IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

FILED
OCT - 1 2013
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF IOWA

IN THE MATTER OF	)	
	)	ORDER
MODEL EQUAL EMPLOYMENT	)	
	)	
OPPORTUNITY AND EMPLOYMENT	)	No. 13-AO-7-P
	)	
DISPUTE RESOLUTION PLAN	)	

IT IS ORDERED that the Eighth Circuit Model Equal Employment Opportunity and Employment Dispute Resolution Plan amended by the Eighth Circuit Judicial Council on November 16, 2012, as modified by the Southern District of Iowa, which is set out as a part of this Order, is adopted and declared operative in the Southern District of Iowa effective October 1, 2013, subject to the approval of the Eighth Circuit Judicial Council.

IT IS FURTHER ORDERED that Ross A. Walters, United States Magistrate Judge, is designated the Employment Dispute Resolution Coordinator for this district.

Dated this 1st day of October, 2013.

JAMES E. GRITZNER, CHIEF DISTRICT JUDGE

JOHN A. JARVEY, DISTRICT JUDGE

STEPHANIE M. ROSE, DISTRICT JUDGE

EIGHTH CIRCUIT
MODEL EQUAL EMPLOYMENT OPPORTUNITY AND EMPLOYMENT DISPUTE RESOLUTION PLAN

Adopted by the Eighth Circuit Judicial Council
January 11, 2011

As Amended November 16, 2012

As Modified and Adopted by the Southern District of Iowa
December 1, 2011

As Amended by the Southern District of Iowa
October 1, 2013

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EIGHTH CIRCUIT MODEL EQUAL EMPLOYMENT OPPORTUNITY AND EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Eighth Circuit Model Equal Employment Opportunity and Employment Dispute Resolution Plan ("Model EEO/EDR Plan").

Under EEO, the Judicial Conference of the United States has recommended 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 disability. Each court will promote equal employment opportunity through a program encompassing all facets of human resource management, including recruitment, hiring, promotion, and advancement. This program does not modify or reduce the qualification standards for employment established in the federal court system.

Under EDR, the Judicial Conference has recommended that this Plan provide all court employees the rights and protections comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

This Model EEO/EDR Plan supersedes all previous versions of the Eighth Circuit Model EEO/EDR Plan.

Each court of the Eighth Circuit shall implement its EEO/EDR plan by either adopting this model Plan or submitting a modified plan for approval by the Judicial Council. A copy of each plan and any subsequent modifications shall be filed with the Circuit Executive and with the Administrative Office. Each court shall submit an annual 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 this EEO/EDR Plan

are not affected. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein are not affected.

The Model EEO/EDR Plan is not intended to duplicate the protections provided for the resolution of complaints under the *Rules for Judicial-Conduct and Judicial-Disability Proceedings,* 28 U.S.C. § 351 et seq., and otherwise is intended to be the exclusive remedy of employees relating to rights enumerated under the Plan.

§ 2 Scope of Coverage

This Plan applies to all district and magistrate judges, as well as to all employees of the said courts, including judges' chambers staff and court unit heads 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 interns or externs providing gratuitous service, 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 counselors 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, bankruptcy courts, and court units including the offices of the circuit executive, federal public defenders, clerks of court, chief probation officers, chief pretrial services officers, staff attorneys, chief settlement conference attorneys, bankruptcy administrators, circuit librarians, and any such offices that might be created in the future. The court in which the judge sits is the employing office of the judge and his or her chambers staff.

c. The term "court" refers to the appropriate court (e.g., circuit, district or bankruptcy) in which the employing office is located, which employing office is 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 Court of Appeals.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **General** - Discrimination against employees based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), disability, and sexual orientation is prohibited. Harassment against an employee based upon any of these protected categories is prohibited. All of the above constitute wrongful conduct.

§ 2 **Prohibition Against Retaliation** - Any person who has opposed any discriminatory practice prohibited by Section 1, and/or has filed a claim, testified, assisted, or participated in any manner in an investigation, proceeding, hearing or any other stage under this Plan shall be free from retaliation.

§ 3 **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. § 12102(2).

§ 4 **Special Provision for Probation and Pretrial Services Officers** - The age discrimination provision of Section 1 of this Chapter shall not apply to the initial hiring or mandatory separation of probation and pretrial services officers and officer assistants. *See* Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17. Additionally, probation and pretrial services officers must meet all fitness for duty standards, and compliance with such standards does not, in and of itself, constitute discrimination on the basis of disability.

§ 5 **EEO Implementation** - All court unit heads must ensure that all vacancies are publicly announced in an effort to attract candidates representing 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 the court permits and within the limits of available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training. Judges and court managers must apply EEO practices and policies. This includes giving all employees fair and equal opportunity to demonstrate their skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit,

training programs may be provided to enable employee development of job skills.

§ 6 **Personnel Practices** - Each court unit will:

a. seek qualified applicants reflecting the make-up of all such persons in the relevant labor market and publicize all vacancies;

b. make hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform satisfactorily the duties of the position;

c. promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level;

d. seek, insofar as reasonably practicable, to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.

§ 7 **Annual EEO Report** - Each court unit will prepare a brief report describing its efforts to provide equal employment opportunity in --

a. **Recruitment** - Each court unit will briefly describe efforts made to bring a fair cross-section of the available pool into its applicant pool, including listing all employment sources and the methods used to publicize vacancies.

b. **Hiring** - Each court unit will identify recruitment efforts resulting 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 offered.

c. **Promotions** - Each court unit will briefly describe promotional opportunities, analyzing the distribution thereof, and describing those promoted to supervisory positions.

d. **Advancement** - Each court unit will describe the efforts 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 a lack of vacancies and minimal numbers of qualified applicants in the relevant labor market, and on all persons in the unit who have received relevant training. This report also will include a breakdown according to the race, sex, color, national origin, and disability of the court's personnel on forms to be provided by the Administrative Office. The report will cover personnel actions occurring in the year ending September 30 and will be submitted each year to the Administrative Office.

Each court unit will prepare for the court's approval an annual report ending September 30, consolidating the data and statements compiled by the court unit. Upon approval by the court, this report will be submitted by the chief judge to the Administrative Office as directed.

§ 8 **EEO Objectives** - Each court unit will develop annual objectives reflecting those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the Employment Dispute Resolution Coordinator ("EDR Coordinator") explaining how those objectives are to be achieved.

§ 9 **EEO Report of Complaints** - Each court will prepare an annual report on complaints, for the year ending September 30, reflecting:

a. the number filed;

b. the types according to race, sex, color, national origin, religion, age, disability, or sexual orientation; and

c. the number resolved, identifying the stage at which each was resolved.

The annual report will not identify the names of the involved parties. The report will be available to the public upon request.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

§ 1 **General** - Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. § 6381 *et seq.*, applies to court employees in the manner prescribed in Volume 12, Chapter 9, Section 920.20.35 of the *Guide to Judiciary Policy*.

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 which 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. (i) at least 33 percent of the full-time employees; and

(ii) at least 50 full-time employees; or

B. at least 500 full-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. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service ("USPS") to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.

CHAPTER VII - POLYGRAPH TESTS

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

CHAPTER VIII - REPORTS OF WRONGFUL CONDUCT

§ 1 **General** - An employee who intentionally engages in wrongful conduct as defined in Chapter II, Section 1, is subject to disciplinary action. Employees are encouraged to report wrongful conduct to a judge, unit executive, immediate supervisor, or the EDR Coordinator. Reports of wrongful conduct will be investigated, corrective action taken, and the reporting employee informed as determined by the chief judge or unit executive in light of the relevant circumstances. Retaliation against any employee making a report of wrongful conduct is prohibited.

All individuals involved in an investigation of wrongful conduct shall protect the confidentiality of the allegations of wrongful conduct to the extent possible.

A report of wrongful conduct is not the same as initiating dispute resolution procedures under Chapter X. Employees who wish to file an EDR claim relating to any alleged wrongful conduct as defined in Chapter II, Section 1, must follow the procedures set forth in Chapter X of this Plan.

CHAPTER IX - WHISTLEBLOWER PROTECTION

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

a. the appropriate federal law enforcement authority, or

b. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts,

by the latter employee, which that employee reasonably and in good faith believes evidences a violation of any law, rule, or regulation, or other conduct that constitutes gross mismanagement, a gross waste of funds, or a substantial and specific danger to public health or safety, provided that such disclosure of information –

1. is not specifically prohibited by law,

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

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

CHAPTER X - DISPUTE RESOLUTION PROCEDURES

§ 1 **General procedure for consideration of alleged violations** - An employee who claims a denial of the rights granted under Chapters II through IX of this Plan may seek resolution of such claims through the procedures of this Chapter. The procedural process consists of:

a. counseling and mediation; and

b. hearing before the chief judge of the court (or a designated judicial officer) in which the alleged violation arises; and

c. review of the hearing decision under procedures set forth in Section 11 of this Chapter.

§ 2 **Alleged Violation by Employee** - Before invoking a request for counseling, an employee (to the extent feasible) is encouraged to bring his or her concerns to his or her supervisor or unit executive. An employee may also without making a formal request for counseling talk informally with the EDR Coordinator about the employee's rights under the Plan and the employee's concerns about whether the employee's rights have been violated. Informal communications with the EDR Coordinator of this kind shall be in confidence unless the EDR Coordinator determines the information received is sufficiently serious that it should be reported to the chief judge or unit executive. An employee alleging that any of the rights granted under this Model EEO/EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with the EDR Coordinator in accordance with Section 8 of this Chapter.

§ 3 **Alleged Violation by Judge** - Any employee alleging that a judge violated any rights granted under this Model EEO/EDR Plan may file an EDR claim in accordance with this Plan. In such an instance, however, all the claims procedures of this Chapter shall be performed by the circuit council, either by members of the council directly or by persons designated to act on its behalf, which may include the chief judge of the circuit. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the circuit judicial council or its designee, which may include the chief judge of the circuit, will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, the EEO/EDR Plan. In so doing, the council or its designee, who may include the chief judge of the circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

§ 4 **Confidentiality** - The court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent practicable. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.

§ 5 **General Provisions and Protections**

a. **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. Similarly, the employing office is entitled to representation in the same manner as claimants.

b. **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.

c. **Extensions of time** - The chief judge of the court, other presiding judicial officer, or EDR Coordinator if a judicial officer may extend any of the deadlines set forth in this Chapter for good cause.

d. **Dismissal of claim** - On his or her own initiative or at the request of any party, the chief judge or presiding judicial officer may at any time in the proceedings dismiss a claim on the grounds that it does not invoke violations of the rights or protections granted under this Model EEO/EDR Plan, is untimely, is unduly repetitive of a previous claim, adverse action or grievance, is frivolous, or fails to state a claim upon which relief may be granted.

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 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.

§ 6 **Designation and Duties of Employment Dispute Resolution Coordinator** - Each court shall designate a person to serve as the EDR Coordinator. Courts may designate more than one EDR coordinator. The duties of such person 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 claims and other matters initiated and processed under the court's EEO/EDR Plan;

c. to coordinate the counseling of individuals in the initial stages of the claims process, in accordance with Section 8 of this Chapter; and

d. to collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process.

§ 7 Disqualification Provisions

a. **General disqualification** - A party may seek the disqualification of an EDR Coordinator, counselor, mediator, or judicial officer involved in a dispute by making a written request to the chief judge, and explaining the reasons why the individual should be disqualified. If disqualification is warranted, the chief judge shall designate another individual to handle the matter. If the chief judge is named as being involved in a dispute, the next most senior active judge shall decide the disqualification request.

b. **Presiding judicial officer** - A judicial officer who has been involved in any decision affecting the claimant with respect to the claim(s) at issue shall not serve as the presiding judicial officer in a hearing on a complaint involving such claim(s). In such cases, a judicial officer shall recuse him or herself subsequent to a designation to serve as the presiding judicial officer, or a party may seek disqualification of the judicial officer in the same manner as set forth above in Section 7(a).

§ 8 Counseling

a. **Initiating a proceeding; formal request for counseling** - An employee who claims that his or her rights under Chapters II through IX of this Plan have been violated and who wishes to seek resolution under the procedures in this Chapter must first request counseling.

b. **Form and manner of requests** - Requests for counseling:

1. are to be submitted to the court's EDR Coordinator;

2. must be made in writing and contain all the violations asserted by the claimant; and

3. must be made within ninety (90) days of the alleged violation or within ninety (90) days of the time the employee becomes aware of the alleged violation.

c. **Procedures**

1. **Who may serve as counselor** - The counseling shall be conducted by the court's EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 7 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. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive of the employing office and the chief judge of the court.

2. **Purposes of counseling** - The purposes of the 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** - Unless waived by the employee, the court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent practicable. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.

4. **Form of settlement** - The 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 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 EDR Coordinator. The counseling period may be extended by mutual agreement of the counselor and the employee for up to an additional thirty (30) day period.

e. **Conclusion of the Counseling Period and Notice** - The EDR Coordinator shall notify the employee, the employee's representative, if any, and the employing office, in writing, when the counseling period has ended. As part of the notice, the 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 EDR Coordinator a request for mediation in accordance with Section 9 of this Chapter.

§ 9 Mediation

a. **Initiation** - Within 15 days after receiving the notice concluding the counseling period, the employee may file with the EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented. The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive of the employing office and the chief judge of the court. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.

b. **Procedures**

1. **Designation of mediator** - As soon as possible after receiving the request for mediation, the 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 court's EDR Coordinator, may serve as a mediator under this Plan.

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.

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.

c. **Duration of Mediation Period** - The mediation period shall be 30 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 proceed to file a complaint. The mediation period may be extended by mutual agreement of the mediator and the parties for up to an additional thirty (30) day period.

d. **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 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 also shall inform the employee of his or her right to file a complaint under Section 10 of this Chapter.

§ 10 Complaint and Hearing

a. **Complaint** - Not later than 15 days after receiving notice concluding the mediation period, an employee may file a complaint with the chief judge or EDR Coordinator. The chief judge will forward a complaint received by the chief judge to the EDR Coordinator and the EDR Coordinator will forward a complaint received by the EDR Coordinator to the chief judge. The EDR Coordinator will forward a copy of the complaint to the employing office and to the individual(s) alleged to have violated rights protected by this Plan. 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 or remedy being sought. Claims that were not presented in § 9(a) may not be pursued. The respondent shall be the employing office 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. **Hearing Procedures**

1. **Presiding judicial officer** - If the chief judge or presiding judicial officer does not dismiss the complaint under Section 5(d) of this Chapter, the chief judge or presiding judicial 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 is 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 days after the filing of the complaint;

B. the complainant and the employing 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;

C. at the hearing, the complainant will have the right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the rights to representation, 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 presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through IX of this Plan and by decisions of the Judicial Council under Section 11 of this Chapter;

F. remedies may be provided in accordance with Section 12 of this Chapter where the chief judge or presiding judicial 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 presiding judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing; and

H. all parties, including any individual alleged to have violated rights under the Plan, shall have the right to written notice of any action taken as a result of a hearing.

§ 11 **Review of Decision** - Anyone aggrieved by a final decision of the chief judge or presiding judicial officer, or by a summary dismissal of a complaint, may petition for review of that decision. Such review must be requested in writing to the Judicial Council of the Eighth Circuit no later than 30 days following the day of the final decision of the chief judge or presiding judicial officer, or the date of the summary dismissal of the complaint. The EDR Coordinator will forward a copy of the petition for review to the employing office and to any individual(s) alleged to have violated rights under the Plan. The review will be conducted by the members of the Judicial Council of the Eighth Circuit, or by a committee appointed from among the members in such manner as the Council may direct. The decision of the Council, or of the committee, as the case may be, shall be based on the record created by the hearing officer, and the decision reviewed shall be affirmed if supported by substantial evidence. The Council or committee, as the case may be, may receive written submissions, hold hearings, or adopt such other detailed procedures as to it may seem proper. Review by the Judicial Council, or by a committee, is the final stage of review under this Plan.

§ 12 Remedies

a. Where the chief judge or presiding judicial officer, acting pursuant to Section 10 or 11 of this Chapter, finds that a substantive right protected by this Plan has been violated, he or she 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 provided to successful complainants under this Plan may include, but are not limited to:

1. placement of an employee in a position previously denied;

2. placement in a comparable alternative position;

3. reinstatement to a position from which the employee was previously removed;

4. prospective promotion to a position;

5. priority consideration for a future promotion or position;

6. back pay and associated benefits, including attorneys' 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, or other appropriate means.

c. Remedies which are *not* legally available include:

1. payment of attorneys' fees (except as authorized under the Back Pay Act);

2. compensatory damages; and

3. punitive damages.

§ 13 **Record of Final Decisions** - The conclusion of the Judicial Council, or of its committee, as the case may be, under Section 11 of this Chapter shall be available to the public, free of charge, upon written request to the Office of the Circuit Executive. The reviewing panel, whether Judicial Council or committee, shall determine whether the names of the complaining party, the employing office, or other individuals shall be included in the material released to the public. The reviewing panel shall also decide whether additional portions of the decision shall be released. The reviewing panel, in the interests of justice and of fairness to the parties, shall consider, in deciding what shall be publicly available, whether public disclosure would compromise the integrity of legitimate confidentiality of the parties or the Court, or would subject a party or person to undue annoyance, embarrassment, oppression, burden, or expense, and shall also take into account the public interest in the administration of justice, including the interest of the public in determining whether the courts are operating properly and without discrimination.

Appendix 1

EEO/EDR CHECKLIST

- You are covered by this plan if you are an employee, applicant for employment or former employee of one of the following offices:
    - District Judge
    - Magistrate Judge
    - District Court Clerk
    - Probation Office
    - Pretrial Services Office

- You are not covered by this plan if you are not an employee, applicant, or former employee of the above, including:
    - an intern
    - an extern
    - an applicant for magistrate judge
    - an attorney representing an indigent CJA defendant
    - a criminal defense investigator not employed by the federal public defender
    - a volunteer counselor or mediator

- Your complaint involves:
    - discrimination based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at time of alleged discrimination), disability, or sexual orientation
    - violation of Family and Medical Leave Act
    - violation of Worker Adjustment and Retraining Notification Rights
    - violation of Employment and Reemployment Rights of Members of the Uniformed Services
    - Occupational Safety and Health Protections
    - Polygraph Tests
    - Reports of Wrongful Conduct
    - Whistleblower Protection

COUNSELING:

- To initiate a proceeding you must first submit a request for counseling
    - to EDR Coordinator
    - in writing
    - including all violations which you are asserting
    - within 90 days of alleged violation or within 90 days of time you became aware of alleged violation.
- EDR Coordinator must notify you in writing when counseling period has ended.

- Counseling lasts 30 days.
- EDR Coordinator must inform you of your right and obligation to request mediation as a condition of filing a formal complaint.

- MEDIATION:
  - To proceed, you must then file a request for mediation
    - within 15 days after the EDR Coordinator notifies you that the counseling period has ended
    - in writing
    - to the EDR Coordinator
    - stating all your claims.
  - You must attend at least one mediation session.
  - Mediation will last 30 days.
  - If you reach a settlement, the mediator will reduce the settlement to writing, and
    - you must sign it
    - your representative, if any, must sign it, and
    - an authorized member of the employing office must sign it.
  - If you do not reach a settlement, the EDR Coordinator will give you, your representative, if any, and the employing office written notice that the mediation period has ended, and tell you how to proceed with a complaint.

- COMPLAINT:
  - To proceed, you must then file a complaint
    - not later than15 days after EDR Coordinator notifies you mediation has ended
    - in writing
    - identifying the complainant and all others involved
    - setting forth a short and plain statement of your claim
    - stating what relief you want, and
    - naming the respondent as your employing office, not an individual
  - The complaint must be filed with the Chief Judge or EDR Coordinator.
  - The Chief Judge of the court or presiding judicial officer, will review the complaint and may dismiss it if it is:
    - untimely
    - unduly repetitive of a previous claim, adverse action or grievance
    - frivolous
    - a claim that fails to state a basis upon which relief may be granted
    - a claim that does not invoke violations of the rights or protections granted under the EEO/EDR Plan; or
    - a claim that has not been the subject of mediation

- HEARING PROCEDURES:
  - You may have a hearing (unless the Chief Judge or presiding judicial officer dismisses the complaint or believes there are no material facts in dispute)
    - The chief judge or presiding judicial officer will provide for necessary discovery and investigation, and determine the time, place and manner of conducting the hearing.
    - The hearing will begin no later than 60 days after you file your complaint.
    - You and the employing office will receive written notice of the hearing.
    - Any individual alleged to have violated rights protected by the EEO/EDR Plan will also receive written notice of the hearing.
    - You may have a representative.
    - You or your representative may present evidence and cross-examine adverse witnesses.
    - The employing office may present evidence and cross-examine adverse witnesses.
    - A verbatim record of the hearing will be kept.
  - You will receive a decision within 30 days of the hearing

- REVIEW OF HEARING DECISION
  - To request a review of the Chief Judge's final decision, you must submit a petition for review
    - within 30 days of the decision or summary dismissal
    - in writing
    - to the Judicial Council of the Eighth Circuit
  - The Judicial Council or a committee appointed by the Council will review the record created by the chief judge or presiding judicial officer.
  - The decision will be affirmed if it is supported by substantial evidence.

Appendix 2

REQUEST FOR COUNSELING UNDER EEO/EDR PLAN

Submitted Under the Procedures of the Equal Employment Opportunity and Employment Dispute Resolution Plan for the _____.
Name of Court

****

Prior to completing this form, please refer to the EEO/EDR Plan for your court unit. Please complete this form legibly.

1. Full Name of Person Requesting Counseling _____

2. Mailing Address _____
_____

3. Home Phone (____) _____ Work Phone (____) _____

4. If you are a court employee, state the following:
Court Unit in which employed _____
Job Title _____

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

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

7. Please summarize the actions or occurrences giving rise to this dispute .
_____
_____
_____
_____
_____
_____

8. What corrective action do you seek in this matter?
_____
_____
_____

This request for counseling is submitted by:

_____ _____
Signature Date

Name of Counselor to whom submitted: _____

Counselor's Signature _____ Date of Receipt:_____

Appendix 3

REQUEST FOR MEDIATION UNDER EEO/EDR PLAN

Submitted Under the Procedures of the Equal Employment Opportunity and Employment Dispute Resolution Plan for the _____.
Name of Court

****

Prior to completing this form, please refer to the EEO/EDR Plan for your court unit. Please complete this form legibly.

Please attach a copy of the REQUEST FOR COUNSELING FORM filed in connection with this matter.

1. Full Name of Person Requesting Mediation _____

2. If any of the information supplied in the **REQUEST FOR COUNSELING FORM** filed in connection with this matter is no longer accurate, please note the number of the entry on the request for counseling form to be changed, and state the change(s) you wish to make:

_____
_____
_____
_____
_____
_____
_____
_____

3. Date counseling was initiated _____

4. Date of receipt of the notice of conclusion of counseling _____

5. Name of person who provided counseling _____

This request for mediation is submitted by:

_____ _____
Signature Date

Name of Person to whom submitted: _____

Signature of Recipient _____ Date of Receipt:_____

Appendix 4

COMPLAINT UNDER EEO/EDR PLAN

Filed Under the Procedures of the Equal Employment Opportunity and Employment Dispute Resolution Plan for the _____.
Name of Court

Prior to completing this form, please refer to the EEO/EDR Plan for your court unit. Please complete this form legibly.

1. Full Name of Person Filing Complaint _____

2. Mailing Address _____
_____

3. Home Phone (____) _____ Work Phone (____) _____

4. If you are a court employee, state the following:
Court Unit in which employed _____
Job Title _____

5. Name and address of the Employing Office against which this complaint is filed (under the terms of the EEO/EDR Plan, all complaints must be filed against an "Employing Office," not an individual): _____
_____
_____

6. Identify the Chapter(s) of the EEO/EDR Plan under which your complaint is being filed.

- ☐ Chapter II - Equal Employment Opportunity & Anti-Discrimination Rights
  - ☐ Race
  - ☐ Color
  - ☐ Religion
  - ☐ Gender/Sex (includes pregnancy and sexual harassment)
  - ☐ National Origin
  - ☐ Age (at least 40 years old at the time of alleged discrimination)
  - ☐ Disability
  - ☐ Sexual Orientation
- ☐ Chapter III - Family and Medical Leave Rights
- ☐ Chapter IV - Worker Adjustment and Retraining Notification Rights
- ☐ Chapter V - Employment and Reemployment Rights of Members of the Uniformed Services
- ☐ Chapter VI - Occupational Safety and Health Protections
- ☐ Chapter VII - Polygraph Tests

☐ Chapter VIII - Reports of Wrongful Conduct

☐ Chapter IX - Whistleblower Protection

7. Date(s) of alleged violation: _____

8. Date on which counseling was requested: _____
Date on which counseling was completed: _____
Date on which mediation was requested: _____
Date on which mediation was concluded: _____

9. Name of person who served as EDR Coordinator on this matter: _____

10. Name of person who served as Mediator 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 EEO/EDR Plan were violated. Identify all persons who participated in this matter or who can provide relevant information concerning your complaint. (If there is insufficient space below, you may attach additional pages.)

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

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

_____
_____
_____
_____

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

☐ Yes ☐ No

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

Name _____

Address _____

_____

Work Phone (____) _____ Fax (____) _____

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

_____ _____

Signature Date