

**JUDICIAL COUNCIL
OF THE UNITED STATES ELEVENTH JUDICIAL CIRCUIT**

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TO : Chief District Judges
Chief Bankruptcy Judges
Clerks of Court

FROM : Ashlyn D. Beck

COPY : Judge Julie E. Carnes
Kate Adams
Employment Dispute Resolution Coordinators

SUBJECT: Adoption of Appendix 6 to Employment Dispute Resolution (EDR)
Plan

The Judicial Council has approved the attached Appendix 6 to the Eleventh Circuit Judicial Council Model EDR Plan. Section VI of the Model EDR Plan provides, “Final Decisions under this Plan will be made available to the public, appropriately redacted, in accordance with procedures established by the Judicial Council of the Eleventh Circuit.” Appendix 6 contains those Council procedures.

We ask that you post Appendix 6 wherever you post your current EDR plan to allow individuals to be able to find it quickly. Please also share Appendix 6 with your staff.

Please let me know if you have any questions or if we may be of any assistance.

Enclosure

Procedures For Public Disclosure of a Final Decision Resolving an EDR Complaint

APPENDIX 6

I. Considerations Concerning Release of Final Decisions

Section VI.C. of the Eleventh Circuit Judicial Council Model Employment Dispute Resolution Plan (“EDR Plan”) provides that “Final Decisions under this Plan will be made available to the public, appropriately redacted, in accordance with procedures established by the Judicial Council of the Eleventh Circuit.” The procedures set out herein attempt to balance two important considerations: the privacy interest of all persons involved in an internal personnel dispute versus the need for public confidence in the judiciary’s employment dispute resolution process. These procedures apply to all EDR plans in the Eleventh Circuit that were adopted after 19 June 2020.

II. Final Decision

- a. When the Presiding Judicial Officer has determined that the Complainant has failed to establish a violation of a substantive right in accordance with the provisions of this Plan, the Officer’s written decision setting out the basis for that decision constitutes the Presiding Judicial Officer’s “final decision.”
- b. When the Presiding Judicial Officer has issued a written ruling concluding that the Complainant has established a violation of a substantive right in accordance with the provisions of this Plan, additional proceedings may be required to identify an appropriate remedy. The Presiding Judicial Officer’s consolidated written decision setting out the basis for the Officer’s determination of a violation combined with a written decision identifying the remedy directed to be provided constitutes the Presiding Judicial Officer’s “final decision.”

- c. Upon a Request for Review of the Presiding Judicial Officer's final decision, the Judicial Council's Order and any Memorandum resolving the Complainant's claims shall constitute the Judicial Council's final decision. An order by the Judicial Council remanding for further investigation or findings by the Presiding Judicial Officer does not constitute a final decision.
- d. The term "final decision" does not include any decisions made or resolutions reached during the Informal Advice or Assisted Resolution processes.
- e. A final decision shall be released only in accordance with the redaction procedures described below.

III. Redaction Protocol for a Final Decision Issued by the Presiding Judicial Officer

- a. Upon the Presiding Judicial Officer's issuance of a written decision concluding that the Complainant has failed to establish a violation of a substantive right, the Presiding Judicial Officer or the EDR Coordinator shall send both a redacted and unredacted copy of this decision to the Chief Judge of the court, Chief Circuit Judge, the Circuit Director of Workplace Relations, and the parties, as that term is defined in Appendix 1 and § IV.C.3.g.v. of this Plan.
- b. Upon the Presiding Judicial Officer's issuance of a written decision concluding that the Complainant has established a violation of a substantive right or a written decision setting out the recommended remedy for that violation, the Presiding Judicial Officer or the EDR Coordinator shall send both a redacted and an unredacted copy of the decision to the Chief Judge of the court, Chief Circuit Judge, the Circuit Director of Workplace Relations, and the parties, as that term is defined in Appendix 1 and § IV.C.3.g.v. of this Plan.
- c. The Chief Circuit Judge must approve any redactions to the Presiding Judicial Officer's final decision prior to the public release of the decision.

- d. When a Request for Review of the Presiding Judicial Officer's final decision has been filed, that final decision shall not be publicly released until after the Judicial Council has issued its final decision. The Presiding Judicial Officer is not authorized to release publicly the Officer's final decision, which task rests with the Chief Circuit Judge.

IV. Redaction Protocol for the Judicial Council Final Decision

- a. Following a Request for Review and prior to the public release of any final decision, the Chief Circuit Judge shall ensure that appropriate redactions to the Judicial Council's and Presiding Judicial Officer's final decision have been made.
- b. The Circuit Director of Workplace Relations shall send both redacted and unredacted copies of the Presiding Judicial Officer's and Judicial Council's final decisions to the Chief Judge of the court and the parties, as defined in Appendix 1 and § IV.C.3.g.v. of this Plan.

V. Material to be Redacted

- a. The public release of a redacted final decision informs the public of the substance of the Complaint, the process through which that Complaint has been investigated, and its ultimate resolution. Redaction of the names of the parties and other involved persons is intended to protect the privacy of those parties and persons.
- b. The names of the parties shall be redacted from any final decisions released by the Court to the public absent a decision to the contrary by the Judicial Council, as set out in subsection d. below.
- c. Final decisions released by the Court to the public may also redact:
 - i. The names of other individuals involved in the subject-matter of the dispute;

- ii. Information that could reasonably lead to the identification of the parties unless inclusion of that information is necessary to explain the reasoning of the final decision; and
 - iii. Sensitive information in which a person's privacy interest substantially outweighs both the relevancy of that information to the decision-making process and the public interest in being made aware of the information.
- d. Release of an unredacted final decision
- i. Although information identifying the parties will typically be redacted from final decisions released to the public, the Judicial Council may decline to redact a particular party's name when it determines that the public interest warrants that action. For example, when a Complainant or a person acting on behalf of a Complainant has publicly identified the Complainant and released information concerning the Complainant's allegations, the Council may deem it necessary that the released final decision likewise identify the Complainant in order to make the public aware of the resolution of those allegations previously made public. *See* Rules for Judicial-Conduct and Judicial Disability Proceedings, Rule 23 Commentary (although it "will generally be necessary" to shield the identity of the Complainant in any materials disclosed to the public, an exception to this principle may arise when there is "a demonstrated need for disclosure," such as when the Complainant has "demonstrated a lack of concern about maintaining the confidentiality of the proceedings.").
 - ii. After transmission of a final decision to the parties by the Judicial Council—or, when no Request for Review has been filed, after the expiration of the deadline for the filing of a Request for Review of a Presiding Judicial Officer's final decision—a party may file a motion showing cause why the released final decision should not redact a particular party's or other person's name. In

addition, the Judicial Council may *sua sponte* determine that redaction of a particular party's name is not warranted.

- iii. Prior to releasing publicly a final decision that does not redact a party's name, the Judicial Council will give the parties an opportunity to object.

VI. Release of Final Decisions in Which a Judicial Officer Is a Respondent

- a. Redacted final decisions in which a judicial officer is a Respondent who has been accused of wrongful conduct will be posted on the Eleventh Circuit's public website. Only final decisions will be released to the public.
- b. Final decisions in which a judicial officer is not a named Respondent will not be released publicly absent a substantial public interest for doing so, as determined by the Judicial Council.

VII. Distribution Of All EDR Final Decisions to the Administrative Office of Courts

All EDR final decisions, whether or not released publicly, will be sent in redacted form to the Director and to the Judicial Integrity Officer of the Administrative Office of Courts.

Effective September 15, 2022.