

***DISTRICT OF MARYLAND
AMENDED
EQUAL EMPLOYMENT OPPORTUNITY
AND EMPLOYMENT DISPUTE RESOLUTION PLAN – MARCH 2013***

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

The District of Maryland Equal Employment Opportunity and Employment Dispute Resolution (EEO/EDR) Plan shall herein be referred to as “the Plan.” It is based on the Federal Judiciary Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States Courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995, **and** the current Equal Opportunity Employment Plan.

Any modification of this Plan by the District of Maryland must first be approved by the Fourth Circuit Judicial Council. A copy of the Plan and any subsequent modifications shall be filed with the Administrative Office and posted on the district’s internal and external websites. The district shall annually submit a report on the implementation of its Plan to the Administrative Office for inclusion in the Director’s Annual Report to the Judicial Conference.

Policies adopted by individual court units 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 by the Plan. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein will not be affected by the Plan.

The Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial officer misconduct or disability under 28 U.S.C. § 351, et seq., and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

If an employee has a dispute which could be either (a) under the court’s internal procedures or (b) under the Plan procedures, the employee may elect either (a) or (b) but may not proceed under both, either simultaneously or consecutively.

§ 2 Scope of coverage

The Plan applies to all Article III judges and other judicial officers in the District of Maryland, as well as to all employees of the U.S. District and Bankruptcy Courts (including chambers staffs), and the U.S. Probation and Pretrial Services Office.

§ 3 Definitions

For purposes of this Plan -

- a. The term “claim” means the filing of a request for counseling as set forth in Chapter X, which may be further pursued by the filing of a request for mediation and a request for hearing.
- b. The term “employee” includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term “employee” does not include externs, applicants for bankruptcy judge or magistrate judge positions, applicants for judicial law clerk positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators, volunteer counselors or mediators, or other individuals who are not employees of an “employing office” as that term is defined below.
- c. The term “employing office” includes all offices of the United States District Court and the United States Bankruptcy Court, including the Offices of the Clerks of Court and Probation and Pretrial Services, and any such offices that might be created in the future. The court is the employing office of a judicial officer’s chambers staff.
- d. The term “judicial officer” means a judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, a judge on the Court of Federal Claims, or a judge of any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.
- e. The term “court” refers to the appropriate court (appeals, district or bankruptcy) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint. In the case of disputes involving federal public defenders, the term “court” refers to the appropriate court of appeals.
- f. The term “days” in all filing and other time periods specified in this Plan shall mean calendar days, except that if the deadline date falls on a weekend or holiday, the deadline shall be extended to the following court business day.

§ 4 **Annual Fair Employment Practices Report (FEPR)** - Each court unit will prepare a report that includes demographic data and complaints pending or filed in the previous fiscal year. Instructions and deadlines related to the FEPR will be provided by the Employee Relations Office (ERO). Each court unit’s FEPR will be reviewed and approved by the chief district judge prior to being submitted to the ERO.

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

§ 1 General - Discrimination against employees based on race, color, religion, sex (including sexual harassment), sexual orientation, national origin, age (at least 40 years of age at the time of the alleged discrimination), and 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.”

§ 2 Definition - The term “disability” means:

- a. a physical or mental impairment that substantially limits one or more of the major life activities of an employee;
- b. a record of such an impairment, or;
- c. being regarded as having such an impairment.

See 42 U.S.C. § 12102(2).

§ 3 Special provision for probation and pretrial services officers and officer assistants - The age discrimination provision of Section 1 of this Chapter shall not apply to the initial hiring of probation and pretrial services officers. *See Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17.* 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.

§ 4 EEO Implementation - All court unit executives 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. Judges and court managers must apply EEO/EDR 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.

§ 5 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.

§ 6 EEO Objectives - Each court unit will annually review the Plan to insure EEO objectives are met.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

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 that results from the absence of appropriated funds.

§ 2 Definitions

- a. The term “employing office closing” means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30 day period for 50 or more employees excluding any part-time employees.
- b. The term “mass layoff” means a reduction in force which is not the result of an employing office closing and results in an employment loss at the single site of employment during any 30 day period for at least 33 percent of the employees (excluding any part-time employees) and at least 50 employees (excluding any part-time employees) or at least 500 employees (excluding any part-time employees).

See 29 U.S.C. § 2101.

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

An employing office shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

- § 1 **General** - Each employing office shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Complaints which seek a remedy that is exclusively within the jurisdiction of the General Services Administration (GSA) or the United States Postal Service (USPS) are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.
- § 2 **Court program requirements** - The court shall implement a program to achieve the protections set forth in Section 1 of this Chapter (see Attachment A).

CHAPTER VII - POLYGRAPH TESTS

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 – 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. 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 IX – REPORTS OF WRONGFUL CONDUCT

A report of wrongful conduct is not the same as initiating or filing a claim under this Plan; thus, employees who wish to file an EDR claim relating to any alleged wrongful conduct as defined in Chapter II, § 1 must follow the procedures set forth in Chapter X of this Plan.

Judges and employees are encouraged to report wrongful conduct to the court’s EEO/EDR Coordinator, the chief judge or his/her designee, unit executive, human resources manager, or their supervisor as soon as possible, before it becomes severe or pervasive. Retaliation against any employee making a report of wrongful conduct is prohibited. The person receiving such a report has the responsibility to notify the EEO/EDR Coordinator as soon as possible. The EEO/EDR Coordinator shall promptly inform the chief judge and unit executive of any report. The chief judge and/or unit executive shall ensure that the allegations in the report are appropriately investigated, either by the human resources manager or other person.

All individuals involved in the investigation shall protect the confidentiality of the allegations of wrongful conduct to the extent possible. Information and records about the allegations shall be shared on a need-to-know basis.

Employees found by the chief judge and/or unit executive to have engaged in wrongful conduct, as defined in this Plan, may be subject to disciplinary action.

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 VIII of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of:
- a. counseling and mediation;
 - b. hearing before the chief district judge (or a designated judicial officer), and;
 - c. review of the hearing decision under procedures established by the Fourth Circuit Judicial Council.
- § 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, unless the supervisor or unit executive is the alleged violator. In such a situation, the court or employing office should specify alternative neutral points of contact for the initial inquiry. An employee alleging that any of the rights granted under this EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with his or her court's EEO/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 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 EDR Plan. In so doing, the council or its designee, which 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 possible. 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. **Prohibition against retaliation** - Complainants under this Plan have the right to be free from retaliation, coercion, or interference because of filing a complaint

pursuant to this Plan. Likewise, any person who participates in the filing or processing of a complaint, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.

- b. **Right to representation** - Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. Every respondent (employing office or judge) that is the subject of the individual employee's complaint also has the right to be represented. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's appointing officer.
- c. **Case preparation** - To the extent feasible, every individual invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her court duties and appropriate notice is provided to the employee's supervisor. Any dispute about whether the amount of official time being used is unreasonable shall be resolved by the EEO/EDR Coordinator or their designee.
- d. **Extensions of time** - The chief district judge, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause.
- e. **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 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. Such a request will be presented to the chief judge or designated judicial officer. Unless the time limit is extended, the chief judge or designated judicial officer will, within 15 days after receipt of the request for dismissal, after providing notice to the claimant and an opportunity to respond, grant or deny the request. This may include, in the judge's discretion, holding a hearing. The claim process will be stayed until the request is decided.
- f. **Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the court's EEO/EDR Coordinator or their designee. 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** - For the District of Maryland, the EEO/EDR Coordinator will be the court unit executives or their designees. Additional EEO/EDR Coordinators may be designated by the court unit executives if deemed necessary (see Attachment B). The duties of such persons shall

include the following:

- a. provide information to the court and employees regarding the rights and protections afforded under this plan;
- b. coordinate and organize the procedures and establish and maintain official files of the court pertaining to complaints and other matters initiated and processed under the court's employment dispute resolution plan;
- c. coordinate the counseling of individuals in the initial stages of the complaint process, in accordance with Section 8 of this Chapter, and;
- d. collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process.

§ 7 General disqualification provision - Any person seeking disqualification or recusal of an EEO/EDR counselor, mediator, or reviewing official shall promptly submit a written statement to the chief district judge explaining the reasons for the requested disqualification or recusal. A copy shall be provided to the person whose recusal is sought, and that person also may choose to submit a written statement to the chief district judge. In determining whether disqualification or recusal is warranted, the chief district judge shall consider the factors, circumstances and considerations set forth in 28 U.S.C. § 455. If disqualification or recusal is warranted, the chief district judge shall designate another individual to act as the EEO/EDR counselor, mediator, or reviewing official. Disqualification or recusal of the EEO/EDR counselor, mediator or reviewing official of a court shall not be warranted merely because the court is named as a responding party. The chief district judge may designate another judicial officer to review a request for disqualification or recusal under this Section.

§ 8 Counseling

- a. **Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through VIII of this Plan have been violated must first request counseling.
- b. **Form and manner of requests** - Requests for counseling:
 1. are to be submitted to an EEO/EDR Coordinator;
 2. must be made in writing and contain all the violations asserted by the claimant; and
 3. must be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation. A Request for Counseling form is attached (see Attachment C).

c. **Procedures**

1. **Who may serve as counselor** - The counseling shall be conducted by an EEO/EDR Coordinator or their designee from a court unit other than the one in which the individual is employed. If the EEO/EDR Coordinators listed in Attachment B are unavailable, additional EEO/EDR Coordinators will be designated by the court unit executives. If the dispute involves an alleged violation of this Plan by a judicial officer, the person who conducts the counseling shall be a judicial officer designated by the chief district judge.
 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** - All counseling shall be kept confidential unless the employee agrees in writing to waive confidentiality of the counseling process for the purpose of allowing the designated counselor to contact the employing office or to attempt a resolution of the disputed matter. A written record of all such contacts must be kept by the counselor and made available for review by the affected person(s).
 4. **Form of settlement** - The EEO/EDR Coordinator or their designee 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 EEO/EDR Coordinator or their designee.
- e. **Conclusion of the counseling period and notice** - The EEO/EDR Coordinator or their designee shall notify the employee in writing of the end of the counseling period. If the employee has waived confidentiality, the court unit executive of the organization involved, shall also be notified in writing of the end of the counseling period. As part of the notice, the EEO/EDR Coordinator or their designee shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EEO/EDR Coordinator or their designee a request for mediation in accordance with Section 9 of this Chapter.

§ 9 Mediation

a. **Initiation** - Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EEO/EDR Coordinator or their designee a request for mediation. The request must be made in writing and must state the claim(s) presented. A Request for Mediation form is attached (see Attachment D). The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive 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 chief judge or EEO/EDR Coordinator shall designate a mediator and provide written notice of such designation.
2. **Who serves as mediator** - In the District of Maryland, a U.S. magistrate judge serving in the Southern Division shall be the mediator for disputes brought by an employee assigned to the Northern Division, and a U.S. magistrate judge serving in the Northern Division shall be the mediator for disputes brought by an employee assigned to the Southern Division.

If the complaint alleges that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the chief district judge.

3. **Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.
4. **Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of all such contacts must be kept and made available for review by the affected person(s). In addition, in the event the employee files a complaint pursuant to Section 10 of this Chapter, the hearing officer shall have access to the record of any claims raised in mediation.
5. **Form of settlement** - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

- 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 request for hearing. See Section 10 of the Chapter.
- 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 EEO/EDR Coordinator or his/her designee shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 10 of this Chapter.

§ 10 Complaint, review and hearing

- a. **Complaint** - Not later than 15 days after receiving written notice of the end of the mediation period, the employee, provided that he or she participated in the mediation as required, may file a complaint with the chief district judge using Attachment E. 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. A copy of the Complaint must also be provided to the court unit executive of the organization named in the Complaint. 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 district judge. In the event the chief district judge chooses not to serve as the reviewing official, is not available to serve, or has disqualified or recused himself or herself under Section 4 of this Chapter, the chief district judge shall designate one or more Article III judge(s) to serve as the reviewing official(s). In the case of a complaint alleging that an Article III judge has violated rights protected by the Plan, the complaint shall be reviewed and decided by a judge of another court, as designated by the Fourth Circuit Judicial Council. Any designation of a judicial officer from another court to hear and decide the case shall be arranged by agreement of the chief district judges of the affected courts.
 - 2. **Review procedures** - After notice to the complainant and an opportunity to respond, the chief district judge or designated judicial officer may dismiss in writing any complaint that is found to be frivolous, 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 mediation.

c. **Hearing procedures**

1. **Presiding judicial officer** - If the chief district judge or designated judicial officer does not dismiss the complaint under the preceding subsection, the chief district judge or designated judicial officer, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
2. **Specific provisions** - The presiding judicial officer may provide for such discovery and investigation as 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 head of the office against which the complaint has been filed must receive at least 15 days advance written notice of the hearing; such notice shall also be provided to the individual alleged to have violated rights protected by this Plan whenever such individual is a judicial officer or when the presiding judicial officer otherwise determines such notice to be appropriate;
 - c. at the hearing, the complainant and the respondent will have the right to be represented, to present evidence, 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 district judge or designated judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this Plan and by decisions of the Fourth Circuit Judicial Council under Section 11 of this Chapter;
 - f. remedies may be provided in accordance with Section 12 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 district judge or designated judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing, and;
- h. all persons entitled to written notice under paragraph 2.b. above shall have the right to written notice of any action taken as a result of the hearing.

§ 11 Review of decision - A party or individual aggrieved by a final decision of the chief district judge or designated judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the Fourth Circuit Judicial Council (see Attachment F). Any review will be conducted by a judicial officer(s), based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence.

§ 12 Remedies

- a. Where judicial officers acting pursuant to Section 10 or 11 of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- b. Remedies which may be provided to 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 position;
 - 6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
 - 7. records modification and/or expungement;
 - 8. "equitable" relief, such as temporary stays of adverse actions;
 - 9. granting of family and medical leave, and;

10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.
- c. Remedies which are *not* legally available include:
1. payment of attorney's fees (except as authorized under the Back Pay Act);
 2. compensatory damages, and;
 3. punitive damages.

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

ATTACHMENT A

HEALTH AND SAFETY PLAN DISTRICT OF MARYLAND

This Health and Safety Plan is established by the District of Maryland in order to carry out the obligations assumed under the court's EEO/EDR Plan. It is established in order to provide a work environment, work practices and employee conduct that are conducive to a safe and healthful workplace.

This plan applies to all employees listed in Chapter 1, Section 2 of the court's EEO/EDR Plan, and excludes all persons excluded from coverage under the EEO/EDR Plan. It is applicable in all facilities operated or leased by this court.

Although the General Services Administration (GSA) has primary responsibility for building operations, maintenance, protection and alterations, tenant agencies are required to maintain a neat and orderly office space to minimize the risk of accidental injuries and fires due to the tenant activities. Tenant agencies are responsible for correcting unsafe conditions associated with their use of assigned space, including those related to the operation of their program equipment ("tenant activities").

It is the responsibility of all employees in the District of Maryland to work in as safe and healthy a manner as is possible. It is also the responsibility of all employees to report any unsafe or unhealthy working conditions. The court unit executive for each tenant agency shall arrange health and safety inspections of their work sites as deemed necessary. Whenever employees are scheduled to occupy space that has not previously been occupied by employees of the court, a health and safety inspection will be conducted prior to occupancy.

Any unsafe conditions relating to tenant activities should be resolved by the tenant agency immediately, if possible. All other unsafe conditions should be reported to GSA. A record should be made of the date of inspections and any findings of unsafe conditions during the inspection. A record should also be made of any reported unsafe conditions, including dates and documentation of the action taken. These records should be maintained by the court unit executive. An inspection will be undertaken at the direction of the court unit executive whenever a report of an unsafe condition is received.

A copy of reports of unsafe conditions, which have not been resolved at the end of each calendar year, should be submitted to the GSA by the court unit executive for the tenant agency where the unsafe condition is located. The court unit executive may report unsafe conditions to GSA at other times, if necessary, to ensure action is taken to correct the unsafe condition.

ATTACHMENT B

**EEO/EDR COORDINATORS AND JUDICIAL DESIGNEES
DISTRICT OF MARYLAND**

<u>COURT UNIT</u>	<u>COURT UNIT EXECUTIVE</u>	<u>DESIGNATED EEO/EDR COORDINATOR</u>
U.S. District Court	Felicia Cannon	Catherine Stavlas
U.S. Bankruptcy Court	Mark Neal	Thomas Kearns
U.S. Probation & Pretrial Services Office	William F. Henry	Karen Sellinger

If the EEO/EDR Coordinators or their designees listed above are unavailable, additional EEO/EDR Coordinators will be designated by the court unit executives.

<u>COURT UNIT</u>	<u>CHIEF JUDGE</u>	<u>DESIGNEE</u>
U.S. District Court	James K. Bredar	Catherine C. Blake
U.S. Bankruptcy Court	Nancy V. Alquist	Lori S. Simpson

REQUEST FOR COUNSELING

(Submitted Under the Procedures of the EEO/EDR Plan for the District of Maryland)
Prior to completing this form, please refer to the EEO/EDR Plan. 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:

Court Unit _____ Job Title _____

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

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

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

G Chapter II- Equal Employment Opportunity & Anti-Discrimination Rights

- Q Race
- Q Color
- Q Religion
- Q Gender/Sex (includes sexual harassment)
- Q National Origin
- Q Age
- Q Disability
- Q Sexual Orientation

G Chapter III - Family and Medical Leave Rights

G Chapter IV - Worker Adjustment and Retraining Notification Rights

G Chapter V - Employment and Re-employment Rights of Members of the Uniformed Services

G Chapter VI - Occupational Safety and Health Protections

G Chapter VII- Polygraph Tests

G Chapter VIII-Whistleblower Protection

G Chapter IX-Reports of Wrongful Conduct

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

9. Are you willing to waive confidentiality in order to permit the counselor to contact the employing office, or to attempt a resolution of the disputed matter? [If you waive confidentiality you authorize the Employment Dispute Resolution (EDR) Coordinator to: contact the employing office, including the unit executive and other involved staff, and the chief judge; and to share a copy of the request for counseling, in order to explore resolution of the disputed matter. This waiver is restricted to the counseling stage of the dispute resolution process and does not extend to any other stage of that process.] Yes No

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

Submitted By

Signature

Date

Counselor Submitted To

Counselor Signature

Date Received

REQUEST FOR MEDIATION

(Submitted Under the Procedures of the EEO/EDR Plan for the District of Maryland)

Prior to completing this form, please refer to the EEO/EDR Plan. 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 is no longer accurate, please state the nature and reason for the change _____

Date counseling was initiated_____

Date of receipt of the notice of conclusion of counseling_____

Name of person who provided counseling_____

Submitted By

Signature

Date

Mediator Submitted To

Signature

Date Received

COMPLAINT

(Filed Under the Procedures of the EEO/EDR Plan for the District of Maryland)

Prior to completing this form, please refer to the EEO/EDR Plan. 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:

Court Unit _____ Job Title _____

5. Name and address of the employing office against whom 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.

G Chapter II- Equal Employment Opportunity & Anti-Discrimination Rights

- Q Race
- Q Color
- Q Religion
- Q Gender/Sex (includes sexual harassment)
- Q National Origin
- Q Age
- Q Disability
- Q Sexual Orientation

G Chapter III - Family and Medical Leave Rights

G Chapter IV - Worker Adjustment and Retraining Notification Rights

G Chapter V - Employment and Re-employment Rights of Members of the Uniformed Services

G Chapter VI - Occupational Safety and Health Protections

G Chapter VII- Polygraph Tests

G Chapter VIII-Whistleblower Protection

G Chapter IX-Reports of Wrongful Conduct

7. Date(s) of alleged violation _____

8. Date counseling was requested _____

EDR COORDINATOR CHECKLIST

1. COUNSELING

Employee: _____

Court Unit: _____

G Date received written request for counseling: _____

G Name of counselor assigned: _____

G Explained employee's right to confidentiality.

G Was waiver of confidentiality signed? Y/N. Dated: _____

G If Alternate Counselor designated, list identifying information and reasons for designation:

G Date counseling period ends: _____

G Written request filed within 30 days of alleged violation (or from date the employee learned of the alleged violation). If not, reasons for untimeliness: _____

G Employee covered under the court's EDR plan.

G Alleged violation covered under the court's EDR plan. Specific applicable law(s):

G If violation not covered, referral made to other agency resources (identify resource and date of referral): _____

G Summary of employee's allegation (i.e. employment issue and legal basis): _____

G Employee's desired remedy: _____

G Explained purposes of counseling, stages of the process, time frames, the role of the counselor, and employee's responsibility to request mediation.

G Gave the employee copy of the court's EDR Plan.

- G Explained employee's right to representation. Identifying information for representative (if any):
- G Written record of all contacts during counseling.
- G Written record requested (include date and person requesting):
- G Date settlement agreement signed: _____
- G Verified signatures of the employee (and representative, if any) and the individual authorized to settle dispute for the employing office.
- G Date written notification given to the employee of the 15 day period for filing a written request for mediation: _____
- G Advised the employee that a failure to timely pursue mediation precludes further processing under court's EDR plan.

Representative of the Employing Office:

- G Explained purposes of counseling, stages of the process, time frames, and the role of the counselor.
- G Gave the employing office a copy of the court's EDR Plan.
- G Summary of the employing office response to allegations (e.g. legitimate business reasons for employment action): _____

- G Summary of employing office's desired remedy and response to employee's desired remedy:
- G Explained right to representation. Identifying information for representative (if any):
- G Request for Dismissal filed: _____
- G Decision by Chief Judge on request: Y / N dated: _____

Other Witnesses:

- G Explained purposes of counseling, stages of the process, time frames, and the role of the counselor.
- G Gave the witness a copy of the court's EDR Plan.
- G Summary of response to allegations: _____

2. MEDIATION

- G Date received the written request for mediation: _____
- G Date mediation period ends: _____
- G Written request filed within 15 days of the employee's receipt of notice of the conclusion of the counseling period.
- G Representative(s) listed (include identifying information): _____
- G Claim(s) stated: _____
- G Date mediator designated (include identifying information for mediator): _____
- G Date written notification of mediator designation sent to parties: _____
- G Date of mandatory mediation session: _____
- G Written record of all contacts during mediation.
- G Written record requested (include date and person requesting): _____
- G Date received signed settlement agreement from mediator: _____
- G Verified signatures of the employee (and representative, if any) and the individual authorized to settle dispute for the employing office.
- G Date received notification that mediation had ended: _____
- G Date written notification given to the employee, his or her representative (if any) and employing office that mediation has ended: _____
- G Date written notification given to the employee of the 15 day period for filing a formal complaint: _____

3. COMPLAINT AND HEARING

- G Date received written complaint: _____
- G Written complaint filed within 15 days after the employee's receipt of notice of the end of the mediation period. If not, reasons for untimeliness: _____
- G Claim: _____
- G identifies complainant: _____

- G identifies other parties: _____
- G identifies employing office: _____
- G statement of claim: _____

- G relief or remedy sought: _____

- G Alleged violation is covered under the court's EDR plan.
- G Representative listed (include identifying information): _____
- G Reviewing official and date of designation: _____
- G Notice to complainant regarding proposed dismissal of complaint (specify date):

- G Dismissal of complaint: _____
- G frivolous
- G unduly repetitive of a previous complaint
- G fails to state a claim upon which relief can be granted
- G makes claims that were not advanced in mediation
- G Date hearing commences: _____
- G Date written notice of the hearing issued: _____
- G complainant
- G head of the employing office against whom the complaint is filed: _____
- G other individuals: _____
- G Verbatim record.
- G Notification sent to parties of right to representation, to present evidence, and to cross-examine adverse witnesses.

G Date written notice of decision or summary dismissal sent to parties: _____

4. APPEAL

G Written notification given to the parties of the right to petition for review under procedures established by the circuit judicial council.

G Written notification given to the parties of the results of the review.

G Written records maintained for a reasonable time period.

Judicial Council of the Fourth Circuit
Procedures for Considering Petitions for Review
and
Public Availability of Final Decisions
of
Complaints Filed Under
Employment Dispute Resolution Plans
of the
United States Courts
of the
Fourth Circuit

January 1999

§ 1 Review of Decision

A. Notice of Procedures for Review

A party or individual aggrieved by a final decision of the Chief Judge, or by a summary dismissal of the complaint, may petition for review of that decision under the following procedures established by the Judicial Council of the Circuit. The EDR Coordinator shall inform all persons served with notice of the final decision of the Chief Judge of the procedures for seeking review by the Judicial Council.

B. Timing and Form of Petition for Review

A petition for review must be received by the EDR Coordinator within 30 days of the date of the letter to the parties transmitting the order. The petition should be in the form of a letter, addressed to the EDR Coordinator, beginning "I hereby petition the judicial council for review of the Chief Judge's order under the Employee Dispute Resolution Plan of the **[name of court]**. . . ." There is no need to enclose a copy of the original complaint. Only one copy of the petition is required. The letter should set forth a brief statement of the reasons why the petitioner believes that the Chief Judge or designated judicial officer's determinations were in error. The letter must be signed.

C. Receipt of Timely Petition in Proper Form

Upon receipt of a petition for review of the order of the Chief Judge within the time allowed and in proper form, the EDR Coordinator will acknowledge receipt of the petition and promptly send a copy of the petition and the following materials to the Circuit Executive:

1. the complaint and any statement of facts;
2. any response filed;
3. any record of information received by the Chief Judge in connection with consideration of the complaint;
4. any findings and recommendations made in the case by the Chief Judge's designee;
5. any objections to the designee's findings and recommendations;
6. the Chief Judge's order disposing of the complaint;
7. any memorandum in support of the order;
8. any other documents that appear to be relevant and material to the petition

Upon receipt of these materials, the Circuit Executive will acknowledge receipt of the petition for review and forward copies of all materials and a ballot to each member of the Judicial Council, except for any member disqualified under Subsection F of this Section.

D. Receipt of Untimely Petition

The EDR Coordinator will dismiss a petition that is not received within 30 days of the date of the letter transmitting the Chief Judge's order.

E. Receipt of Timely Petition Not In Proper Form

Upon receipt of a petition filed within the time allowed but not in proper form (including a document that is ambiguous about whether a petition for review is intended), the EDR Coordinator will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within 15 days of the date of the letter. If the deficiencies are not corrected within the time allowed, the EDR Coordinator will dismiss the petition.

F. Consideration of Petition

Each member of the Judicial Council to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the Circuit Executive. The ballot form will provide opportunities to vote to (1) affirm the Chief Judge's disposition, or (2) place the petition on the agenda of a meeting of the Judicial Council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition. Any judge who acted on the complaint, will not participate in the Council's consideration of the petition for review.

Review will be based on the record created before the Chief Judge, and the order shall be affirmed if supported by substantial evidence.

If a majority of the votes cast should be for affirmance, the Chief Judge's order will be affirmed, and the Circuit Executive will prepare an appropriate order to that effect, but if any of the members vote to place the petition on the agenda of a Council meeting, that will be done. If a petition is placed on the agenda of a meeting of the Judicial Council, Council action may be taken by a majority of the members present and voting.

G. Timing and Notice of Decision

If the petition is in proper form, the Judicial Council shall render its decision within 30 days after receipt of the petition for review unless the deadline is extended by the Council for good cause. The original of the order shall be filed with the EDR Coordinator, and the EDR Coordinator will promptly transmit copies of the order to the parties and their representatives.

H. Finality

Decisions of the Judicial Council are final and conclusive and shall not be judicially reviewable on appeal or otherwise.

§ 2 Record of Final Decisions

Final decisions of the Chief Judge and of the Judicial Council shall not name the complainant or individual respondents. In addition, the Chief Judge has the discretion to remove sensitive information contained in the final decision that may inadvertently identify the parties. Once final action on a complaint has been taken and is no longer subject to review, the final decision of the Chief Judge and of the Judicial Council shall be available to the public free of charge by written request to the EDR Coordinator.