

**SOUTHERN DISTRICT OF FLORIDA EMPLOYMENT DISPUTE  
RESOLUTION PLAN  
UNITED STATES DISTRICT COURT  
UNITED STATES BANKRUPTCY COURT  
Approved: 08/08/2014**

**CHAPTER I. GENERAL PROVISIONS.**

**§ 1 Preamble.**

This is the Employment Dispute Resolution Plan (“EDR Plan”) of the United States District Court, Southern District of Florida.

On its effective date, this Plan supersedes the Employment Dispute Resolution Plan (“EDR Plan”) previously adopted by this court. Any complaint pending on the effective date of such new plans shall continue to be processed and considered under the procedures established under the EDR Plan in effect at the time it was filed. Any complaint filed after the effective date of this Plan shall be processed under the provisions of this Plan regardless of whether the actions giving rise to such a complaint may have occurred before the effective date of this Plan.

Although intended to be the exclusive remedy for employees with respect to the rights and protections afforded, this Plan does not apply to complaints concerning a judicial officer made pursuant to 28 U.S.C. § 351(a), which provides for complaints against a judicial officer based on allegations that the officer engaged in conduct prejudicial to the efficient and expeditious administration of the business of the courts or is unable to discharge all of the duties of office by reason of mental or physical disability. Section 351(a) complaints should be made separately under the applicable procedures for such a complaint. *See* 28 U.S.C. §§ 351-364.

The definition of “employee” does not include judicial officers nor does it include judicial chambers’ staff. While this limitation means that a member of these groups cannot file a claim under this Plan, a claim can be filed against a judicial officer under 28 U.S.C. § 351(a) when the officer engages in conduct prejudicial to the efficient and expeditious administration of the business of the courts.

The distinction with regard to judicial chambers' staff is necessary given the unique, confidential relationship that chambers' staff have with the judicial officer that they serve. A judicial officer must be able to rely, without question, on the discretion, loyalty, and fitness of his or her staff, and therefore a judicial officer must be permitted to decide who those integral staff members will be. Accordingly, a protocol that would allow others to dictate to the judicial officer those employees whom the officer must hire or retain would undermine fundamental and constitutional concepts of judicial independence.

## **§ 2 Scope of coverage.**

This Plan establishes rights of employees of the Southern District of Florida Court units. The procedures established under this Plan are the exclusive means for an employee to seek redress of rights covered by the Plan. In all instances, 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 liability of any person is established by any proceedings under this Plan. The remedies established under this Plan are in lieu of any other legal or equitable remedies with respect to the rights which may be the subject of redress under this Plan.

Complaints under this Plan may be made by employees, as defined in Section 3, Part F of this Chapter. The term "employee" includes court unit heads and their staffs.

This Plan does not apply to the award of contracts or subcontracts, or to employment decisions made by such contractors or subcontractors.

## **§ 3 Definitions.**

For purposes of this Plan—

- A.** "in 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.
- B.** "Alleged Violation" – The employment action that the employee

alleges violated the EDR Plan.

- C.** “Claim” – The employee’s effort to seek resolution of an alleged violation during the consultation phase and the mediation phase.
- D.** “Complainant” or “Complaining Party” – The individual filing a Claim under the EDR Plan.
- E.** “Complaint” – The employee’s formal statement requesting relief through a hearing, filed after the conclusion of the mediation phase.
- F.** “Court” – The term “Court” refers to the United States District Court or Bankruptcy Court for the Southern District of Florida, unless the context clearly indicates otherwise, where the "Employing Office" responsible for redressing, correcting or abating the violation alleged in the claim or complaint is located.
- G.** “Days/Deadlines” – The word “days” in this Plan shall mean calendar days. If the deadline falls on a Saturday, Sunday or Court holiday, the deadline shall be extended to the following court business day. The receipt deadline for filings and other time periods is by close of the business day and is not determined by mail (or similar) postmarks.
- H.** “Disability” means
  1. a physical or mental impairment that substantially limits one or more of the major life activities of an employee,
  2. a record of such an impairment, or
  3. being regarded as having such an impairment. *See* 42 U.S.C. § 12102(1).
- I.** “Discrimination” means an adverse employment action taken against an employee because he or she is a member of a protected category.
- J.** “EDR Coordinator” or “Alternate EDR Coordinator” – The person designated by the Chief Judge of the respective court to perform coordination, administration, and consultation functions in the EDR process.

- K.** “EDR Plan” (or “Plan”) – The Employment Dispute Resolution Plan applicable to the courts and employees within the Southern District of Florida.
- L.** “Employee,” subject to exclusions listed below, includes all current employees, all applicants for employment who have been interviewed, and former employees who were terminated or removed from employment, but who did not have a reasonable opportunity to raise their claim during the period of employment. Absent extraordinary circumstances, an employee will be considered to have been provided a reasonable opportunity to raise a claim if the employee was provided notice of the termination/removal and the reasons for it, and was given at least one-week to respond.

**Exclusions.** The term “employee” does not include:

- a student intern or extern who provides services to the court on a voluntary, gratuitous basis
- a probationary employee for a period of up to one year
- a judicial officer or an applicant for a non-Article III judicial officer position
- a member of a judicial chambers’ staff or an applicant for a position on a judicial chambers’ staff
- a private attorney representing or seeking to represent indigent defendants under the Criminal Justice Act
- a criminal defense investigator not employed by a federal public defenders’ office
- a private attorney administering Chapters 7 and 11 bankruptcy estates

- a position in connection with pending or potential litigation (such as a Commissioner, a counselor or mediator, a Special Master, a monitor, a court-appointed expert, or counsel appointed to represent litigants or potential litigants)
- a position other than as an employee of an “employing office,” as that term is defined below

- M.** “Employing office” includes all offices of the district courts and bankruptcy courts, including the offices of the district court executives, staff attorneys, clerks of the district or bankruptcy courts, pretrial services, probation, and any other offices that might be created in the future. For purposes of coverage under this EDR Plan, the court is treated as the employing office of the clerk of the court and the chief probation officer. The clerk of the court is treated as the employing officer of court reporters and courtroom deputies. Depending on the identity of the decision maker(s) or the identity of the person or persons with the power to provide a remedy for the adverse action being alleged, the clerk of the court, the court, or the supervising judge is treated as the employing officer of pro se law clerks. The chief probation officer is treated as the employing officer of all staff in that office. Federal public defenders, bankruptcy administrators, and their staffs are subject to the EDR Plan of the Eleventh Circuit, rather than the EDR Plans of the district in which they serve.
- N.** “Harassment” (other than sexual harassment) means actions taken or comments directed at an employee based upon the latter’s status as a member of a protected category, which are severe or pervasive enough to alter the terms or conditions of employment and create an abusive working environment.
- O.** “Hearing Officer” – The person designated to conduct the hearing described in Chapter VIII, § 1C.
- P.** “Judicial chambers’ staff” is defined as the personal staff of a judicial officer, and whose members are selected for their positions on the staff by the judicial officer and are supervised by that officer. This term includes Judicial Administrator, Judicial Secretary, term law clerk, career law clerk, temporary law clerk, death penalty law clerk, a

staff attorney or pro se law clerk who is assigned to or supervised by a judicial officer.

- Q.** “Judicial officer” means a United States district judge or magistrate judge, or United States bankruptcy judge.
- R.** “Mediator” – The person designated to conduct Mediation during the Mediation phase.
- S.** “Protected activity” refers to filing a claim (other than a frivolous or malicious discrimination claim or knowingly presenting false information as discussed in Chapter VIII, Section 2, Part A) under this Plan, participating in or assisting with an investigation or proceeding under this Plan in any manner, or otherwise opposing discrimination or harassment that is prohibited by this Plan.
- T.** “Protected category” includes race, color, religion, gender (including pregnancy), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability.
- U.** “Request for Consultation” – The employee’s written request seeking to assert rights under the EDR Plan.
- V.** “Request for Mediation” – The employee’s written request for mediation of the claim.
- W.** “Request for Review” – The employee’s or the Employing Office’s written request for review of an adverse decision.
- X.** “Retaliation” refers to an adverse employment action that is taken against an employee for engaging in protected activity.
- Y.** “Sexual harassment” as proscribed by Chapter II, Section 1, includes—
  - 1.** deliberate or repeated unsolicited and unwelcomed verbal comments, gestures, or physical contact of a sexual nature that are severe or pervasive enough to alter the conditions of employment and create an abusive working environment, and

2. demands, solicitations, offers, invitations, or other inducements for sexual relations between an employee and his or her supervisor, as to which it is explicitly or implicitly indicated that future personnel decisions regarding employment, advancement, evaluation, wages, assignment of duties, or other conditions of employment or advancement might, would, or should be affected by the existence or continuation of such sexual relations.
- Z.** Unit Head – The term “unit head” refers to the person most directly involved in or responsible for the employment decisions relating to employees working in a certain unit. For purposes of coverage under this EDR Plan, the district court clerk is treated as the unit head of all staff in that office, including court reporters, and courtroom deputies; the bankruptcy court clerk is treated as the unit head of all staff in that office, including courtroom deputies; and the chief probation officer is treated as the unit head of all staff in that office.

## **CHAPTER II. EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS.**

- § 1 General.** Discrimination against employees based on race, color, religion, gender (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), or disability is prohibited. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. All of the above constitute wrongful conduct.
- A.** The provisions of this Plan shall not be construed as modifying or reducing qualification standards for employment that have been or may hereafter be established by the Judicial Conference. There are no positions for which race, color, gender, religion, national origin, age (except as indicated in Section 3, Part A of this Chapter), or any combination of such factors, is an occupational qualification.
  - B.** Efforts to accomplish the legitimate and worthy objectives of nondiscrimination must not infringe upon the principles of equal employment opportunity stated in this Section. Special recruitment efforts may properly be directed towards qualified individuals in unrepresented or under-represented segments of the available labor

force, provided however that no such efforts should imply that qualified persons from other segments of the available labor force are disqualified or in any way discouraged from also becoming applicants. Vacancies shall be publicized in a manner likely to reach qualified persons of all segments of the available labor market. The provisions of this Plan shall not be construed as calling for employment or promotion to a position for which the individual is not qualified or as providing anyone with entitlement to preferential treatment based on race, color, gender, national origin, religion, age, or disability.

- C. Each employee of the court is and will continue to be an “AT-WILL” employee, unless otherwise provided by law.

## **§ 2 Special provisions relating to disabilities.**

- A. For the definition of disability, see Chapter I, Section 3, Part H.
- B. The provisions of Section 1 of this Chapter do not preclude consideration of a person’s physical or mental impairments if the latter would significantly affect that individual’s ability to perform important aspects of the job in question. Before a person is rejected for or removed from a job because of physical or mental impairments, the unit head should consider whether reasonable accommodations would permit the employee to perform the essential duties of his position. In deciding whether a requested accommodation is reasonable, the employing office may inquire whether the Administrative Office will fund the costs of that accommodation, and, if it will not, the employing office may consider budgetary constraints in deciding whether to offer the requested accommodation. An individual is a “qualified individual with a disability,” only if he or she can perform the essential functions of the job with or without reasonable accommodation. If the unit head is aware of an individual’s disability, the employee/applicant and the Human Resources Manager will engage in an interactive process to determine whether reasonable accommodations can be made and whether an individual is a qualified individual with a disability. The unit head, in conjunction with the Human Resources Department, has the final say in determining what is a reasonable accommodation.

C. Probation and pretrial services officers must meet all fitness for duty standards, and requiring compliance with such standards does not, in and of itself, constitute discrimination on the basis of disability.

**§ 3 Special provisions relating to age.** The provisions of Section 1 of this Chapter relating to age—

A. are subject to special provisions of law and regulations approved by the Judicial Conference with respect to the maximum age at initial hiring of probation and pretrial services officers and officer assistants and to mandatory retirement ages for such persons.

B. do not preclude consideration of appropriate training, experience, and education, notwithstanding the fact that such factors may weigh in favor of older persons.

C. do not preclude (subject to the protections afforded in Section 2 of this Chapter) consideration of a particular individual's physical or mental impairment or limitation that significantly affects that person's ability to perform important aspects of a job even though that impairment or limitation may arguably be the result of the aging process.

**§ 4 Special provisions relating to religion.** Reasonable accommodations shall be made for an individual's religious observances and practices unless to do so would impair the operations or dignity of the court or impose undue hardship upon the Court or its employees.

**§5 Special provision relating to pregnancy and leave.** Notwithstanding the prohibition on discrimination based on pregnancy and disability, any leave requested by an employee based on pregnancy or disability is subject to the particular leave policy which is applicable to that employee. Further, the provisions of the Family and Medical Leave Act ("FMLA") apply only to an employee who is covered by the Leave Act and who has been employed by the federal government for at least one year. *See* Chapter III. The determination of whether a law clerk is subject to the Leave Act shall, in all circumstances, be in the discretion of the law clerk's employing judge. If a law clerk is not under a leave system, he or she is entitled to no leave as a result of a pregnancy during the limited term of the clerkship.

**§6 Special provisions relating to anti-harassment.** It is the policy of the Court to maintain a working environment free of harassment and discrimination. The Court's commitment is to maintain a workplace where each employee's personal dignity is respected and each employee is protected from offensive or threatening behavior based on their protected status.

- A.** It should be clearly understood that the Court will not tolerate unlawful discrimination or harassment based on an individual's protected status such as: race, color, religion, national origin, disability, marital status, gender, or veteran status. Accordingly, employees of the Court shall not engage in harassment of co-workers, subordinates, or other Court employees based on any protected status or category under federal law. Harassment proscribed by this provision includes, but is not limited to, (a) deliberate or repeated unsolicited and unwelcome verbal comments, gestures, or physical contact of a sexual or intimidating nature and (b) adverse job actions based on a person's protected status;
- B.** The Court will not tolerate unlawful harassment of its employees by anyone, including any supervisor, co-worker, business invitee, or visitor, when the harassment occurs in the workplace or outside the workplace at work-sponsored events;
- C.** Any employee who believes he or she is being harassed or discriminated against has a right to talk to management and can expect that immediate action will be taken to investigate and resolve the matter. In order to accomplish this, the alleged harassment or discrimination must be brought to the attention of management. Accordingly, employees who feel they have been subject to harassment or discrimination have an obligation to communicate their problem or concern immediately. All communication should be directed, as appropriate, to the unit head, the Human Resources Manager, or the EDR Coordinator as soon after the incident as possible. All alleged harassment or discrimination will be thoroughly investigated. All employees must cooperate completely and honestly in any investigation. All information exchanged or gathered shall be held with discretion, but the Court cannot guarantee complete confidentiality. Appropriate discipline will be taken against any

employee found to be violating this policy up to and including termination of employment;

- D.** No employee will be retaliated against for reporting harassment or discrimination or for participating in the investigation of a harassment or discrimination complaint; and
- E.** If the Court determines that an allegation of harassment or discrimination was knowingly false or malicious, the accuser will be subject to disciplinary action up to and including termination. On the other hand, any complaint brought in good faith, even if found to be without merit, will not result in any adverse consequence to the accuser.

## **§7 Other policies.**

- A.** Inclusion at all levels of the Court's work force of persons with diverse ethnic, cultural, and personal characteristics has various benefits to the Court, including an enrichment of the work environment through the sharing of different attitudes, traditions, and backgrounds, a public symbol of the Court's own commitment to policies frequently involved in litigation before the Court, and an encouragement to prospective qualified applicants from all segments of the labor force.

Efforts to accomplish the legitimate and worthy objectives of nondiscrimination must not infringe upon the principles of equal employment stated in Section 1 of this Chapter. Special recruitment efforts may properly be directed towards qualified individuals in unrepresented or under-represented segments of the available labor force. Such efforts, however, should not imply that qualified persons from other segments of the available labor force are disqualified or in any way discouraged from working for the Court. Vacancies, with the exception of judicial law clerks and judicial secretaries, to newly appointed judges, shall be publicized in a manner likely to reach qualified persons of all segments of the available labor market. Judicial Officers may advertise vacancies in the way they determine best to recruit law clerks and may focus their recruiting at law schools or employers of potential clerk candidates. In addition, based on

funding or budget constraints, vacancies may be advertised only to employees within a specific Employing Office.

- B.** Unit heads shall 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 to apply for promotions.

### **CHAPTER III. FAMILY AND MEDICAL LEAVE RIGHTS.**

- § 1 General.** The Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 et seq., applies to court employees in the manner prescribed in the *Guide to Judiciary Policy*. Coverage is limited to employees who are covered by the annual and sick leave program established under 5 U.S.C. § 6301 et seq., and who have completed at least 12 months of civilian service with the Federal Government. The deadlines in the EDR Plan supersede any deadlines, by statute or case law, otherwise applicable to the FMLA. For purposes of the EDR Plan, a notice of denial of reinstatement, or the termination of an employee before his or her FMLA leave expires, constitutes an adverse action and initiates the running of the EDR Plan's 30-day filing period.

### **CHAPTER IV. 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 V. OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS.**

- § 1 General.** Each employing office shall use its best efforts to insist that the General Services Administration ("GSA") shall provide a place of employment free from recognized hazards that cause or are likely to cause death or physical harm to employees. Because court offices and units occupy space and utilize facilities provided by the GSA, complaints that seek a remedy exclusively within the jurisdiction of the GSA are not cognizable under this Plan; such requests should be filed directly with GSA.

## CHAPTER VI. 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 VII. WHISTLEBLOWER PROTECTION.

§ 1 **General.**

A. Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not take an adverse employment action with respect to an employee (excluding applicants for employment) because of that employee's disclosure of information to a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, if a reasonable employee would believe—and if the employee actually believes—that the information constitutes evidence of gross mismanagement, a gross waste of funds, a substantial and specific danger to public health or safety, or a violation of the law.

Likewise, no adverse action shall be taken against an employee who discloses information to an appropriate law enforcement agency if a reasonable person would believe—and if the employee actually believes—that the information constitutes a violation of the law.

B. This prohibition on adverse action, however, does not arise if disclosure of the information:

1. is prohibited by law,
2. reveals 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),
3. reveals information that would endanger the security of any federal judicial officer or other person, or
4. otherwise contravenes reasonable policies established by the Employing Office concerning workplace

confidentiality or non-disclosure of information obtained in the workplace.

## **CHAPTER VIII. DISPUTE RESOLUTION PROCEDURES.**

**§ 1 Procedure for consideration of alleged violations.** An employee who claims a denial of the rights granted under Chapters II through VII of this Plan or claims retaliation for having filed a claim or participating in the investigation, filing, and/or processing of a claim under this Plan may seek resolution of such claims through the procedures of this Chapter. The procedural process provided under this Plan involves the following steps—

- A.** consultation;
- B.** mediation;
- C.** hearing before the chief judge (or a judicial officer designated by the chief judge) of the court; and
- D.** review of the hearing decision under procedures established by the Judicial Council of the circuit.

These procedures do not preclude, and should not be construed as discouraging, any individual from seeking to resolve a concern about potentially discriminatory conduct directly with the person or persons involved. Any such efforts do not, however, suspend or extend the time within which a request for consultation, mediation, or a complaint may be timely filed; nor does a failure to try to resolve the situation informally with the person involved constitute a procedural bar or precondition to the filing of a complaint under this Plan.

## § 2 General provisions and protections.

- A. Prohibition against retaliation.** The court, a court unit head, or their designees, shall not retaliate against, coerce, or interfere with a complainant or anyone participating in the filing and processing of a complaint. However, the filing or pursuit of a frivolous or malicious claim, or the presentation of knowingly false information may, if relevant, be considered in subsequent employment decisions or in the evaluation of the merits of subsequent discrimination complaints involving the same person.

In the event it is determined by the hearing officer that the complaint was filed to harass or to undermine good management or discipline by a supervisor, or within an office, disciplinary action against the complainant may be recommended by the hearing officer to the appointing authority.

- B. Right to representation.** Every individual invoking the dispute resolution procedures of this Plan has the right (at his or her own expense) to be represented by counsel of his or her choice if such person is available and consents to be a representative. Any individual(s) alleged to have violated the rights and protections of the Plan (the complained of party) also has the right, at his or her own expense, to be represented during any phase of the Plan. The unit head acting as the representative of the employing office (or alternate individual appointed to such role) under this Plan is entitled to representation in the processing and resolution of such a matter at the Court/Court unit's expense, subject to the availability of funds.

- C. Case preparation.** It is expected that employees involved in or affected by a dispute resolution process will continue to perform the duties for which they are being paid and will limit any official duty time spent on case preparation, instead preparing their case, as much as possible, during break or lunch periods, or after-hours. To the extent that some preparation or interviewing of witnesses must occur during official duty hours, by a complainant or employee who could potentially be affected adversely by the outcome of the complaint process, the person seeking to so utilize these duty hours may apply, in writing, to the EDR Coordinator for authorization to use official time to prepare his or her case, specifying the amount of time sought,

the functions to which that time will be devoted, and any other court personnel who may be involved. The EDR coordinator should consult with the officer conducting the segment of the proceedings for which the preparation is sought (i.e., the dispute mediator or the hearing officer). The decision of the EDR coordinator shall be final and not subject to further review, nor may the decision itself be the subject of a complaint under this Plan. No request for utilization of duty hours must be made by the unit head who is responding on behalf of the court.

- D. Confidentiality and Notice.** At the consultation stage, all communications shall be kept confidential as contemplated in § 5 C(3) of this Chapter, but the EDR Coordinator may, in his or her sole discretion, determine how best to attempt resolution of the disputed matter and determine whether it is necessary to contact the alleged violator(s) of the EDR Plan. At any time, the EDR Coordinator may contact the Chief Judge or attempt resolution of the disputed matter by contacting the unit head, the Complaining Party, or the alleged violator(s). Beginning at the Mediation stage and until final resolution of the Complaint, every individual alleged to have violated the provisions of this Plan has the right to have reasonable notice of the charge and an opportunity to respond to the allegation. The EDR Coordinator or Alternate EDR Coordinator shall inform the Complainant at the initial Consultation Stage how these provisions may eventually affect the confidentiality of the process.
- E. Extensions of time.** The Chief Judge of the Court, the designated Hearing Officer, or the EDR Coordinator may extend any deadline set forth in this Chapter for good cause shown, except the initial 30-day deadline for filing a Request for Consultation, the 15-day deadline for filing a Request for Mediation, the 15-day deadline for filing a Complaint, and the 21-day deadline for filing a Petition for Review. These filing deadlines may not be extended unless all parties involved at the stage of the proceedings agree in writing.
- F. Dismissal of claim.** On his or her own initiative, at the request of any party, or on the recommendation of the EDR Coordinator, the chief judge or presiding judicial officer may at any time in the proceedings, dismiss in writing a claim on the grounds that it does not invoke violations of the rights or protections granted under this Plan, is

plainly without merit, is untimely, is repetitive of a previous claim, is frivolous, fails to state a claim upon which relief may be granted, or advances claims that were not made in mediation.

- G. Records.** At the conclusion of 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 or document an official personnel action, as well as to document the filing of a frivolous or malicious claim by the complainant, which is discussed in Chapter VIII, Section 2, Part A.
- H. Confidentiality.** The court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent possible. However, to assess the credibility of assertions made by a complainant or respondent, information regarding allegations filed under this Plan may be shared on a need-to-know basis. This Section should be read in conjunction with the provisions regarding confidentiality in Chapter VIII, Section 2, Part G, Section 5, Part C(3) and Section 6, Part A(5).
- I. Implementing Settlement Agreements or Remedies Ordered by a Hearing Officer's or Reviewing Officer's Final Decision.**
- 1. Implementing the terms.** Affected individuals, including unit heads and Judicial Officers, are required to accept and carry out the terms of a settlement agreement approved by the Chief Judge or the designated representative of an Employing Office, or any final decision of the Hearing Officer or the Eleventh Circuit Judicial Council.
  - 2. Retention of jurisdiction.** The Hearing Officer retains jurisdiction over the Complaint until the Employing Office fully implements the resolution and any relief.
  - 3. Failure to implement resolution and relief.** Where any Court official or employee fails to implement the ordered resolution or relief, the Hearing Officer or Chief Judge may enter an appropriate order requiring full implementation of the resolution or relief and impose sanctions for failure to do so.

**§ 3 Designation and duties of employment dispute resolution coordinator.**

The court will designate a person to serve as the EDR Coordinator. The duties of the EDR Coordinator shall include the following:

- A. providing information to the court and employees regarding the rights and protections afforded under this Plan;
- B. coordinating and organizing the procedures and establishing and maintaining official files of the court pertaining to complaints and other matters initiated and processed under the court's EDR Plan;
- C. consulting with individuals during the initial stages of the complaint process, in accordance with Section 5 of this Chapter;
- D. collecting, analyzing, and consolidating statistical data and other information pertaining to the court's EDR Plan;
- E. drafting for the court's approval an annual report to the Administrative Office;
- F. recommending to the court modifications to this Plan and suggestions for improvement in implementation; and
- G. Sending to the chief judge for information purposes a copy of any Form 1, 2, 3, or 4 that may come into his or her possession, as well as a copy of the notice described in Section 5, Part E of this Chapter.

The person serving as EDR Coordinator on the effective date of this Plan shall automatically become the initial EDR Coordinator under this Plan.

Because the EDR Coordinator may sometimes be unable to oversee, or disqualified from participation in, a particular dispute resolution process, the court shall name an Alternate EDR Coordinator to handle such claims.

**§ 4 General provisions relating to unavailability and disqualification.**

- A. The chief judge may either by a continuing delegation or by a delegation for purposes of a particular matter, designate another

judicial officer of the court to perform the duties assigned in this Section to the chief judge.

- B.** A party may seek disqualification of a Hearing Officer, employee or other person involved in a dispute by written request to the Chief Judge. Such written request shall specify why the individual should be disqualified. The provisions or considerations for disqualification of a federal judge pursuant to 28 U.S.C. § 455 do not apply to proceedings under this Plan.

## **§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 confidentially provide accurate information about the EDR Plan and listen to an employee's concerns.
- B.** During the first communication with an employee about a potential claim, the EDR Coordinator should explain an employee's rights and responsibilities under the EDR Plan, including deadlines for filing a Request for Consultation, and provide the employee with a copy of the EDR Plan and associated forms. In the case of alleged harassment, the EDR Coordinator should assure the employee that the matter will be investigated promptly and briefly document the pre-counseling communications for future reference.

## **§6 Consultation.**

- 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 consultation with the EDR Coordinator.
- B. Form and manner of requests.** Requests for consultation—
  1. are to be submitted to the court's EDR Coordinator;
  2. must be made in writing on the form attached to this Plan as Form 1; and

3. must be made within 30 days of the alleged violation or within 30 days of the time the employee reasonably should have become aware of the alleged violation. An individual's first awareness of an alleged violation could occur via verbal or written notice of an action or decision violating the EDR Plan. A future effective date of an action or proposed action does not act to extend the filing deadline when an individual has previously received notice either verbally or in writing. This 30-day filing deadline may not be waived or extended, unless agreed to in writing by the EDR Coordinator.

### C. Procedures.

1. **Oversight of consultation process.** Consultation shall be conducted by the court's EDR Coordinator, unless the EDR Coordinator or Alternate EDR Coordinator are disqualified from serving pursuant to Section 4 of this Chapter, or are otherwise unavailable. In such a case, the chief judge of the court shall designate another qualified individual to perform this function. The EDR Coordinator shall promptly provide a copy of the request for consultation to the unit executive and to the chief judge of the court. If the dispute involves an alleged violation of this Plan by a judicial officer, the person who conducts the consultation process shall be a judicial officer designated by the chief judge of the circuit, in consultation with the chief judge of the district, unless either is the judicial officer who is the subject of the complaint, in which case, he or she will be replaced in the consultation process by the next most senior active judge of the circuit or of the district.
2. **Purposes of consultation.** The purposes of the consultation process shall be to informally discuss the employee's concerns and elicit information regarding the conduct that the employee believes to have constituted a violation of the Plan; 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 contact the court unit executive of the employee's employing office in order to attempt to resolve the

disputed matter; and to assist the employee in achieving an early resolution of the matter, if possible.

**3. Confidentiality.** All contacts made, information obtained or exchanged and representations made by the complainant, the head of the office in which they are employed, any witness(es), and all other information obtained during the consultation process shall be treated in the same manner as other sensitive personnel issues which are normally confidential and for official use only. The EDR Coordinator shall inform the complaining and complained-of parties at the initial counseling stage how the notice provision in Part E of this Section may eventually affect the confidentiality of the complainant.

**4. Form of settlement.** The EDR Coordinator shall reduce to writing any settlement achieved during the consultation process and secure the signature of the employee, his or her representative, if the employee is represented by legal counsel, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf. Copies of the settlement agreement must be provided to all parties and to any adversely affected person. If the settlement will require the expenditure of any funds from the court's budget (decentralized funds) or from the Administrative Office's budget (centralized funds), approval of the chief judge shall also be required.

**D. Duration of period for the consultation.** The consultation period shall not exceed 45 days, beginning on the date the request for consultation is received by the EDR Coordinator. The consultation period may be extended by the mutual agreement of the EDR Coordinator and the employee for an additional 30-day period. Additional extensions should be approved by the chief judge.

**E. Conclusion of the consultation period and notice.** The EDR Coordinator shall notify the employee in writing of the end of the consultation process and notice shall also be given to the head of the employing office. 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 6 of this Chapter.

## § 7 Mediation.

### A. Procedures.

1. **Request for mediation.** Not later than 15 days after receiving notice of the end of the consultation period, an employee may file a request for mediation with the chief judge (or, if such person is disqualified or unavailable, with the next most senior active judge). The request shall be in writing on the form attached to this Plan as Form 2, shall be signed under penalty of perjury, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim or claims and the relief or remedy being sought. Mediation is a pre-requisite to filing a Complaint. Thus, failure to request mediation after the consultation phase precludes the filing of a complaint and constitutes dismissal with prejudice of the matters raised in the Request for Consultation.
2. **Designation of mediator.** Within 21 days after a request for mediation is received, the chief judge shall designate a mediator and provide written notice of such designation to the person who filed the request for mediation.
3. **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. If the claim is that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the chief judge of the circuit, in consultation with the chief judge of the district, unless either is the judicial officer who is the subject of the complaint, in which case, he or she will be replaced in the consultation process by the next most senior active judge of the circuit or of the district.
4. **Purpose of mediation.** The mediator shall meet separately and/or jointly with the employee and representative, if any, and

the unit head, or designee, of the employing office to discuss options for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution. The mediator shall also meet separately and/or jointly with any other employee who may be affected adversely by the potential resolution of the dispute.

5. **Confidentiality.** No person involved in the mediation process shall 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 parties directly involved in this mediation process or their representatives. However, to assess the credibility of assertions made by a complainant or respondent, information regarding allegations filed under this Plan may be shared on a need-to-know basis. In addition, in the event the employee files a complaint pursuant to Section 7 of this Chapter, the hearing officer shall have access to the record of any claims raised in mediation. (The provisions of this paragraph shall not be interpreted as precluding or limiting private communications between a person and his or her representative, or as requiring a record of such communications.) Once a matter enters the mediation stage, and until final resolution of the complaint, any individual alleged to have been involved in a violation of the provisions of this Plan has the right to reasonable notice of the contentions made by the complaining party and an opportunity to respond to those allegations. After the consultation phase, no additional individuals may be named as an alleged violator of the EDR Plan unless the addition is based on newly-discovered evidence as decided by the official handling the current phase of the claim.
  
6. **Form of settlement.** The mediator shall provide a brief summary report to the employee and the employee's representative, if any, the representative of the Employing Office and the EDR Coordinator. The report should include: identification of the employee and Employing Office and their representatives, if any; identification of claims advanced in mediation; dates of mediation session(s) and participants; the result of the mediation, either resolution or non-resolution,

including a copy of any settlement agreement. The summary will not address the merits of the claim and will not disclose any confidential information discussed in the session(s) or offers of settlement not finalized during this phase.

**B. Duration of mediation period.** The mediation period shall not exceed 60 days, beginning on the date the request for mediation is received. The complainant is required to attend two separate and two joint mediation sessions, to be determined by the mediator. The number of mediation sessions may thereafter be increased by mutual agreement of the mediator and the Complainant. Thereafter, he or she may proceed to file a complaint. The mediation period may be extended by mutual agreement of the mediator and the complainant, or, if agreement cannot be reached, by the chief judge.

**C. 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 to the employee, the employee's representative, if any, and the head of 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 7 of this Chapter. An employee may bring to the attention of the chief judge the fact that more than 60 days have elapsed since the beginning of the mediation period without such notice having been received.

## **§ 8 Complaint, review, and hearing.**

**A. Complaint.** Not later than 15 days after receiving notice of the end of the mediation period, an employee may file a complaint with the EDR Coordinator. The complaint shall be in writing on the form attached to this Plan as Form 3, shall be signed under penalty of perjury, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim or claims and the relief or remedy being sought. Claims that were not presented in mediation may not be pursued. The alleged violator of the EDR Plan must have been identified in the Request for Consultation, unless the addition of a new violator(s) is based on newly-discovered evidence. 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. 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 by the next most senior active judge.
- 2. Alleged violation by a judge.** An employee alleging that a judge violated any rights granted under this 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 Judicial 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 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 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.
- 3. Review procedures.** After notice to the Complainant and an opportunity to respond, the Chief Judge or designated Hearing Officer may dismiss any complaint that is found to be plainly without merit, untimely, or unduly repetitive of a previous complaint, that fails to state a claim upon which relief may be granted, or that makes claims that were not advanced in the Request for Consultation and Mediation. The Employing Office (Respondent) also may move to dismiss the Complaint if it is legally insufficient or not properly filed under the EDR Plan. In

addition, either party may file a motion for summary judgment or for judgment on the pleadings.

4. **Discovery.** The EDR Plan contemplates an expedited procedure and, therefore, allows limited discovery. Absent leave of the Hearing Officer, a party may conduct no more than two depositions, propound no more than 10 interrogatories, and shall be limited to 15 requests for production and 15 requests for admissions. The Hearing Officer, moreover, shall have authority to limit discovery, enter protective orders, and order sanctions consistent with a federal court's powers under Federal Rules of Civil Procedure 26 and 37.

### C. **Hearing procedures.**

1. **Hearing officer.** If the chief judge or designated judicial officer does not dismiss the complaint under the preceding paragraph, 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.** Generally, the Hearing Officer shall conduct a hearing consistent with a non-jury trial in federal court, unless otherwise limited by the EDR Plan. 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 90 days after the filing of the complaint; absent the consent of the complainant to a later hearing date or good cause shown and documented in writing by the presiding judge;
  - b. the complainant, the person the complainant accuses of having violated rights protected under the Plan, and the unit head of the office against which the complaint has been filed, must receive written notice of the hearing;

**c.** In appropriate cases, at the discretion of the Hearing Officer, the Complainant, will have the right to representation, to present evidence on his or her behalf, and to examine and cross-examine witnesses; the representative of the Employing Office will be entitled to representation, to present evidence and to examine and cross-examine witnesses. In appropriate cases, in the discretion of the Hearing Officer, the alleged violator of the Plan or his counsel may be allowed to participate in the same fashion as counsel for the Complainant and counsel for the Employing Office;

**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;

**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 120 days after the conclusion of the hearing; absent the consent of the complainant to a longer period of time or good cause shown and documented in writing by the presiding judge;

**h.** all parties shall receive written notice of any action taken as a result of a hearing; and

**i.** if the relief or remedy sought would adversely affect another employee, that employee and his or her representative, if any, shall have the same rights to notice

and to participation in the hearing as afforded to the complainant.

**§ 9 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 within 21 days of the date of the letter transmitting the decision of the chief judge, petition for review of that decision under procedures set forth in Chapter IX of this Plan.

**§ 10 Remedies.**

- A. Where a judicial officer acting pursuant to Section 7 or 8 of this Chapter finds 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 ensuring 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. A judge's decision in EDR matters must be in conformance with all statutes and regulations that apply to the judiciary, and judges have no authority to declare such statutes or regulations unconstitutional or invalid.
- C. A judge presiding in EDR matters may not compel the participation of or impose remedies upon agencies or entities other than the employing office which is the respondent in such matters.

Remedies which may be provided to successful complainants under this Plan 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 previously removed;
4. prospective promotion to a position;

5. priority consideration for a future promotion or placement in another position for which the complaining party is qualified;
6. back pay and associated benefits<sup>1</sup>, 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, or other appropriate means.

**D.** 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.

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<sup>1</sup> Back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C Section 5596, are satisfied may be applicable. Settlements or remedies that may justify "back pay" should be reviewed by the Administrative Office, Office of the General Counsel, prior to finalization.

## **Chapter IX. REVIEW PROCEDURES**

**§ 1 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 seek review of that decision under the procedures hereinafter set forth. The standard governing such review shall be whether the decision is supported by substantial evidence on the record as a whole. The EDR Coordinator shall be responsible for submitting the complete record of the proceeding to the Circuit Executive for use by the Judicial Council. The Judicial Council, in its sole and exclusive discretion, shall determine whether, and in what format and timeframe, any additional briefing shall be required.

- A. Time, place, and manner of filing a petition for review.** 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 within 21 days of the date of the letter transmitting the decision of the chief judge file with the Circuit Executive a petition for review by the Judicial Council in the form attached to this Plan as Form 4.
  
- B. Receipt of timely petition in proper form.** 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 head of the court unit or office in which the complainant is employed, to the complained-of judicial officer (if any), and to the judicial officer who determined the matter (or other official who summarily dismissed the 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. Thirty (30) days after the acceptance of a petition for review, the Circuit Executive shall send to the Circuit's EEO committee, and all non-disqualified members 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; (4) the petition for review, and (5) the response, if any.

**C. Receipt of petition not in proper form or out of time.**

1. Upon receipt of a petition for review not filed in the form required, the Circuit Executive shall return the petition and explain why it was returned. The party requesting review may re-file the corrected petition for review with the Circuit Executive within 14 days of receipt of the returned petition. Failure to file in the form required a second time will result in dismissal of the petition for review.
2. Failure of the party requesting review to file a petition within 21 days of the date of the letter transmitting the decision regarding the original complaint, shall result in the dismissal of the petition.

**D. Review of order.**

**Ballot.** The Judicial Council EEO Committee shall consider the petition for review and the related materials provided by the Circuit Executive and recommend to the Judicial Council whether or not the decision made by the hearing officer below should be affirmed. The Circuit Executive shall transmit to all non-disqualified members of the Judicial Council the Committee's recommendation along with a ballot that shall ask: (1) whether the decision of the hearing officer below should be affirmed; (2) whether the petition for review should be considered at the next meeting of the Judicial Council; and (3) whether the Judicial Council member recuses himself or herself from participating in the consideration of the petition. If within 14 days of the date on which the Circuit Executive sends ballots to the members of the Council, no member of the Council votes that the petition be considered at the next Council meeting, the original decision of the hearing officer below shall be deemed affirmed.

**E. Decision by Judicial Council.**

1. A petition for review placed on the agenda of a meeting of the Judicial Council shall be decided by a majority of the non-disqualified members of the council present at the meeting.
2. 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 Chapter VIII, Section 9 of this Plan. The Judicial Council may also take any other action within its authority pursuant to 28 U.S.C. §§ 332, 351-364.

3. 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 Council.
4. The Circuit Executive shall provide to the complainant, the Chief Judge of the Court, the employing office and the complained-of official a copy of the order and any separate or dissenting statements issued by members of the Council, and shall inform them that the Council's decision is final.
5. The Circuit Executive shall transmit a copy of the order to the chief judge and maintain a summary record that clearly identifies the nature of the proceeding and the disposition reached.

**F. Complained-of judge.** A complained-of judge and the judge rendering the decision that initially determined the matter which is under review by the Council is disqualified from participating in deliberations or decisions by the Judicial Council.

**G. Withdrawal of petition.** A complainant may withdraw a petition for review at any time before the Judicial Council acts on the petition.

## **§ 2 Finality.**

The decision of the Judicial Council is final and not subject to further review.

**§ 3 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 Eleventh Circuit. It may be appropriate that the final decision be redacted to protect the privacy of anyone involved in the matter.

## **CHAPTER X. OTHER PROVISIONS.**

### **§ 1 Annual Reports.**

The EDR Coordinator shall annually provide to the court for its review, approval, and submission to the Administrative Office of the United States Courts a report on the implementation of this Plan. This report shall be in the format, and contain such information, as may be prescribed by the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

### **§ 2 Notice of Plan.**

A copy of this Plan and of any subsequent modification shall be posted on the internal and external websites of the court. Employing offices (unit heads) shall maintain an electronic or paper record of employees' acknowledgment of receipt of notice of access to a copy of this Plan. A copy of this Plan and any subsequent modifications shall also be filed with the Administrative Office.

### **§ 3 Effective date.**

Subject to approval by the Judicial Council, this Plan takes effect on August 8, 2014.