notice of such prospective closing or layoff. This provision does not apply to an employing FPDO’s closing or mass layoff resulting from absent appropriated funds.

Definitions

- A. “Employing office closing” means a single employment site’s permanent or temporary shutdown if the shutdown results in a single site employment loss during any 30-day period for 50 or more employees (excluding any part-time employees).
- B. “Mass layoff” means a workforce reduction which:
 - 1. is not the result of an employing office closing; and
 - 2. results in a single site employment loss during any 30-day period for:
 - a. (i) at least 33 percent of the single site’s 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 FPDO shall implement a program to provide to its employees an employment site free from recognized hazards causing or are likely to cause death or serious physical harm to employees. Claims seeking a remedy exclusively within General Services Administration (“GSA”) or the United States Postal Service (“USPS”) jurisdiction 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 to access classified information, or otherwise required by law, no employee

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can be required to take a polygraph test.

IV. WHISTLEBLOWER PROTECTION

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

- A. the appropriate federal law enforcement authority, or
- B. the employing FPDO's supervisor or managerial official, 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 constituting gross mismanagement, a gross waste of funds, or a substantial and specific danger to public health or safety, provided such information disclosure -
 - 1. is not specifically prohibited by law,
 - 2. does not reveal case-sensitive information, sealed material, or the federal judiciary's deliberative processes (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 - Within this section, an "adverse employment action" means termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action materially adverse to the employee's job status, compensation, terms, or responsibilities or the employee's working conditions.

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Appendix 2: NINTH CIRCUIT EQUAL EMPLOYMENT OPPORTUNITY PLAN¹

I. Policy Statement

Each Federal Public Defender Office 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), 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 employment facets such as recruitment, hiring, work assignments, compensation, benefits, education, disciplinary actions, terminations, training, promotion, advancement, and supervision are included in the Plan. Each Federal Public Defender (FPD) will promote an 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 Ninth Circuit EDR Policy, Section VI procedures.

FPDs must ensure appropriate vacancies are publicly announced to attract candidates representing the make-up of persons available in the relevant labor market and all hiring and other employment decisions are based solely on job-related factors. Reasonable efforts should be made to see that each employee's skills, abilities, and potential are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the FPDO's work permits and within any available resources, cross-training, reassignments, special assignments, and outside job-related training limitations.

II. Annual Report

FPDs may submit annually to the chief circuit judge the same report submitted annually to the Defender Services Office. The report will describe any significant achievements in providing equal employment opportunities, identify areas where improvements are needed, and explain factors inhibiting achieving equal employment opportunity objectives.

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 Office of the Circuit Executive's former EEO Plan.

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III. Objectives

When the FPD deems it necessary or desirable, he or she will develop annual objectives reflecting 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

This Plan's copies must be made available to all employees and furnished, upon request, to employment applicants.

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Appendix 3 - REQUEST FOR ASSISTED RESOLUTION UNDER EDR POLICY

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

Before 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 a Federal Public Defender Office (FPDO) employee, state the following:
FPDO employing you:

Title _____

5. Name and address of the office from which you seek to resolve your dispute:

6. Date(s) of alleged incident or decision giving rise to your dispute:

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

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

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

10. I acknowledge this Request will be kept confidential to the extent possible and that the Director of Workplace Relations (DWR) may share confidential information on a need-to-know basis to try to resolve this matter as provided in the EDR Policy.

☐ Yes ☐ No

11. For the Assisted Resolution stage, I hereby request

☐ the Director of Workplace Relations or ☐ the local EDR Coordinator
facilitate resolving my complaint.

This Request for Assisted Resolution is submitted by:

Name: _____

Signature

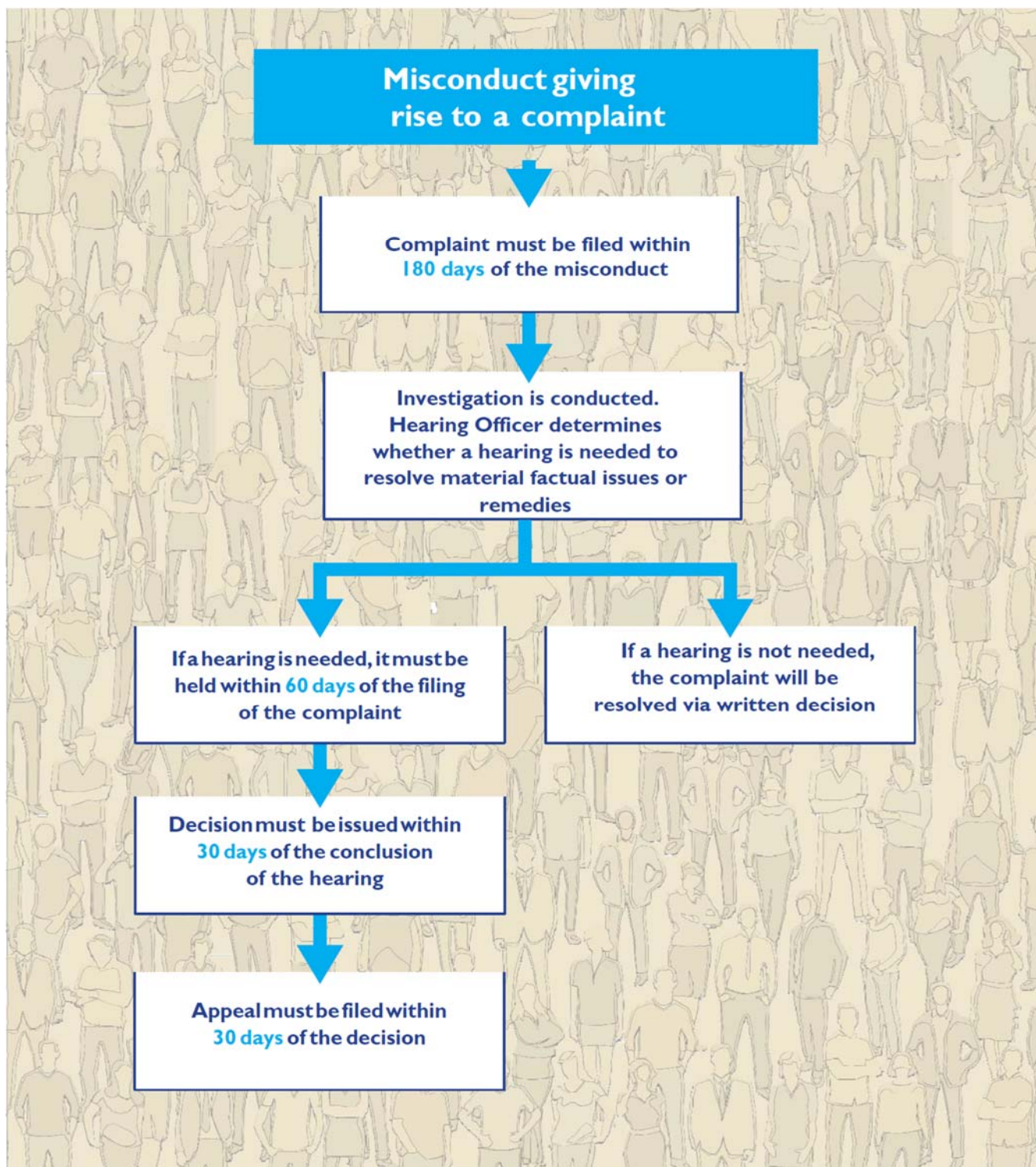
Date

Director of Workplace Relations Signature:

_____ Receipt Date: _____

NINTH CIRCUIT EMPLOYMENT DISPUTE RESOLUTION POLICY AND COMMITMENT TO A FAIR AND RESPECTFUL WORKPLACE FOR NINTH CIRCUIT FEDERAL PUBLIC DEFENDERS AND STAFF

Appendix 4 – Timeline for EDR Complaint Process



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Appendix 5 - COMPLAINT UNDER EDR POLICY

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

Before 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. Please state the following:
Job Title: _____
Court Unit in which employed: _____

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
 - ☐ Religion
 - ☐ 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

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- ☐ 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.]

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

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

☐ Yes ☐ No

If yes, please provide the following information concerning that person:

Name: _____

Address: _____

Work Phone: (_____) _____ Fax (_____) _____

Email: _____

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

Signature

Date

NINTH CIRCUIT EMPLOYMENT DISPUTE RESOLUTION POLICY AND COMMITMENT TO A FAIR AND RESPECTFUL WORKPLACE FOR NINTH CIRCUIT FEDERAL PUBLIC DEFENDERS AND STAFF

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
Assistant Circuit Executive - EDR Policy
P.O. Box 193939
San Francisco, CA 94119

Parcel Delivery:
95 Seventh Street
San Francisco, CA 94103
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

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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]

