

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED
December 1, 2005

LAWRENCE K. BAERMAN, CLERK

**IN RE: EQUAL EMPLOYMENT OPPORTUNITY PLAN
 AND EMPLOYMENT DISPUTE RESOLUTION PLAN**

GENERAL ORDER #2

Pursuant to Resolution of the Judicial Conference of the United States, each court shall adopt and implement a Plan based on the Model Equal Employment Opportunity Plan and the Model Employment Dispute Resolution Plan.

IT IS HEREBY ORDERED, that the District Court for the Northern District of New York hereby adopts the Model Equal Employment Opportunity Plan (EEO Plan), and the Model Employment Dispute Resolution Plan (EDR Plan).

The court's Equal Employment Opportunity Plan and Employment Dispute Resolution Plan dated December 12, 1997 is hereby amended as follows:

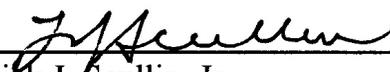
Chapter 2 of the Court's Employment Dispute Resolution Plan has been amended to include language addressing the Court's prohibition of sexual harassment of employees. See Chapter 2, section 4.

A copy of the court's EEO and EDR Plans are attached hereto.

By Order of this Court, the Clerk of the Court for the Northern District of New York is designated the Equal Employment Opportunity Coordinator for the purpose of filing the district's consolidated EEO Report. The Unit Executives for the District Court, Bankruptcy Court, Probation Office and Federal Public Defenders Office are designated as the Equal Employment Opportunity Coordinators and the Employment Dispute Resolution Coordinators for their respective court units with the responsibilities and authority provided for in the Plans.

The Clerk of the Court will distribute copies of this Order and the Plans, to all unit heads and supervisors in the judiciary and supporting personnel in the Northern District of New York; such unit heads and supervisors shall advise their employees of the EEO and EDR Plans, and make available provisions thereof to all such employees.

SO ORDERED the 3rd Day of October, 2005



Frederick J. Scullin, Jr.
Chief United States District Court Judge

Circuit Council Approved this 1st Day of
December, 2005

EQUAL EMPLOYMENT OPPORTUNITY PLAN

§ 1 Preamble

The Judicial Conference of the United States has directed that each court adopt a Plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management, including recruitment, hiring, promotion, and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the federal courts, as such standards have been approved by the Judicial Conference of the United States.

§ 2 Scope of coverage

This Equal Employment Opportunity Program applies to all court personnel, including judges' staffs and court officers and their staffs.

§ 3 Organization

- A **Implementation** - The court shall implement the Equal Employment Opportunity Program. On behalf of the court, the Chief Judge will submit modifications in the Plan for Circuit Council approval.
- B **Heads of Court Support Units** - The heads of each court support unit must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and all hiring decisions are based solely on job-related factors. They should make reasonable efforts 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 court permits and within the limits of available resources, cross training, reassignments, job restructuring, special assignments, and outside job related training.
- C **Judges, Court Managers, and Supervisors** - Judges and designated court managers and supervisors must apply equal employment opportunity practices and policies in their work units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

- D **Equal Employment Opportunity Coordinator** - The court has designated the Clerk of the District Court as the Equal Employment Opportunity Coordinator for the purpose of collecting, analyzing, and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the court's achievements in providing equal employment opportunities, identifying those areas in which improvements are needed, and explaining those factors inhibiting achievement of equal employment opportunity objectives. The Coordinator will also provide EEO information to the public when requested. Based upon this evaluation and report, the Coordinator will recommend modifications in the Plan to the court. The Unit Executives for the District Court, Bankruptcy Court, Probation Office and Federal Public Defender Office are designated as the EEO Coordinators for their respective court units and shall seek to resolve discrimination complaints within their units.

§ 4 **Personnel Practices -**

- A **Recruitment** - Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will publicize all vacancies.
- B **Hiring** - Each court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.
- C **Promotions** - Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.
- D **Advancement** - Each court unit will seek, insofar as reasonable and practicable, to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.
- E **Discrimination Complaints** - The court adopts the procedures for resolving discrimination complaints set forth in the Model Employment Dispute Resolution Plan (EDR Plan). The EDR Plan is attached at Part II of this General Order.

§ 5 **Evaluations** - Each court unit will prepare a brief report for the EEO Coordinator describing its efforts to provide equal employment opportunities in:

- A **Recruitment** - Each court unit will describe briefly efforts made to bring a fair cross-section of the pool available for the position into its applicant pool, including listing all employment sources used (e.g., state employment offices, schools, organizations, etc). Each unit will also explain the methods it uses to publicize vacancies.
- B **Hiring** - Each court unit will identify where its recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment with the court when it was offered.
- C **Promotions** - Each court unit will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.
- D **Advancement** - Each court unit will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives such as no vacancies, minimal numbers of qualified applicants in the relevant labor market, and all persons in the unit having received all relevant training. This report will also include a breakdown, on forms to be provided by the Administrative Office of the United States Courts, according to the race, sex, color, national origin, religion, age and disability of the court's personnel involved. The report will cover personnel actions occurring in the year ending September 30 and will be submitted to the EEO Coordinator by November 1 of each year.

§ 6 **Objectives** - Each court unit will develop annually its own objectives which reflect those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific Plan for the EEO Coordinator explaining how those objectives will be achieved.

§ 7 **Annual Report** - The EEO Coordinator will prepare for the court's approval an annual report for each year ending September 30, consolidating the data and statements received from each court unit. The report will include tables to be provided by the Administrative Office of the United States Courts, consolidating the information provided by each court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will explain factors inhibiting achievement of equal employment opportunity objectives. Upon approval of the court, this report will be submitted by the Chief Judge to the Administrative Office of the United States Courts each year.

EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER 1 - GENERAL PROVISIONS

§ Preamble

This Plan shall be known as the Federal Judiciary Model Employment Dispute Resolution Plan (“Model EDR Plan”). It was adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

The Plan supersedes Appendix I (“Discrimination and Complaint Procedures”) of the current Judiciary Model Equal Employment Opportunity Plan (“Model EEO Plan”), except for Section VI of appendix I (“Annual Report”) imposing requirements on the courts. Claims arising under Chapters II through VII of this Plan, or under Sections I through VII of the Judiciary’s Model EEO Plan, shall be treated in accordance with the procedures set forth in Chapter VIII of this Plan. The duties of the court’s EEO Coordinator will be assumed by the Employment Dispute Resolution Coordinator (established in Section 3 of Chapter VIII of this Plan), except that the dispute resolution duties assigned to the EEO Coordinator under the Model EEO Plan will be replaced by the dispute resolution procedures set forth in Chapter VIII of this Plan.

This Plan is to be implemented in the same manner as the Model EEO Plan. Any modification of this Plan by a court must first be approved in its circuit by the judicial council. A copy of each plan and any subsequent modifications shall be filed with the Administrative Office. Each court shall annually submit a report on the implementation of its plan to the Administrative Office for inclusion in the Director’s Annual Report to the Judicial Conference.

Policies adopted by individual courts pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections afforded under the Model EDR Plan are not affected by the Plan. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein will not be affected by the Plan.

The Model EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of Judicial Officer misconduct or disability under 28 U.S.C. §372(c) and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

§ 2 **Scope of Coverage**

This Plan applies to all Article III judges and other Judicial Officers of the United States courts of appeals, district courts, and bankruptcy courts, as well as to all employees of the courts of appeals, district courts, and bankruptcy courts, including judges' chambers staffs, court unit heads and their staffs, circuit executives and their staffs, federal public defenders and their staffs, and bankruptcy administrators and their staffs.

§ 3 **Definitions**

For purposes of this Plan --

- A. The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include externs, applicants for bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators not employed by federal public defenders, volunteer Coordinators or mediators, or other individuals who are not employees of an "employing office" as that term is defined below.
- B. The term "employing office" includes all offices of the United States courts of appeals, district courts, and bankruptcy courts, including the offices of circuit executives, district court executives, federal public defenders, clerks of court, chief probation officers, chief pretrial services officers, staff attorneys, chief preargument attorneys, circuit librarians, bankruptcy administrators, and any such offices that might be created in the future. The court is the employing office of a Judicial Officer's chambers staff.
- C. The term "Judicial Officer" means a judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, or a judge of any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.
- D. The term "court" refers to the appropriate court (appeals, district or bankruptcy) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint. In the case of disputes involving federal public defenders, the term "court" refers to the appropriate court of appeals.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **General** - Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. The rights and protections of Sections I through VII of the Judiciary's Model Equal Employment Opportunity Plan shall also apply to employees.

§ 2 **Definition** - The term "disability" means -

- A. A physical or mental impairment that substantially limits one or more of the major life activities of an employee,
- B. A record of such an impairment, or
- C. Being regarded as having such an impairment.

See 42 U.S.C. § 12101(2).

§ 3 Special provision for probation and pretrial services officers - The age discrimination provision of Section I of this Chapter shall not apply to the initial hiring of probation and pretrial services officers. *See Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17.*

§ 4 It is the policy of the Court to prohibit sexual harassment of employees in the workplace by any person in any form. It is the responsibility of every employee to respect the rights of fellow employees and to refrain from behavior, either physical or verbal, that may be offensive to others. Specifically, all forms of sexually harassing conduct, whether committed by supervisors or non-supervisory personnel, are prohibited. Such conduct includes:

- A. Unwelcome sexual flirtations, advances or propositions;
- B. Verbal abuse of a sexual nature;
- C. Graphic verbal comments about an individual's body;
- D. Sexually degrading words used to describe an individual; and
- E. The display in the workplace of sexually suggestive objects or pictures.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

§ 1 **General** - Title II of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611, applies to court employees in the manner prescribed in Volume I-C, Chapter X, Subchapter 1630.1, Section R, of the *Guide to Judiciary Policies and Procedures*.

CHAPTER IV - WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

§ 1 **General** - No “employing office closing” or “mass layoff” (as defined in Section 2 of this Chapter) 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.

§ 2 **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. (1) at least 33 percent of the employees (excluding any part-time employees); and
(2) 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.

CHAPTER V - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

§ 1 **General** - 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 et seq.

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

- § 1 **General** - Each employing office shall 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. Complaints which 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.
- § 2 **Court program requirements** - The court shall implement a program to achieve the protections set forth in Section 1 of this Chapter.

CHAPTER VII - POLYGRAPH TESTS

- § 1 **General** - No employee may be required to take a polygraph test.

CHAPTER VIII - DISPUTE RESOLUTION PROCEDURES

- § 1 General procedure for consideration of alleged violations - An employee who claims a denial of rights granted under Chapter II through VII of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of -
- A. pre- counseling, counseling and mediation;
 - B. hearing before the Chief Judge (or a designated Judicial Officer) of the court in which the alleged violation arises; and
 - C. review of the hearing decision under procedures established by the judicial council of the circuit.
- § 2 **General provisions and protections**
- A. **Prohibition against retaliation** - Complainants under this Plan have the right to be free from retaliation, coercion, or interference because of filing a complaint pursuant to this Plan. Likewise, any person who participates in the filing or processing of a complaint, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.
 - B. **Right to representation** - Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative’s appointing officer.

- C. **Case preparation** - To the extent feasible, every individual invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her court duties.
- D. **Extensions of time** - The Chief Judge of the court, or other presiding Judicial Officer, may extend any of the deadlines set forth in this Chapter for good cause.
- E. **Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the court's Employment Dispute Resolution Coordinator ("EDR Coordinator"). No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.
- F. **Election of Remedies** - If an employee or an employee representative files an appeal of an adverse action or a grievance in addition to a claim under this Plan concerning the same or substantially the same subject matter, the employee must elect either (a) to process the claim using the EDR Plan or (b) the grievance/adverse action appeal procedures. An employee may not utilize both (a) and (b). Similarly, if a complaint has already been processed under one of these procedures (i.e., the grievance/adverse action appeal procedure or the EDR Plan procedures), it may not be the subject of a complaint under the other.
- G. **Determining Time Periods** - The word "days" in all filing and other time periods specified in this Plan shall mean calendar days, except that if the deadline date falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following court business day.
- H. **Early Dismissal** - The EDR Coordinator with approval of the Chief Judge and designated Judicial Officer, may request dismissal of a claim at any stage of the process before it is resolved on the basis that it is frivolous, is outside of the scope of the Plan, is unduly repetitive of a previous EDR claim, consists of the same or substantially the same subject matter as an appeal of an administrative action or grievance, fails to state a claim upon which relief may be granted, raises allegations that were not advanced in earlier stages of the dispute resolution process, or is otherwise barred by the procedures of this Plan. Such a request will be presented to the Chief Judge or designated Judicial Officer. The Chief Judge or designated Judicial Officer will grant or deny the request in writing, after providing written notice to the claimant and an opportunity to respond. This may include, in the Judge's discretion, holding a hearing. If a claim is dismissed, the claimant is authorized to seek review of the action from the Circuit Judicial Council within 30 calendar days of the dismissal.

§ 3 **Designation and duties of employment dispute resolution coordinator** - Each court shall designate a person to serve as the EDR Coordinator. The Unit Executives for the District Court, Bankruptcy Court, Probation Office and Federal Public Defenders Office are designated as the EDR Coordinators for their respective court units. The duties of the unit

EDR coordinator shall include the following:

- A. to provide information to the court and employees regarding the rights and protections afforded under this Plan;
- B. to coordinate and organize the procedures and establish and maintain official files of the court pertaining to complaints and other matters initiated and processed under the court's employment dispute resolution Plan;
- C. to coordinate the counseling of individuals in the initial stages of the complaint process, in accordance with Section 5 of this Chapter; and
- D. to collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process.

§ 4 **General disqualification provisions** - Any person seeking disqualification or recusal of an EDR Coordinator or reviewing official shall promptly submit a written statement to the Chief Judge of the court in which the coordinator or reviewing officer in question is employed, explaining the reasons for the requested disqualification or recusal. In determining whether disqualification or recusal is warranted, the Chief Judge shall consider the factors, circumstances and considerations set forth in 28 U.S.C. § 455. If disqualification or recusal is warranted, the Chief Judge shall designate another individual to act as the EDR Coordinator, or reviewing official. Disqualification or recusal of the EDR Coordinator, or reviewing official of a court shall not be warranted merely because the court is named as a responding party. If the Chief Judge is named as being involved in a dispute, the Chief Judge will ask the next most senior active Judge who is available and qualified to serve to decide the disqualification request.

§ 5 **Pre-Counseling**

- A. It is common for employees to come to an EDR Coordinator to discuss their concerns regarding potential claims and ask questions about the coverage and procedures of the EDR Plan. EDR Coordinators can provide accurate information about the EDR Plan and listen to an employee's concern.
- B. Handling Pre-Counseling - During the first communication with an employee about a potential claim, the EDR Coordinator should:
 - 1. Explain the employee's rights and responsibilities under the EDR Plan, including deadlines for filing a Request for Counseling. (Refer to Section 6 of the EDR Plan)
 - 2. Provide the employee with a copy of the EDR Plan and Request for Counseling form.
 - 3. In the case of alleged sexual harassment, assure the employee that the matter will be looked into immediately.

§ 6 **Counseling**

- A. Initiating a proceeding; formal request for counseling - An employee who believes that his or her rights under Chapters II through VII of this Plan have been violated must first request counseling. Failure to pursue counseling will preclude further processing of the employee's claim under any other provisions of this Chapter.
- B. **Form and manner of requests** - Request for counseling:
1. Are to be submitted to the EDR Coordinator;
 2. Must be made in writing using the Counseling form.
 3. Must be made within 30 calendar days of the alleged violation or within 30 calendar days of the time the employee becomes aware of the alleged violation.
- C. **Procedures**
1. **Who may serve as Coordinator** - The counseling shall be conducted by the unit's EDR Coordinator, unless the unit's EDR Coordinator is disqualified from serving as coordinator under Section 4 of this Chapter, or is otherwise unavailable. In such instances, the Chief Judge of the court shall designate another qualified individual to perform the counseling function. If the dispute involves an alleged violation of this Plan by a Judicial Officer, the person who conducts the counseling shall be a Judicial Officer designated by the Chief Judge.
 2. **Purpose of counseling** - The purposes of counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; to evaluate the matter, and to assist the employee in achieving an early resolution of the matter, if possible.
 3. **Confidentiality** - All counseling shall be kept confidential unless the employee agrees in writing to waive confidentiality of the counseling process for the purpose of allowing the designated coordinator to contact the the employing office or to attempt a resolution of the disputed matter. A written record of all such contacts must be kept by the coordinator and made available for review by the affected person(s).
 4. **Form of settlement** - The unit EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

- D. **Duration of counseling period** - The period for counseling shall be 30 calendar days (or a shorter period if counseling is concluded at an earlier date), beginning on the date that the request for counseling is received by the unit EDR Coordinator.
- E. **Conclusion of the counseling period and notice** - The unit EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the unit EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the unit EDR Coordinator a request for mediation in accordance with Section 7 of this Chapter.

§ 7 **Mediation**

- A. **Initiation** - Within 15 calendar days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the unit EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.
- B. **Form and manner of requests** - Request for mediation:
 - 1. Are to be submitted to the EDR Coordinator;
 - 2. Must be made in writing using the Mediation form.
- C. **Procedures** -
 - 1. **Designation of mediator** - As soon as possible after receiving the request for mediation, the unit EDR Coordinator shall designate a mediator and provide written notice of such designation.
 - 2. **Who may serve as mediator** - Any person with the skills to assist in resolving disputes, except the unit's EDR Coordinator, may serve as a mediator under this Plan. If the complaint alleges that a Judicial Officer has violated the rights protected by this Plan, the mediator shall be a Judicial Officer designated by the Chief Judge.
 - 3. **Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.
 - 4. **Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of all such disclosures must be kept and made available for review by the affected person(s). In addition, in the event the

employee files a complaint pursuant to Section 8 of this Chapter, the hearing officer shall have access to the record of any claims raised in mediation.

5. **Form of settlement** - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

D. **Duration of mediation period** - The mediation period shall be 30 calendar days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, he or she may file a complaint.

E. **Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the unit EDR Coordinator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 8 of this Chapter.

§ 8 **Complaint, review and hearing**

A. **Complaint** - Not later than 15 calendar days after receiving notice of the end of the mediation period, an employee may file a complaint under procedures established by the court. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief of remedy being sought. The respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint.

B. **Form and manner of requests** - File a formal complaint:

1. Are to be submitted to the EDR Coordinator;
2. Must be made in writing using the Complaint form.

C. **Review of pleadings**

1. **Reviewing official** - The complaint and any other documents shall be reviewed by the Chief Judge of the court, or by another Judicial Officer of the court designated by the Chief Judge. In the event the Chief Judge is disqualified under Section 4 of this Chapter, or is unavailable to serve under this subsection, the reviewing official shall be designated in accordance with procedures established by the court. In the case of a complaint alleging that an Article III judge has violated rights protected by the Plan, that judge may elect to have a hearing conducted by a judge of another court, as designated

by the Judicial Council of the Circuit. Any designation of a Judicial Officer from another court to hear and decide the case shall be arranged by agreement of the Chief Judges of the affected courts.

2. **Review procedures** - After notice to the complainant and an opportunity to respond, the Chief Judge or designated Judicial Officer may dismiss in writing any complaint that is frivolous, is unduly repetitive of a previous complaint, fails to state a claim upon which relief may be granted, or makes claims that were not advanced in mediation.

D. **Hearing procedures**

1. **Hearing officer** - If the Chief Judge or designated Judicial Officer does not dismiss the complaint under the preceding subsection, the Chief Judge or designated Judicial Officer, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
2. **Specific provisions** - The presiding Judicial Officer may provide for such discovery and investigation as necessary. In general, the presiding judicial officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:
 - a. the hearing shall be commenced no later than 60 calendar days after the filing of the complaint;
 - b. the complainant and the head of the office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to the individual alleged to have violated rights protected by this Plan whenever such individual is a Judicial Officer or when the presiding Judicial Officer otherwise determines such notice to be appropriate;
 - c. at the hearing, the complainant will have the rights to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the rights to present evidence on its behalf and to cross-examine adverse witnesses;
 - d. a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;
 - e. in reaching his or her decision, the Chief Judge or designated judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII of this Plan and by decisions of the Judicial Council of the appropriate circuit under Section 9 of this Chapter;

- f. remedies may be provided in accordance with Section 9 of this Chapter where the hearing officer finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated;
- g. the final decision of the Chief Judge or designated Judicial Officer must be issued in writing not later than 30 calendar days after the conclusion of the hearing; and
- h. all parties, or any aggrieved individual, shall have the right to written notice of any action taken as a result of a hearing.

§ 9 Remedies

- A. Where Judicial Officers acting pursuant to Section 8 or 9 of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B. Remedies which may be provided to a successful complainant under this Plan include, but are not limited to:
 - 1. placement in a position previously denied;
 - 2. placement in a comparable alternative position;
 - 3. reinstatement to a position from which previously removed;
 - 4. prospective promotion to a position;
 - 5. priority consideration for a future promotion or position;
 - 6. 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;
 - 7. records modification and/or expungement;
 - 8. "equitable" relief, such as temporary stays of adverse actions;
 - 9. granting of family and medical leave, and
 - 10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.
- C. Remedies which are *not* legally available include:

1. payment of attorney's fees (except as authorized under the Back Pay Act);
2. compensatory damages; and
3. punitive damages.

§ 10 **Record of Decision by the Chief Judge or Designated Judicial Officer** - A copy of the report will remain with the Unit Executive of the employing office and will be made available to the public upon request.

§ 11 **Review of decision** - A party or individual aggrieved by a final decision of the Chief Judge or designated Judicial Officer, or by a summary dismissal of the complaint, may petition for review of that decision. Such review must be requested in writing of the Judicial Council of the Second Circuit no later than **30 calendar days** following the date of the final decision of the Chief Judge or the designated Judicial Officer or following the date of a summary dismissal of the complaint. Any review will be conducted by the members of the Second Circuit Judicial Council or their designees. The decision of the Judicial Council shall be based on the record created by the hearing officer, and the decision of the Chief Judge or designated Judicial Officer or summary dismissal shall be affirmed if supported by substantial evidence. The EDR Coordinator shall be responsible for submitting the complete record of the proceeding to the Circuit Executive for the use of the Judicial Council.

§ 12 **Circuit Judicial Council Review Procedures** - Upon receipt of a timely petition for review filed in the form required, the Circuit Executive shall promptly acknowledge receipt of the petition and transmit a copy to the employing office against which the complaint was filed from all parties involved, and the complained of Judicial Officer who determined the matter (or other official who summarily dismissed the claimant/complaint). Neither the person filing the petition for review nor the Judicial Officer who determined the matter (or other official who summarily dismissed the complaint) may otherwise communicate with the Judicial Council or any of its members about the matter. Fourteen (14) calendar days after the acceptance of a petition for review, the Circuit Executive shall send to each non-disqualified member of the Judicial Council copies of (1) the original complaint and any documents filed pertaining to it; (2) the record of proceedings; (3) the decision affecting the complaint and any documents filed pertaining to it; and (4) the petition for review.

A. For petitions not filed properly or not filed in time, the Circuit Executive shall return the petition and explain why it has been returned.

B. Decision by the Judicial Council -

1. The Judicial Council may enter an order (a) affirming the original decision or summary dismissal; (b) directing further investigation; or (c) directing corrective action including remedies set forth in Section 9 of this Chapter. The Judicial Council may also take any other action within its authority pursuant to 28 U. S.C. Sections 332, 372.
2. The order of the Judicial Council may be accompanied by a separate

memorandum setting forth facts and containing findings and conclusions made by the Judicial Council. The order shall be accompanied by any separate or dissenting statements by members of the Judicial Council.

3. The Circuit Executive shall provide to the complainant and the employing office a copy of the order and any separate or dissenting statements issued by members of the Judicial Council, and shall inform them that the Judicial Council's decision is final.

§ 13 **Record of final decisions** - Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Judicial Council of the Circuit.

§ 14 **Annual report** - The EDR Coordinator will prepare an annual report, for the year ending September 30, indicating:

1. the number of complaints initiated;
2. the types of complaints initiated according to race, sex, color, national origin, religion, age, or handicap;
3. the number of complaints resolved informally;
4. the number of complaints resolved formally without a hearing; and
5. the number of complaints resolved formally with a hearing. The foregoing information will not identify the names of the parties involved.

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