

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

**EQUAL EMPLOYMENT OPPORTUNITY  
AND  
EMPLOYMENT DISPUTE RESOLUTION PLAN**

**PART A – EQUAL EMPLOYMENT OPPORTUNITY  
PART B – EMPLOYMENT DISPUTE RESOLUTION**

**APPROVED BY THE NINTH CIRCUIT JUDICIAL COUNCIL  
FEBRUARY 20, 2014**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON**

IN RE:  
Equal Employment Opportunity Plan and  
Employment Dispute Resolution Plan

GENERAL ORDER 01-14

Effective January 21, 2014, the court adopts the attached revised Equal Employment Opportunity and Employment Dispute Resolution Plan with Whistleblower protection language.

DATED this 21st day of January, 2014.

  
MARSHA J. PECHMAN  
Chief United States District Judge



**UNITED STATES DISTRICT COURT**

WESTERN DISTRICT OF WASHINGTON  
CONSOLIDATED ADMINISTRATIVE SERVICES

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**MEMORANDUM**

**DATE:** October 27, 2016

**TO:** The Honorable Ricardo S. Martinez  
Chief U.S. District Judge

**FROM:** Bill McCool   
District Court Executive / Clerk

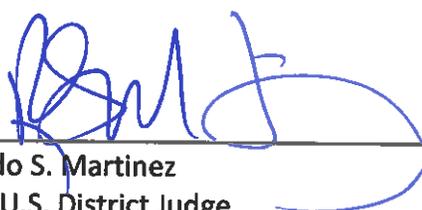
**RE:** Employment Dispute Resolution (EDR) Coordinators for the U.S. District Court

Our court's EDR Coordinators play an important frontline role with employees concerned about potential claims under our EEO and EDR Plans. I would like your approval to update our court's designated EDR Coordinators to the following:

**EDR Coordinator:** Lara Gerheim  
Jamie Halterman

**Alternate:** Jim Fenner, U.S. Bankruptcy Court HR Manager

**Approved:**

  
\_\_\_\_\_  
Ricardo S. Martinez  
Chief U.S. District Judge

## **PART A – EQUAL EMPLOYMENT OPPORTUNITY**

### **I. GENERAL PROVISIONS**

#### **§1. Preamble**

The United States District Court for the Western District of Washington (the “court”) provides equal employment opportunity regardless of race, color, religion, sex, national origin, age, disability or sexual orientation. Under Judicial Conference policy, the court adopts this Equal Employment Opportunity (“EEO”) and Employment Dispute Resolution (“EDR”) Plan (“Plan”). This Plan supersedes all previous versions of the court’s EEO and EDR Plan, and all modifications from the judiciary’s Model EDR Plan have been approved by the Ninth Circuit Judicial Council.

Each appointing officer, supervisor and self-managing team will promote equal employment opportunity in all aspects of employment actions and conditions, including recruitment, hiring, training, promotion, advancement and supervision. Each appointing officer, supervisor and self-managing team will also promote a work environment free of discrimination and harassment. Retaliation because of filing or participating in a claim under this Plan is prohibited. All employing offices will promptly address all claims alleging discrimination, harassment or retaliation, and pursue resolution of reports of wrongful conduct or claims under procedures described in Part B, Chapters IX and X.

This Plan is not intended to modify or reduce the qualification standards for employment in the federal courts as such standards have been approved by the Judicial Conference of the United States. Neither this Plan nor the procedures set forth in Part B constitute a contract or create any legally enforceable obligation. No actions taken or documents created or processed under this Plan are discoverable in any court proceeding, except records of final decisions made available to the public under Part B, Chapter X, §13.

The court’s Adverse Action and Open Door policies that do not invoke the rights and protections afforded under this EDR Plan are not affected by the Plan. If an employee or representative files an appeal of an adverse action in addition to a claim under this Plan concerning the same or substantially the same subject matter, the employee must select the appeal procedures under either (a) the EDR Plan or (b) the Adverse Action Plan. An employee may not utilize both (a) and (b). Similarly, if a claim has already been processed under one of these procedures, it may not be the subject of a claim under the other.

This 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. §§ 351-364, and otherwise is intended to be the exclusive remedy of the claimant relating to rights enumerated under the Plan.

## §2. Definitions

- A. **Age** means at least 40 years of age.
1. **Special provision for probation and pretrial services officers.** The age discrimination provision of §1 of this Chapter does not apply to the initial hiring or mandatory separation of probation and pretrial services officers and officer assistants.<sup>1</sup> Additionally, probation and pretrial services officers and officer assistants 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.<sup>2</sup>
- B. **Claim.** The term “claim” means the filing of a request for counseling as set forth in Part B, Chapter X, which may be further pursued by the filing of a request for mediation and a request for hearing.
- C. **Court.** The term “court” refers to the appropriate employing office (appeals, district or bankruptcy) responsible for redressing, correcting or abating the violation alleged in the claim. In cases of disputes involving federal public defenders, the term “court” refers to the appropriate court of appeals.
- D. **Determining time periods.** The word “days” in all filing and other time periods specified in this Plan means calendar days, except that if the deadline date falls on a Saturday, Sunday or holiday, the deadline will be extended to the following Monday or court business day, respectively.
- E. **Disability.** The term “disability” refers to a physical or mental impairment that substantially limits one or more of a person’s major life activities, where there is a record of such impairment, or the person is regarded as having such an impairment.
- F. **Discrimination claim.** A discrimination claim is any allegation that a person has been denied employment, promotion or advancement, or has been affected in any other aspect of employment, because of his or her race, color, religion, sex, national origin, age, disability or sexual orientation. A discrimination claim does not include claims relating to other dissatisfactions with a person’s conditions of employment.
- A discrimination claim may only be filed under the procedures set forth in Part B – Employment Dispute Resolution.
- G. **Discriminatory harassment** means threats, insinuations, innuendo, slurs, or other offensive statements or conduct based on race, color, religion, sex, national origin, age, disability or sexual orientation directed at an individual or a specific class or group.

- H. **Employee.** The term “employee” includes all individuals listed in Part A, Chapter II, as well as applicants for employment and former employees.

The following are **not** employees under this Plan: applicants for magistrate judge positions; private attorneys who apply to represent indigent defendants under the Criminal Justice Act; criminal defense investigators not employed by federal public defenders, volunteer counselors or mediators; or other individuals who are not employees of an “employing office” as the term is defined below.

- I. **Employing office.** The term “employing office” includes all offices and chambers of the United States District Court, Western District of Washington.
- J. **Employment actions and conditions** include all employment and personnel decisions, actions, terms and conditions of a person’s employment.
- K. **Judicial officer** means a judge appointed under Article III of the Constitution or a United States magistrate judge.
- L. **National origin** includes birthplace, ancestry, culture, or the linguistic characteristics of a specific ethnic group. However, employees of the United States courts must be citizens of the United States or a lawful permanent resident seeking U.S. citizenship under 8 U.S.C. § 1324b(a)(3)(B).<sup>3</sup>
- M. **Race/Color** refers to an immutable characteristic associated with race, such as skin color, hair texture, or certain facial features.
- N. **Religion** includes religious beliefs, observations and practice, unless the religious practice would cause an undue hardship.
- O. **Sex** includes gender, pregnancy and sexual harassment.
- P. **Wrongful conduct** includes discrimination or harassment based on race, color, religion, sex, national origin, age, disability or sexual orientation, or retaliation for engaging in any protected activity covered under Part B, Chapters II-VIII.

## II. SCOPE OF COVERAGE

This Plan applies to all court staff, former employees and applicants for positions with the Western District of Washington, defined as follows:

1. All judges and their staffs;
2. District court executive and staff; and
3. Chief probation and pretrial services officer and staff.

For the purposes of this Plan, all chambers and offices will be described as “employing offices.”

### **III. ORGANIZATION**

#### **§1. Implementation**

Each employing office will implement this Plan.

#### **§2. Appointing Officers**

All appointing officers, including individual judges, the district court executive and chief probation and pretrial services officer, must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market. Exceptions to public announcements include chambers law clerk vacancies, newly-appointed judges' judicial assistant vacancies, and openings that will not be backfilled.

Appointing officers should make reasonable efforts to see that the skills, abilities, and potential of employees are identified and developed, and that all employees are given equal opportunities for promotions and other advantageous actions and conditions.

#### **§3. Appointing Officers, Supervisors and Self-Managing Teams**

All appointing officers must apply equal employment opportunity practices and policies in their chambers and court units. This includes giving employees a fair and equal opportunity to demonstrate their skills.

#### **§4. Employment Dispute Resolution Coordinator**

The chief district judge will designate at least one person to be the Employment Dispute Resolution ("EDR") coordinator(s) for the court.

EDR coordinators should be committed to the goals of equal employment opportunity, and have the training and experience necessary to perform the administrative aspects of the position as described in Part B, Chapter X, §6. One EDR coordinator is responsible for collecting data and submitting an annual report as described in Chapter V below. EDR coordinators will also provide EEO/EDR information to the court and the public.

### **IV. HUMAN RESOURCE PRACTICES**

#### **§1. Discrimination-Free Workplace**

All appointing officers will provide a discrimination-free workplace for their employees and applicants. No employing office will tolerate discrimination, harassment, or retaliation in hiring or any employment actions or conditions on the basis of race, color, religion, sex, national origin, age, disability or sexual orientation. Appointing officers will offer training on EEO and harassment prevention to court employees, subject to available funds.

**V. ANNUAL REPORT**

An EDR coordinator will submit an annual report for each court unit to the district chief judge for his or her approval. The report will provide statistical data and describe instances where significant achievements have been made, identify areas for improvement, and explain any identified barriers to achieving equal employment opportunity objectives. This report will also be submitted annually to the Administrative Office of the United States Courts' Fair Employment Practices Office and the Ninth Circuit Office of the Circuit Executive.

**VI. DISTRIBUTION AND PUBLIC NOTICE**

Copies of this Plan will be posted on the court's internal and external websites and made available to all employees and applicants for positions with the court.

## **PART B – EMPLOYMENT DISPUTE RESOLUTION**

### **I. GENERAL PROVISIONS**

#### **§1 Preamble**

This Plan will be known as the Employment Dispute Resolution Plan (“EDR Plan”). Under Judicial Conference policy, this EDR Plan was adopted by the United States Court for the Western District of Washington (the “court”) to provide rights and protections to employees of the court’s chambers, clerk’s office, and probation and pretrial services office that are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

### **II. EQUAL EMPLOYMENT OPPORTUNITY & ANTI-DISCRIMINATION RIGHTS**

#### **§1 General**

Title VII of the Civil Rights Act of 1964 as amended does not apply to Judiciary employees, but the forms of employment discrimination prohibited by this Plan parallel the substantive forms of discrimination covered by the statute. Discrimination is prohibited against employees based on race, color, religion, sex, national origin, age, disability or sexual orientation. Harassment is also prohibited against employees based on any of these protected categories. Finally, retaliation for engaging in any protected activity is also prohibited. All of the above constitute “wrongful conduct.”

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

#### **§1 General**

Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. Chapter 63, Subchapter 1, applies to court employees in the manner prescribed in the Guide to Judiciary Policy.<sup>4</sup>

### **IV. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS**

#### **§1 General**

The Worker Adjustment and Retraining Notification Act does not apply to Judiciary employees, but the forms of employment discrimination prohibited by this Plan parallel the substantive forms of discrimination covered by the statute. No “employing office closing” or “mass layoff” (as defined in §2 of this Chapter) may occur until the end of a 60-day period after the employing office serves written notice to affected employees of such prospective closing or layoff. This provision does not apply to an employing office closing or mass layoff resulting from the absence of appropriated funds.

## **§2 Definitions**

### **A. Employing Office Closing.**

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. Mass layoff.**

The term “mass layoff” means a reduction in force which:

1. is not the result of an employing office closing; and
2. excluding any part-time employees, results in an employment loss at the single site of employment during any 30-day period for
  - a. at least 33 percent of the employees; and  
at least 50 employees; or
  - b. at least 500 employees.

## **V. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

### **§1 General**

The Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Chapter 43, applies to Judiciary employees by statute. An employing office may not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits.

## **VI. OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS**

### **§1 General**

The Occupational Safety and Health Act does not apply to Judiciary employees, but the forms of employment discrimination prohibited by this Plan parallel the substantive forms of discrimination covered by the statute. Each employing office will provide to its employees a place of employment that is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration (“GSA”) should be filed directly with GSA; such claims may not be filed under this Plan.

## §2 Court program requirements

The court will implement a program to achieve the protections set forth in §1 of this Chapter.

## VII. POLYGRAPH TESTS

### §1 General

The Employee Polygraph Protection Act does not apply to Judiciary employees, but the forms of employment discrimination prohibited by this Plan parallel the substantive forms of discrimination covered by the statute. Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

## VIII. WHISTLEBLOWER PROTECTION

### §1 General

The Whistleblower Protection Enhancement Act, 5 U.S.C. Chapter 23, does not apply to Judiciary employees, but the protections offered by this Plan parallel the substantive whistleblower protections covered by the statute. This chapter does not cover applicants for employment.

As described below, an employee with authority may not, with respect to that authority, take an adverse employment action against an employee because of any disclosure of information by the employee which the employee reasonably and in good faith believes evidences a violation.

For purposes of this chapter:

- A. **Employee with authority** means any employee who has authority to take, direct others to take, recommend, or approve any personnel action.
- B. **Adverse employment action** means 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, responsibilities, or working conditions.
- C. **Disclosure of information** means disclosure to the appropriate law enforcement authority, or a judicial officer of the court, a supervisor or managerial official of the employing office, or the Administrative Office of the United States Courts, 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.

D. A **violation** means 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.

## **IX. REPORTS OF WRONGFUL CONDUCT**

### **§1. General**

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 before it becomes severe or pervasive to one of the court's EDR coordinators, the chief judge, court unit executives, human resources representative, supervisor or team member. Retaliation is prohibited against any employee making a report of wrongful conduct. The person receiving such a report has the responsibility to notify an EDR coordinator as soon as possible.

### **§2. Procedures**

An EDR coordinator will promptly inform the chief judge and court unit executive of any report of wrongful conduct. The chief judge and/or court unit executive will ensure that the allegations in the report are appropriately investigated.

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

### **§3. Confidentiality**

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

## **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 process consists of:

- A.** counseling and mediation;
- B.** hearing before the chief judge or a designated judicial officer of the court in which the alleged violation arises; and
- C.** review of the hearing decision under the procedures established by the Ninth Circuit Judicial Council.

### **§2 Alleged Violation by Employee**

Before invoking a request for counseling, employees are encouraged, to the extent practical, to bring their concerns to their supervisor, team or court unit executive, unless he or she is the alleged violator. In such a situation, the employing office should specify alternative neutral points of contact for the initial inquiry. Employees alleging that any of the rights granted under this EEO/EDR Plan have been violated, and seeking relief under this Plan, must file a request for counseling with their court's EDR Coordinator under §8 of this Chapter.

### **§3 Alleged Violation by Judge**

Any employee alleging that a judge violated any rights granted under this Plan may file an EDR claim. In such an instance, however, all the claims procedures of this Chapter will be performed by the Ninth Circuit Judicial Council, either by members of the Council directly or by those designated to act on its behalf.

If a judge becomes the subject of both an EDR claim and judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the Ninth Circuit Judicial Council or its designee will craft a procedure for determining any common issues of fact. It will process both the claim and complaint subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practical, this Plan. In so doing, the Council or its designee may determine that all or part of the EDR claim will be abated until action is taken on the judicial misconduct complaint.

### **§4 Confidentiality**

To the extent possible, the employing office will protect the confidentiality of allegations filed under this Plan. However, information about allegations filed under this Plan will be shared on a need-to-know basis. Records relating to violations under this Plan will be kept confidential on the same basis.

## §5 General Provisions and Protections

### A. Prohibition against retaliation

Claimants under this Plan have the right to be free from retaliation because of filing a claim under this Plan. Likewise, any person who participates in the filing or processing of a report of wrongful conduct or claim is also entitled to freedom from retaliation.

### B. Right to representation

All individuals invoking the dispute resolution procedures of this Plan have the right to be represented by a person of their choice if the person is available and consents to be a representative. Court employees may accept the responsibilities of representation if it will not interfere with their court duties or constitute a conflict of interest, as determined by the representative's appointing officer. The employee office also has the right to representation.

### C. Case preparation

To the extent feasible, individuals invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare their case, so long as it does not interfere with their performance of court duties.

### D. Extensions of time

The chief judge of the court or designated judicial officer may for good cause extend any of this Chapter's deadlines.

### 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 EEO/EDR Plan;
- is untimely;
- is unduly repetitive of a previous claim;
- is the same or substantially the same subject matter as an appeal of an administrative or adverse action;
- is frivolous; or
- fails to state a claim upon which relief may be granted.

The chief judge or designated judicial officer will, after providing notice to the claimant and an opportunity to respond, grant or deny a request for dismissal.

This may include, in the judge’s discretion, holding a hearing. The claims process will be stayed until the request is decided.

**F. Records**

At the conclusion of formal and informal proceedings under this Plan, all papers, file, and reports will be filed with the designated EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee’s personnel folder or electronic Official Personnel File (“e-OPF”), except as necessary to implement an official personnel action.

**§6 Designation and Duties of EDR Coordinators**

This court will designate at least one person to serve as EDR coordinator, see Part A, Chapter III, §4. The duties of EDR Coordinators include:

- 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 court files pertaining to reports of wrongful conduct, claims, and other matters initiated and processed under this Plan;
- C. Coordinating the counseling of individuals in the initial stages of the claims process, under §8 of this Chapter;
- D. Coordinating the investigation of reports of wrongful conduct, under Part B, Chapter IX; and
- E. Gathering data and preparing the annual report, see Part A, Chapter V.

**§7 General Disqualification Provision**

Any party seeking disqualification or recusal of an EDR Coordinator, mediator, or reviewing official will promptly submit a written statement to the chief judge explaining the reasons for the request. If the chief judge or designated judicial officer determines that disqualification or recusal is warranted, he or she will designate another individual to act as the EDR Coordinator, mediator, or reviewing official.

**§8 Counseling**

**A. Purposes of counseling**

The purposes of counseling are to:

- advise employees of their rights and responsibilities and the procedure of the court applicable to the EDR process;

- advise the employing office of employees' concerns; and
- discuss employees' concerns and elicit information regarding the matter that they believe constitutes a violation.

**B. Initiating a proceeding; formal request for counseling.**

Employees who believe that their rights under Chapters II through VIII of this Plan have been violated must first request counseling.

1. Form and manner of requests

Requests for counseling must be:

- a. Submitted to a court EDR coordinator (copies will be given to the chief judge and employing office);
- b. Made in writing on the Request for Counseling form in Appendix 1;
- c. Contain all the violations asserted by the claimant; and
- d. Made within 30 days of the alleged violation or within 30 days of the time the employee knew or should have known of the alleged violation.

2. Who may serve as counselor

The counseling will be conducted by a court EDR coordinator, unless disqualified from serving under §7 of this Chapter, or otherwise unavailable. In such instances, another person will be designated to conduct the counseling.

3. Confidentiality

To the extent possible, the employing office will protect the confidentiality of requests for counseling filed under this Plan. Disclosure of information relating to counseling will be limited to that information needed to facilitate the counseling process, and then on a need-to-know basis. Records relating to violations under this Plan will be kept confidential on the same basis.

**C. Duration of counseling period**

The period for counseling will be 30 days (or a shorter period if counseling is concluded earlier), beginning on the date that the request for counseling is received by an EDR Coordinator.

**D. Conclusion of the counseling period and notice**

The designated EDR coordinator will notify the employee in writing at the end of the counseling period. As part of the notice, the EDR coordinator will inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file a request for mediation under §9 of this Chapter.

**§9 Mediation**

**B. Purpose of mediation**

The mediator will meet separately and/or jointly with the employee and the employing office and their representatives, if any. The purpose is to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution, keeping in mind that the objectives of this Plan are to resolve disputes quickly, informally, and without imposing substantial costs on participants.

**C. Initiating a proceeding; form and manner of requests for mediation**

Requests for mediation must be:

1. submitted to a court EDR coordinator (copies will be given to the chief judge and employing office);
2. made in writing on the Request for Mediation form contained in Appendix 2;
3. contain the claim(s) presented; and
4. made within 15 days after receiving notice of the conclusion of the counseling period.

Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.

**D. Procedures**

1. Designation of mediator

As soon as possible after receiving the request for mediation, the chief judge or designated judicial officer will designate a mediator and provide written notice of the designation.

2. Who may serve as mediator

Any person with the skills to assist in resolving disputes, except the EDR coordinator designated in the counseling phase, may serve as a mediator under this Plan.

**E. Confidentiality**

No person or party involved in the mediation process will disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process. An exception to this requirement is when it is necessary to consult with the parties or their representatives, and then only with notice to all parties.

**F. Form of settlement**

The mediator will reduce to writing any settlement achieved during the mediation 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.

**G. Duration of mediation period**

The mediation period will 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.

**H. 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 for the request for mediation, the EDR coordinator will provide the employee, the employing office and their representatives, if any, with written notice that the mediation period has concluded. The notice will also inform the employee of his or her right to file a complaint under §10 of this Chapter.

**§10 Complaint, Review and Hearing**

**A. Form and manner for initiating a complaint**

Complaints must be:

1. submitted to a court EDR coordinator (copies will be given to the chief judge and employing office);
2. made in writing on the Complaint form contained in Appendix 3;
3. identify the complainant and all involved parties and individuals;

4. set forth a short and plain statement of the complainant's claim and the relief or remedy sought; and
5. made within 15 days after receiving notice of the conclusion of the mediation period.

Claims that were not presented in under the procedures in §9(A) of this Chapter may not be pursued. The respondent will be the employing office that would be responsible for redressing, correcting, or abating the violation(s) alleged in the complaint. No individual will be named as a respondent in the complaint.

## **B. Review of Pleadings**

The complaint and any other documents will be reviewed by the chief judge or designated judicial officer. After notice to the claimant and an opportunity to respond, the chief judge or designated judicial officer may dismiss a claim in writing, on his or her own initiative or for any of the reasons listed in §5 of this Chapter.

## **C. Hearing Procedures**

### **1. Hearing**

If the chief judge or designated judicial officer does not dismiss the claim or determine that no material factual dispute exists, he or she will hold a hearing on the merits of the complaint.

### **2. Specific provisions**

The presiding judicial officer may provide for discovery and investigation as necessary. There is no right to formal discovery in advance of the hearing unless permitted by the presiding judicial officer, although documents in the employee's personnel file or e-OPF will be made available to the employee. In general, the presiding judicial officer will determine the time, place, and manner of conducting the hearing, keeping in mind that the objectives of the Plan are to resolve disputes quickly, informally, and without imposing substantial costs on participants. Extensive discovery and investigation are not required or expected. However, the following specific provisions apply to hearings conducted under this section:

- a. the hearing will commence no later than 60 days after the filing of the complaint;
- b. the complainant and the employing office must receive written notice of the hearing: such notice will also be provided to the individual(s) alleged to have violated rights protected by this Plan;

- c. at the hearing, the complainant and the employing office will have the right to representation, to present evidence on his or her/its behalf, and to cross-examine adverse witnesses;
- d. the Federal Rules of Evidence may be used as a guide, but are not required to be followed by the presiding judicial official;
- e. a verbatim record of the hearing (the presiding judicial officer will determine the manner in which the proceeding will be recorded) must be kept and will be the sole official record of the proceeding;
- f. in reaching his or her decision, the presiding judicial officer will be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this Plan and by decisions of the Ninth Circuit Judicial Council under §11 of this Chapter.
- g. remedies may be provided under §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;
- h. the final decision of the presiding judicial officer will be issued in writing within 30 days of the conclusion of the hearing; and
- i. all parties, or any aggrieved individual, have the right to written notice of any action taken as a result of the hearing.

## **§11 Review of Decision**

- A. A party or individual aggrieved by a final decision of the presiding judicial officer, or by a summary dismissal of the claim or complaint, may petition for review of that decision.

### **B. Initiating a petition for review; manner and form of petition**

A petition for review must be:

- 1. submitted to the Ninth Circuit Executive Committee, with copies to the opposing party with proof of service;
- 2. made in writing using the Petition for Review form and procedures contained in Appendix 4; and

3. submitted within 30 days following the date of the final decision of the presiding judicial officer or following the date of the summary dismissal.

## **§12 Remedies**

### **A. Remedies**

Where judicial officers, acting under §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, subject to the limitations set forth in Section C below. A remedy may be directed at correcting a past violation, prospectively ensuring compliance with the rights protected by this Plan, or both. A remedy will be tailored as closely as possible to the specific violation involved.

### **B. Remedies Available**

Remedies that may be provided to successful complainants under this Plan include:

1. placement in a position previously denied;
2. placement in a comparable alternative position
3. reinstatement to a position from which previously removed;
4. prospective promotion to a position;
5. priority consideration for a future promotion or position;
6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
7. records modification and/or expungement;
8. "equitable" relief, such as temporary stays of adverse actions;
9. granting of family and medical leave; and
10. accommodation of disabilities through the purchase of specialized equipment, the restructuring of duties and work hours, or other appropriate means.

### **C. Remedies *Not* Available**

Remedies *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 Decision**

Upon written request, the conclusion of the reviewing panel in any final decisions reached under §11 of this Chapter will be made available to the public from the Ninth Circuit Office of the Circuit Executive. Only in the event the reviewing panel determines that all or portions of the entire decision should be made public will additional portions of the decision be made available to the public.

The reviewing panel, in the interests of justice and fairness to the parties, may determine not to make available to the public the conclusion of any final decision if public disclosure would compromise the integrity or legitimate confidentiality of the parties or the court, or to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, or for any reason that the administration of justice may require.

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<sup>1</sup> See Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17; see also 5 U.S.C. §§ 8335(b) and 8425(b).

<sup>2</sup> Officer and Officer Assistant Medical Standards, <http://www.uscourts.gov/FederalCourts/ProbationPretrialServices/Officers/OfficerMedicalRequirements.aspx>

<sup>3</sup> AO Director's Memo, [Employment of Noncitizens Update](#), dated September 20, 2010.

<sup>4</sup> *Guide to Judiciary Policies and Procedures*, [Volume 12, Chapter 9, Section 920.20.35](#).

# Appendix 1

## REQUEST FOR COUNSELING UNDER EDR PLAN

Filed Under the Procedures of the Employment Dispute Resolution Plan for the  
United States District Court for the Western District of Washington

\*\*\*\*\*

Prior to completing this form, please refer to the Employment Dispute Resolution Plan for your court unit. Please complete this form legibly. Copies will be given to you, the chief judge and the employing office.

1. Full Name of Person Requesting Counseling \_\_\_\_\_
2. Mailing Address \_\_\_\_\_  
\_\_\_\_\_
3. E-mail Address \_\_\_\_\_
4. Work Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_
5. If you are a court employee, state the following:  
Court Unit in which employed \_\_\_\_\_  
Job Title \_\_\_\_\_
6. Name and address of the office from which you seek resolution of your dispute  
\_\_\_\_\_  
\_\_\_\_\_
7. Date(s) of alleged incident or decision from which you seek resolution of your dispute  
\_\_\_\_\_  
\_\_\_\_\_
8. Please summarize the actions or occurrences giving rise to this dispute.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. The EDR Coordinator will advise the employing office of your concerns regarding the matter which you believe constitutes a violation. Disclosure of information relating to counseling will be limited to that information needed to facilitate the counseling process and then on a need-to-know basis only.
10. What corrective action do you seek in this matter?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This request for counseling is submitted by:

Signature \_\_\_\_\_ Date \_\_\_\_\_

Name of Coordinator to whom submitted: \_\_\_\_\_

Coordinator's Signature \_\_\_\_\_ Date of Receipt \_\_\_\_\_



## Appendix 3

### COMPLAINT UNDER EDR PLAN

Filed Under the Procedures of the Employment Dispute Resolution Plan for the  
United States District Court for the Western District of Washington

\*\*\*\*\*

Prior to completing this form, please refer to the Employment Dispute Resolution Plan for your court unit. Please complete this form legibly. Copies will be given to you, the chief judge and the employing office.

1. Full Name of Person Filing Complaint \_\_\_\_\_
2. Mailing Address \_\_\_\_\_  
\_\_\_\_\_
3. E-mail Address \_\_\_\_\_
4. Work Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_
5. If you are a court employee, state the following:  
Court Unit in which employed \_\_\_\_\_  
Job Title \_\_\_\_\_
6. Name and address of the Employing Office against whom this complaint is filed (under the terms of the EDR Plan, all complaints must be filed against an "Employing Office," not an individual):  
\_\_\_\_\_  
\_\_\_\_\_
7. Identify the Chapter(s) of the EDR Plan under which your complaint is being filed:
  - Chapter II – Equal Employment Opportunity & Anti-Discrimination Rights
  - Race
  - Color
  - Religion
  - Sex (includes gender, pregnancy and sexual harassment)
  - National Origin
  - Age
  - Disability
  - Sexual Orientation
  - Chapter III – Family and Medical Leave Rights
  - Chapter IV – Worker Adjustment and Retraining Notification Rights
  - Chapter V – Employment and Re-employment Rights of Members of the Uniformed Services
  - Chapter VI – Occupations Safety and Health Protections
  - Chapter VII – Polygraph Tests
8. Date(s) of alleged violation \_\_\_\_\_
9. Date on which counseling was requested \_\_\_\_\_  
Date on which counseling was completed \_\_\_\_\_  
Date on which mediation was requested \_\_\_\_\_  
Date on which mediation was request \_\_\_\_\_

Date on which mediation was concluded \_\_\_\_\_

10. Name of person who served as Counselor on this matter \_\_\_\_\_

11. Name of person who served as Mediator on this matter \_\_\_\_\_

12. Please summarize the actions or occurrences giving rise to your complaint. Explain in what way you believe your rights under the EDR Plan were violated. Identify all persons who participated in this matter or who can provide relevant information concerning your complaint. (If there is insufficient space below, you may attach additional pages.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

13. What corrective action do you seek from your complaint? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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

- Yes
- No

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

Name \_\_\_\_\_

Address \_\_\_\_\_

Email address \_\_\_\_\_

Work Phone \_\_\_\_\_ Cell Phone \_\_\_\_\_

I affirm that the information in this complain is true and correct to the best of my knowledge.

Signature \_\_\_\_\_ Date \_\_\_\_\_

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

## Appendix 4

### Procedures for Review of EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit

#### I. Scope of the Rules

These rules govern procedures for petitioning for review of a decision, or summary dismissal, of an Employment Dispute Resolution (“EDR”) Plan complaint rendered by the chief judge or designated judicial officer of the court involved (“Hearing Officer”). Such review is conducted by the Executive Committee of the Judicial Council of the Ninth Circuit (“Executive Committee”).

#### II. Filing of Petition for Review

- A. *Filing the Petition for Review* - A party aggrieved by a final decision of the Hearing Officer or by summary dismissal of a complaint, may petition for review of that decision or summary dismissal by filing a petition for review to which is attached a copy of the decision of the Hearing Officer (or a copy of the summary dismissal).
- B. *Form of Petition and Supporting Arguments* - The petition shall be in accordance with Form 1 shown in Appendix A. Included in the petition or as an attachment to the petition shall be a statement, not to exceed 10 pages in length (8.5 x 11 white paper, double-spaced, single-sided) setting forth the basis for the petition and all arguments and information supporting the petition. The petition must be filed with the Executive Committee in a timely manner as set forth in Section III below.
- C. *Serving the Petition for Review* - The petitioning party must serve the petition on the Executive Committee by having it delivered to the Circuit Executive at the following address:

Office of the Circuit Executive  
Assistant Circuit Executive - EDR Plan  
P.O. Box 193939  
San Francisco, CA 94119  
Fax (415) 355-8901

Parcel Delivery:  
95 Seventh Street  
San Francisco, CA 94103

Simultaneously, a copy of the petition (and all attachments thereto) must be served on the opposing party, and proof of such service shall be included with the petition filed with the Executive Committee.

#### III. Filing Deadlines

- A. *Time for Filing a Petition for Review* - A petition for review must be submitted to the Executive Committee no later than 30 days following the date of the final decision of the Hearing Officer or following the date of a summary dismissal of

- the complaint.
- B. *Requests for Extension of Time* - The Executive Committee may extend the time to file a petition for review and for any other filing specified in these procedures, provided the request is received no later than the required filing date, and provided the petitioner shows good cause or excusable neglect.
  - C. *Determining Time Periods*- The word “days” in all filing deadlines in these procedures shall mean calendar days, except that if the deadline date occurs on a Saturday, Sunday or holiday, the deadline shall be extended to the next following Monday or court business day respectively.

#### IV. **Consideration by the Executive Committee**

- A. *General*- All reviews will be conducted by the members of the Executive Committee, and shall be based on the decision of the Hearing Officer or the summary dismissal of a complaint and any documents submitted by the parties in response to the directive of the Executive Committee as outlined below.
- B. *Scope of Record and Documents to be Considered* - Within 20 days following receipt of the petition for review, the Executive Committee shall notify the parties concerning what, if any, additional information, i.e., record (e.g. hearing transcript), documents and/or briefs, may be submitted for its consideration. Unless notified by the Executive Committee of its request for additional information, neither party is to submit further information.
- C. *Oral Argument* - Oral argument will normally not be permitted, and only if specifically ordered but may be ordered by the Executive Committee. Either party may request such argument in writing filed within 7 days following filing of the petition as part of the petition (in the case of the party filing the petition) or (in the case of the Respondent) in a letter submitted no later than 7 days from receipt of the petition, setting forth the specific reasons why such argument is necessary, and why adequate argument cannot be made in written form. If granted, oral argument, may, at the sole discretion of the Executive Committee, be conducted via teleconference using video and/or audio technology.
- D. *Standard of Review* -The decision or summary dismissal of the Hearing Officer shall be affirmed if supported by substantial evidence.
- E. *Summary Disposition* - If at any time prior to the final submission of the case for review, the Executive Committee determines that the basis(es) of the request for review are so insubstantial as not to justify further proceedings, the court may issue an appropriate dispositive order.
- F. *Form of Final Review* - The Executive Committee shall issue its decision in writing.

**APPENDIX OF FORMS**

Name of Petitioning Party or Counsel  
Address  
Telephone #  
Fax #

Name of Court in Which Hearing Officer's Decision Was Issued

A.B., Petitioner	)	Petition for Review of Decision in
	)	(or Summary Dismissal of) Employment Dispute
	)	Resolution Plan Complaint
	)	
v.	)	
	)	
C.D., Respondent	)	

Notice is hereby given that (name the party petitioning for review), (petitioners) in the above named case, hereby petition for review to the Executive Committee of the Judicial Council for the Ninth Circuit from the decision (or summary dismissal of the complaint) by Judge (name of Hearing Officer) entered in this matter action on the \_\_\_\_\_ day of \_\_\_\_\_, (20\_\_).

Attached to this petition is a copy of the Hearing Officer's Decision (or summary dismissal of the complaint).

The basis(es) of this petition for review is (reason why review is requested -- this basis(es) may be included as an attachment).

Submitted this \_\_\_ day of \_\_\_\_\_, 20\_\_

(s) \_\_\_\_\_  
(Representing name of party)