



**TABLE OF CONTENTS**

I. Purpose .....	2
II. Scope .....	2
III. Definitions .....	2
IV. Types of Adverse Actions .....	6
V. Administrative Review Process and Appeal Procedures for Adverse Actions.....	8
VI. Adverse Action Documents .....	11
VII. Signatures.....	11



## **I. Purpose**

The purpose of this Plan is to set forth the procedures for adverse actions in the Southern District of Ohio.

These procedures are separate from those adopted by the District in its Employment Dispute Resolution Plan (EDR) and Grievance Plan. Employees alleging a denial of a protection granted under the EDR Plan should file a complaint in accordance with the provisions of the EDR Plan and not the Adverse Action Plan. Employees who have filed a grievance may not raise the same issue in a complaint under this Plan.

## **II. Scope**

All District employees are in the excepted service and are “at-will” employees. “At-will” generally means that an employee may be terminated with or without notice, and with or without cause (i.e., without providing a reason). Probation Officers are an exception to the general “at-will” status rule and may be removed by the District Court only “for cause” (18 U.S.C. § 3602.1). Nothing contained or implied in any statement, policy, handbook, guideline, or practice of the court unit or its employees is intended to change the “at-will” nature of an employee’s employment. This Plan provides an avenue for mitigating factors and circumstances to be heard and a means for ensuring that the final decision is not based on inaccuracies. No further adverse action-related appeals, remedies, or reviews are available to an employee beyond those stated in this Plan.

This Adverse Action Plan applies to most employees. It does not apply to temporary employees, to employees still in their probationary period (except compensated probation officers), or to employees in a provisional hire status.

## **III. Definitions**

### **A. Adverse Action**

An “adverse action” is a documented oral or written reprimand, withholding of a step increase for performance reasons, suspension, demotion, or termination.

### **B. Non-Actionable Matters**

- The following matters are excluded as non-actionable by an employee under this Adverse Action Plan:



Southern District of Ohio

---

- Complaints addressable under the Grievance Plan;
- Matters that have previously been heard under this or another plan, policy, or process;
- Early cancellation of a temporary appointment resulting in termination;
- Termination during a probationary period;
- Termination due to actual or anticipated funding shortfalls or projected operating budget deficits; and
- Position-classification decisions or failure to receive a promotion.

C. Employee Actions Warranting Adverse Action

The following list provides examples of situations when adverse actions may be taken by the Court. The list neither exhausts all possible grounds for an adverse action nor implies the Court Unit Executives or Chief Judge are obligated to take adverse action if an employee engages in any type of this conduct:

- Abandonment of position;
- Absence from duty without approval;
- Below standard work performance;
- Excessive unapproved absence or tardiness;
- Discourteous treatment of other employees or the public;
- Possession or use of intoxicating beverages or controlled substances in the office, or being under the influence of such substances while on duty;
- Falsification of travel, leave, attendance, or other accountability documents;

**Southern District of Ohio**

---

- Insubordination;
- Neglect of duty;
- Fraud or deception in securing appointment or promotion;
- Misuse or theft of the Court's or employees' property, funds, or records;
- Threats, sabotage, or injury to the Court, and/or threats of or injury to court employees or the public;
- Failure to comply with the Code of Conduct for Judicial Employees or court/unit policies;
- Conduct in violation of the Equal Employment Opportunity (EEO) and/or Employment Dispute Resolution (EDR) Plans; or
- Criminal conviction or arrest (the nature of the matter will determine appropriate action).

Informal actions may also be imposed prior to adverse actions by the Court. Informal actions are attempts to address issues of concern with an employee. Informal actions are generally the first step taken by supervisors to address infractions of a minor nature involving the violation of a rule, regulation, standard of conduct, safety practice, or authorized instruction. The employee is interviewed and advised of the specific infraction or breach of conduct and when it occurred, and is permitted to explain his or her conduct or act of commission or omission. This informal process may be documented by the immediate supervisor and included in the supervisor's file. Informal actions are generally taken at the time of the issue of concern or immediately upon the supervisor's knowledge that the problem has occurred. It is possible that an informal action will resolve the issue and that no further action is necessary.

**D. Expedited Removal of Employee**

In extraordinary circumstances, the CUE or Chief Judge may determine that the employee's continued presence in the office during the adverse action review process poses a threat to the other employees or to the public; could result in loss of or damage to government or personal property, records, or documents of cases before the Court; could adversely affect the operation of the unit or the Court; or, could otherwise jeopardize government interests. In such circumstance, the CUE or Chief



Southern District of Ohio

---

Judge may initiate one of the following actions, which should be included in the Proposed Notice of Adverse Action:

- Assign the employee to alternate duties or an alternate duty station;
- With the employee's consent, place the employee on annual leave or leave without pay;
- With the employee's consent, following applicable rules for sick leave usage and documentation of medical incapacitation, place the employee on sick leave;
- Place the employee on excused absence/administrative leave with pay; or
- Place the employee on indefinite suspension without pay pending resolution of the proposed adverse action. This action should be given careful consideration. If the action is vacated as a result of an administrative review, the employee may be returned to his/her prior status as if no action had been taken and may be entitled to back pay and/or attorney's fees under the Back Pay Act (See *Guide* Vol. 12 § 690).

E. Documentation

The term "documentation" refers to the physical record that supports and justifies the need for an adverse action. It may take the form of letters and memoranda of warning or reprimand, notes from personal observations or conversations, leave records, performance evaluations, examples of work product, records of efforts made to correct the situation, or other applicable information.

F. Business Day

A "business day" is defined as Monday through Friday, excluding federal holidays.

G. Employee Representative

Employees may be represented during the Adverse Action Review process for proposed demotion, suspension or removal by an individual of his or her choosing, at his or her own personal cost, if applicable. When another employee acts as a representative, that employee may accept the responsibilities of representation if it will not unduly interfere with his or her duties or constitute a conflict of interest, as determined by the respective Court Unit Executive. The Court Unit Executive must receive notification of employee representation that is to be noted in the written appeal for proposed demotion, suspension, or removal.



#### H. Extension of Time

At any level of review, established time limits may be waived or extended by mutual agreement of the employee and Court Unit Executive, for good reason, and confirmed in writing.

### IV. Types of Adverse Actions

As noted in Section III, an “adverse action” is a documented oral or written reprimand, withholding of a step increase for performance reasons, suspension, demotion, or termination.

#### A. Oral/Written Reprimands

A formal oral/written reprimand may be initiated upon management’s discretion when an employee does not respond to informal efforts or the nature of the problem requires a more severe response from management.

##### 1. Oral Reprimands

An “oral reprimand” is a verbal notice in writing to the employee that his/her performance or behavior must be improved. The warning defines the areas in which improvement is required, sets up goals to achieve improvement, and informs the employee that failure to improve will result in more serious action.

##### 2. Written Reprimands

A “written reprimand” is more severe in nature than an oral reprimand. It provides formal notification to an employee that unless behavior improves, it will be necessary to take further disciplinary action. The written reprimand contains basically the same information shared in the oral reprimand and, in addition, advises the employee of the potential consequences of failing to improve performance.

#### B. Denial of Default Step Increases

Default step increases are not automatic and employees are awarded such increases, if applicable, only after the respective Court Unit Executive certifies that the employee is performing at an acceptable level of performance. Additionally, disciplinary problems can result in a delay in authorization for advancement to the next classification level or next higher step of the employee’s current classification level.



### **C. Demotion**

A “demotion” is normally imposed in lieu of removal (1) for disciplinary purposes; (2) when the employee is found to be inefficient in his/her position and is reduced in classification level to a position where it is determined that the employee can perform competently; or, (3) when an employee is in a supervisory position, is found to be unable to perform supervisory duties and responsibilities, but can serve in a non-supervisory position.

### **D. Suspension**

A “suspension” is a temporary, enforced absence from duty in a non-pay status, which may be imposed for significant misconduct or repeated lesser infractions and is a severe disciplinary action.

Suspension will generally result after a series of informal and formal reprimands informing the employee of needed improvement in behavior or if an infraction of an egregious nature has occurred.

Only Judges (for Chambers staff) and Court Unit Executives may authorize the suspension of an employee. Suspensions of Chambers staff are non-appealable.

### **E. Removal**

“Removal” is the most severe type of adverse action as the employee is terminated from his or her position and may be barred from future federal employment. Only Judges (for Chambers staff) and Court Unit Executives may terminate employment of employees, with the exception of Probation Officers. Removal is seldom imposed for a first offense unless the conduct is of an egregious nature.

A removal for poor performance may not be based solely upon the employee’s receiving an unsatisfactory performance rating unless the employee has been placed on a Performance Improvement Plan (PIP) and has failed to satisfy its schedule. Before initiating adverse action against an employee for poor performance, the employee shall have been warned about his/her shortcomings and warned of the consequences of failure to improve. Judges (for Chambers staff) and CUE’s in considering the possibility of removing an employee for poor performance, will have carefully documented instances or unacceptable work and provided counseling/coaching to the employee. Removals of Chambers staff by a Judge are non-appealable.



Southern District of Ohio

---

Probation Officers only are an exception to the general "at-will" status rule and may be removed by the District Court only "for cause." (18 U.S.C. § 3602.1) The Chief Probation Officer will recommend the removal of officers to the Chief Judge along with reasons for it and the proposed effective date of the removal.

## **V. Administrative Review Process and Appeal Procedures for Adverse Actions**

When an adverse action has been initiated against an employee and the employee wishes to formally appeal the action, the following procedures are to be followed.

Appeals may be presented during regular business hours using the Request for Appeal of Adverse Action Form contained in this Plan. Preparation time may be requested by the employee from the Court Unit Executive for review of personnel records and gathering of data. The preparation time may be granted at the discretion of the Court Unit Executive, for a period of time not to exceed eight (8) hours.

### **A. Official Reprimand**

The employee shall respond within five (5) business days after receipt of the oral or written reprimand by submitting a written appeal to the immediate supervisor who issued the official reprimand. Any pertinent information should be contained with the written appeal. The supervisor may respond in writing to the employee within five (5) business days after receipt of the written appeal.

If the employee disagrees with the supervisor's response, the employee may direct, within five (5) business days after receipt of the supervisor's response, a written appeal to the respective Court Unit Executive. Any pertinent information should be contained with the written appeal. The Court Unit Executive shall respond in writing to the employee within ten (10) business days after receipt of the employee's written appeal. The written decision of the Court Unit Executive is final.

### **B. Withholding of a Default Step Increase**

The employee shall respond, within five (5) business days after notification of withholding of a default step increase, by submitting a written appeal to the Court Unit Executive. Any pertinent information should be contained with the written appeal. The Court Unit Executive shall respond in writing to the employee within ten (10) business days after receipt of the employee's written appeal. The written decision of the Court Unit Executive is final.





### C. Demotion

Notice of a proposed demotion shall be provided to an employee. The notice will:

- Advise the employee of the nature of the proposed adverse action and the proposed effective date, which should be at least ten (10) business days after the date of the date of the notice;
- Cite all pertinent information concerning the proposed adverse action;
- Summarize all efforts that were made to correct the situation, if applicable; and
- Direct the employee to the District's Adverse Action Plan or reference and attach a copy of this Plan.

Employees may direct, within three (3) business days after receipt of notice of demotion, a written appeal to the respective Court Unit Executive. Any pertinent information should be contained with the written appeal. An administrative review meeting may be conducted at the discretion of the Court Unit Executive limited to attendance of the employee, his or her representative, the Court Unit Executive, and his/her Chief Deputy. The Court Unit Executive shall respond in writing to the employee within five (5) business days after receipt of the employee's written appeal. The written decision of the Court Unit Executive is final.

### D. Suspension

Notice of a proposed suspension shall be provided to an employee. The notice will:

- Advise the employee of the nature of the proposed adverse action and the proposed effective date, which should be at least ten (10) business days after the date of the date of the notice;
- Cite all pertinent information concerning the proposed adverse action;
- Summarize all efforts that were made to correct the situation, if applicable; and
- Direct the employee to the District's Adverse Action Plan or reference and attach a copy of this Plan.

Employees may direct, within three (3) business days after receipt of notice of suspension, a written appeal to the respective Court Unit Executive. Any pertinent

**Southern District of Ohio**

---

information should be contained with the written appeal. An administrative review meeting may be conducted at the discretion of the Court Unit Executive limited to attendance of the employee, his or her representative, the Court Unit Executive, and his/her Chief Deputy. The Court Unit Executive shall respond in writing to the employee within five (5) business days after receipt of the employee's written appeal. The written decision of the Court Unit Executive is final.

**E. Removal****1. District Employees (excluding Probation Officers)**

Notice of proposed removal shall be provided to an employee. The notice will:

- Advise the employee of the nature of the proposed adverse action and the proposed effective date, which should be at least ten (10) business days after the date of the date of the notice;
- Cite all pertinent information concerning the proposed adverse action;
- Summarize all efforts that were made to correct the situation, if applicable; and
- Direct the employee to the District's Adverse Action Plan or reference and attach a copy of this Plan.

Employees may direct, within three (3) business days after receipt of notice of removal, a written appeal to the respective Court Unit Executive. Any pertinent information should be contained with the written appeal. An administrative review meeting may be conducted at the discretion of the Court Unit Executive limited to attendance of the employee, his or her representative, the Court Unit Executive, and his/her Chief Deputy. The Court Unit Executive shall respond in writing to the employee within five (5) business days of receipt of the employee's written appeal. The written decision of the Court Unit Executive is final.

**2. Probation Officers**

Notice of proposed recommendation for removal from the Chief U.S. Probation Officer to the Chief Judge shall be provided to the Probation Officer, which will:

- Advise the employee of the nature of the proposed adverse action and the proposed effective date, which should be at least ten (10) business days after the date of the date of the notice;



Southern District of Ohio

---

- Advise the employee that he/she will be placed on administrative leave;
- Cite all pertinent information concerning the proposed adverse action;
- Summarize all efforts which were made to correct the situation, if applicable; and
- Direct the employee to the District's Adverse Action Plan or reference and attach a copy of this plan.


Employees may direct, within three (3) business days after receipt of notice of removal, a written appeal to the Chief Judge with a copy of provided to their respective Chief Probation Officer. Any pertinent information should be contained with the written appeal. A hearing may be conducted at the discretion of the Chief Judge based on the review of the employee's written appeal and the Chief U.S. Probation Officer's Recommendation for Removal. The Chief Judge shall respond in writing to the employee within five (5) business days after receipt of the employee's written appeal. The written decision of the Chief Judge is final.


## VI. Adverse Action Documents

Documents or memoranda relating to an adverse action shall not be filed in an employee's local or official personnel file. Local documents should be provided to the Human Resources Manager for confidential filing separate from personnel folders or files.

Documents that will be maintained in the Official Personnel File (OPF) and may be maintained in the local personnel folder are any requests for personnel action affecting pay and employment, such as the AO193 Request for Personnel Action Form, the Remote Data Entry (RDE) Notice of Action, and any applicable SF50 Notification of Personnel Action Form.

## VII. Signatures

 8-31-2015  
\_\_\_\_\_  
Edmund A. Sargus, Jr. Date  
Chief District Judge

 8/19/15  
\_\_\_\_\_  
Richard W. Nagel Date  
Clerk of Court



---

Adverse Action Plan

Effective: July 21, 2015

---

Southern District of Ohio

---

A handwritten signature in black ink, appearing to read "John Dierna", is written over a horizontal line.

8-20-15

John Dierna

Date

Chief Probation Officer

A handwritten signature in blue ink, appearing to read "Melanie Furry", is written over a horizontal line.

08-20-2015

Melanie Furry

Date

Chief Pretrial Services Officer