UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Equal Employment Opportunity Plan
(EEO Plan)
Part A

&

Employment Dispute Resolution Plan
(EDR Plan)
Part B

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Part A

Equal Employment Opportunity Plan

United States District Court for the Eastern District of Washington

I. Preamble

A. Statement of Policy

The Judicial Conference of the United States in 1987 directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age, or handicap.

The Judicial Council of the Ninth Circuit directed each court to adopt the Ninth Circuit model plan and complaint procedures or to submit an alternative plan for the review and approval of the Judicial Council of the Ninth Circuit.

The United States District Court for the Eastern District of Washington adopts this Plan providing equal employment opportunity to all persons regardless of their race, color, national origin, gender, religion, age, disability and/or sexual orientation[i].

Each appointing officer and supervisor will promote equal employment opportunity through a plan encompassing all facets of employment actions and conditions including recruitment, hiring, training, promotion, advancement, and supervision.

Each appointing officer and supervisor will promote a court or office environment free of discrimination and discriminatory harassment. Any instances of discriminatory harassment for which a person seeks relief or assistance should be immediately reported. All court units shall address promptly all complaints alleging discrimination or discriminatory harassment and shall pursue resolution of each complaint in accordance with

the procedures described in Chapter IX of the Employment Dispute Resolution Plan.

Retaliation by an appointing officer or supervisor, or by any other employee against an employee for having filed a discrimination or discriminatory harassment complaint, or against any persons involved in the processing of a complaint such as employee representatives or witnesses, is prohibited and constitutes grounds for disciplinary action. The filing of frivolous or harassing complaints, however, may also be grounds for disciplinary action.

This Plan, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the federal courts as such standards have been approved by the Judicial Conference of the United States.

Neither this Plan, nor the complaint procedures set forth in Appendix A, shall constitute a contract or create any legally enforceable obligation. No actions taken or documents created or processed pursuant to this Plan or the complaint procedures related thereto are discoverable in any court proceeding.

B. Definitions.

1. **Age.** At least 40 years of age at the time of the alleged discrimination except for the age restrictions prescribed by 5 U.S.C. § 8335(b) and 8425(b) and described in the Judiciary Salary Plan and the Court Personnel System, applying to the appointment and retirement of federal probation and pretrial services officers.

2. **Disability.** Formerly referred to as "handicap." Any physical or mental impairment which substantially limits one or more of a person's major life activities where there is a record of such impairment and the person is regarded as having such impairment. A qualified disabled person is one who, with or without reasonable accommodation, can perform the essential

functions of the position in question without endangering the health and safety of the individual or others and who meets the criteria for appointment[ii].

Certain other conditions that are temporarily disabling such as pregnancy and childbirth are treated as disabilities for purposes of protections afforded under this Plan[iii].

3. **National origin.** National origin includes ethnicity. Employees of the United States Courts must be citizens of the United States or citizens of countries with treaty relations with the United States, as defined by the United States Department of State, or persons subject to the Chinese Student Protection Act, 8 U.S.C. § 1255.

4. **Gender.** Discrimination on the basis of marital status or parenthood is also categorized as gender discrimination.

5. A **discrimination complaint** 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, national origin, gender, religion, age, disability and/or sexual orientation.

   A discrimination complaint also includes allegations of restraint, interference, coercion, discrimination, or reprisal because a person has raised an allegation of discrimination or has served as a representative, a witness, or an EEO Coordinator in connection with a complaint. It does not include complaints relating to other dissatisfactions with a person's conditions of employment which are commonly known as grievances.

6. **Sexual harassment** is a form of gender discrimination. Sexual harassment is defined as unwelcome sexual advances, such as

an overture, an offer, or requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment;[iv] and

d. Such conduct is engaged in either the workplace or outside the workplace, during working hours or after working hours, where there is a direct connection with workplace matters.

7. **Discriminatory Harassment.** Conduct, threats, insinuations, innuendo, or slurs, or other offensive statements or conduct based on race, color, national origin, gender, religion, age, disability and/or sexual orientation directed at an individual or a specific class or group is considered discrimination.

8. **Employment Actions and Conditions.** Includes all employment and personnel decisions, actions, impacts, terms and conditions of a person's employment. Included are the following: recruitment, hiring, promotions, advancement, work assignments, compensation and benefits, training, education, disciplinary actions, terminations, and other such categories.

II. Scope of Coverage

This Equal Employment Opportunity Plan applies to all court personnel, and applicants for positions, defined as follows:

1. All judges and their staffs;

2. District Court Executive/Clerk of Court and Clerk's Office staff;

3. Chief Probation/Pretrial Services Officer and Probation/Pretrial Services staff.

Article I and Article III judges and applicants for Article II judgeships may not file a complaint pursuant to this Plan. Complaints against judges are filed pursuant to judicial misconduct procedures, 28 U.S.C. § 351(a). Complaints about the conduct of the bankruptcy judge merit selection process should be submitted to the chief judge of the Court of Appeals. Complaints about the conduct of the magistrate judge merit screening process should be submitted to the chief judge of the district.

For the purposes of this Plan, all chambers and offices will be described as "court units."

III. Organization

A. Implementation

Each appointing officer (judges for judge's staff, District Court Executive/Clerk of Court for Clerk's Office staff, and Chief Probation/Pretrial Services Officer for Probation/Pretrial Services staff) shall implement this Plan or such equal employment opportunity plan as has been approved by the Judicial Council of the Ninth Circuit. On behalf of the United States District Court for the Eastern District of Washington, the Chief Judge, upon approval of a majority of the active and senior judges thereof, will submit modifications to the Plan for Circuit Council approval.

B. Appointing Officers

All appointing officers, including the individual judges, and court unit heads must ensure that all vacancies, [with the exception of chambers law clerk vacancies and secretaries to judges], are publicly announced[v] to attract candidates who represent the make-up of persons available in the qualified labor market and that all hiring decisions are based solely on job-related factors. They should make reasonable efforts to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions and for other advantageous employment actions and conditions.

The District Court Executive/Clerk of Court is the head/appointing officer of the Clerk's Office unit; the Chief Probation/Pretrial Services Officer is the head/appointing officer of the Probation/Pretrial Services Office unit; each Judge and Magistrate Judge is regarded as the head/appointing officer of his or her own separate unit.

C. Equal Employment Opportunity Coordinator

The Chief Judge will designate one person to be the Equal Employment Opportunity (EEO) Coordinator for the District Court and an EEO Coordinator for the Probation/Pretrial Services Office of the Eastern District of Washington.

The EEO Coordinator should be a person committed to the goals of equal employment opportunity with the experience and training necessary to perform the investigative and record-keeping aspects of the position. An appointing officer should not be designated as the EEO Coordinator, except in very small courts where there is no one employed in the court unit except the appointing officer who is qualified to carry out the responsibilities of the EEO Coordinator[vi].

The EEO Coordinator will be responsible for preparing statements, collecting, analyzing, and consolidating statistical data, and submitting an annual EEO report as described in Sections VI and VII of this Plan. The EEO Coordinator will also seek to resolve discrimination complaints informally[vii] and will provide EEO information to the public.

The EEO Coordinator for the United States District Court will be Grace Capri Miller, the Human Resources Specialist for the District Court, and the EEO Coordinator for the Probation/Pretrial Services Office will be Nancy Wideman, the Human Resources Specialist for the Probation/Pretrial Services Office.

IV. Objectives

The District Court Executive/Clerk of Court and the Chief Probation/Pretrial Services Officer will develop annual objectives, when the appointing officer deems it necessary, which reflect those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EEO Coordinator explaining how those objectives will be achieved.

V. Personnel Practices

A. Discrimination-Free Workplace

All appointing officers will provide a discrimination-free workplace for their employees and applicants. No court unit will tolerate discrimination or discriminatory harassment in hiring or in any employment actions or conditions, on the basis of race, color, national origin, gender, religion, age, disability and/or sexual orientation. Appointing officers should make available to court employees training and education with respect to equal employment opportunity, including, but not limited to, sexual harassment, subject to available funds for such training.

B. Recruitment

All appointing officers will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. All vacancies, except those for judicial clerkships, externs and secretaries to judges, will be publicly announced[viii].

C. Hiring

All appointing officers will make their hiring decisions based upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

D. Promotion

All appointing officers will promote employees, if promotions are available, according to their experience, training, and demonstrated ability to perform duties of a higher level.

E. Advancement

All appointing officers and supervisors will seek, insofar as appropriate and reasonably practical, to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

F. Employee Discrimination Complaints

All appointing officers will adopt the procedures for resolving complaints of discrimination and discriminatory harassment set forth in Appendix A, or such procedures as have been approved by the Judicial Council of the Ninth Circuit.

VI. Evaluations

The EEO Coordinator will prepare a compiled annual report for each court unit, summarizing the appointing officers' efforts to provide equal employment opportunities in recruitment, hiring, promotions and advancement. The EEO Coordinator will collect this information through evaluations prepared by all appointing officers, addressing these areas of concern:

A. Recruitment

The report will briefly describe efforts made to bring a fair cross-section of the pool available for the position into its applicant pool, including listing all employment sources used (state employment offices, schools, organizations, etc.). Each appointing officer will also explain the methods used to publicize vacancies.

B. Hiring

The report will identify where recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment with the office when it was offered.

C. Promotions

The report will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.

D. Advancement

The report will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

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

VII. Annual Report

The EEO Coordinator in each court will submit to the chief judge of the court for his or her approval the annual report for the year ending September 30. The EEO Coordinator for the circuit executive will prepare for the judicial council's approval an annual report for the year ending September 30. The report for the court of appeals or the district will consist of the consolidated reports and data received from each reporting court unit.

The report will describe instances where significant achievements were made in providing equal employment opportunities, identify areas where improvements are needed, and explain factors inhibiting achievement of equal employment opportunity objectives. The report will be the same report as that submitted annually to the Administrative Office of the United States Courts. This report will detail:

a. The number of discrimination and discriminatory harassment complaints initiated;

b. The types of discrimination and discriminatory harassment complaints initiated according to race, color, national origin, gender, religion, age, disability and sexual orientation;

c. The number of discrimination and discriminatory harassment complaints resolved informally;

d. The number of discrimination and discriminatory harassment complaints resolved formally without a hearing; and

e. The number of discrimination and discriminatory harassment complaints resolved formally with a hearing.

The foregoing information will not identify the names of the parties involved.

The individual court unit reports will be submitted to the Judicial Council of the Ninth Circuit. The reports for the bankruptcy court and the probation and pretrial services offices of a district will be consolidated with the report for the district court and submitted to the Administrative Office of the United States Courts.

These consolidated reports will be submitted by the chief judge to the Administrative Office of the United States Courts by the required deadline each year. A copy of the consolidated reports will be submitted to the Judicial Council of the Ninth Circuit.

Copies of the annual EEO reports will be made available to the public upon request.

VIII. Distribution and Public Notice

Copies of these procedures shall be available to all employees and, upon request, to applicants for positions of employment with the United States Courts.

Notes— EEO Plan

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[i] The federal government, including the federal courts, is bound by 38 U.S.C. § 4301 pertaining to the employment of individuals with military reserve status. While the federal courts are not required to honor veterans' preference in employment decisions, the federal courts are prohibited from denying hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces. 38 U.S.C. § 4311(a). Federal court employees are also guaranteed re-employment rights if their employment is interrupted by active military duty in any branch of the armed forces, by reserve training activities, or by reporting for examinations to determine their fitness for military service.

[ii] Further clarification of this definition can be found in 29 CFR § 1615.103. That section provides that "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, breathing, learning and working. Under the standard of "Reasonable Accommodation" the court unit shall reasonably accommodate to the known physical or mental limitations of a qualified disabled applicant or employee unless the court unit can demonstrate that the accommodation would impose an undue hardship on the court unit's operations. 29 CFR § 1614.102(a)(8). Such accommodations may include, but shall not be limited to: (1) making facilities readily accessible to and usable by disabled persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers and interpreters and other similar actions.

[iii] HIV infection is considered to be a non-interfering disability absent medical and workplace documentation regarding the extent to which the infection may affect job performance, leave, or conduct.

[iv] Prohibited unwelcome conduct includes offensive sexual flirtations, suggestive comments, sexual innuendo, unwanted physical contact, impeding or blocking movement, repeated requests or pressure for dates, advances, propositions, insults or verbal abuses of a sexual nature, graphic verbal comments about an individual's body, sexually degrading words describing an individual, humor and jokes about sex or gender-specific traits, or the display of sexually suggestive objects or pictures. Prohibited discriminatory conduct also includes non-verbal, suggestive, or sexually insulting actions such as leering, whistling, suggestive sounds, and obscene gestures. Prohibited touching includes any unwelcome touching of a sexual nature, pinching, intentional brushing of the body, sexual assault, and coerced sexual acts.

[v] A "public announcement" is a reasonable attempt to notify applicants and potential applicants about the existence of job vacancies. In some situations this will involve the placement of a job notice in a widely circulated publication, whereas in others it may simply involve the posting of a notice on bulletin boards in appropriate places. The purpose of a public announcement is to afford all possible applicants, including women and minorities, an opportunity to compete for the position(s) in question.

[vi] For purposes of processing and investigating discrimination complaints in small courts, it would usually be necessary to obtain the services of an employee of another court unit to fulfill these functions to ensure objectivity and avoid any appearance of conflict of interests.

[vii] Informal resolutions are solutions to discrimination complaints that are satisfactory to all parties involved that are arrived at through discussion, mediation, and/or other techniques short of a complete processing of a complaint to a written decision. Experience has shown that such resolutions are generally preferable to the parties involved and less disruptive to the work environment than formal decisions rendered in an adversarial context.

[viii] See note 5.

Part B

Employment Dispute Resolution Plan

United States District Court for the Eastern District of Washington

CHAPTER I – GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Employment Dispute Resolution Plan (EDR Plan). It was adopted by the United States District Court for the Eastern District of Washington in accordance with the Federal Judiciary Employment Dispute Resolution Model Plan (Model EDR Plan) adopted by the Judicial Conference of the United States on March 16, 2010 in order to provide rights and protections to employees of the United States District Court, including the Clerk's Office and Probation/Pretrial Services Office, Eastern District of Washington that are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995. The employees of the United States Bankruptcy Court, for the Eastern District of Washington, are not covered by this Plan, but are covered by a separate plan.

This EDR Plan *(Part B)* together with the EEO Plan *(Part A)* supersede the current Equal Employment Opportunity and Employment Dispute Resolution Plan (EEO/EDR Plan) applicable to the United States District Court for the Eastern District of Washington imposing requirements on the Court or court unit. Claims arising under Chapters II through VII of this Plan, or under Chapters I through VI of the EEO Plan, shall be treated in accordance with the procedures set forth in Chapter IX of this Plan. The duties of the Court's EEO Coordinator will be assumed by the Employment Dispute Resolution (EDR) Coordinator (established in Section 6 of Chapter IX of this Plan), except that the dispute resolution duties assigned to the EEO Coordinator under the EEO Plan will be replaced by the dispute resolution procedures set forth in Chapter IX of this Plan.

<u>This Plan applies to</u>:

■Claims of invidious discrimination

(Discrimination or discriminatory harassment in hiring or in any employment actions or conditions, on the basis of race, color, religion, sex (including pregnancy and sexual harassment), national origin, age, disability and sexual orientation).

■Family and medical leave rights

■Advance notice of mass reductions in force or office closures

■Employment and re-employment rights of members of the Uniformed Services

■Health and safety protections

■Prohibition of polygraph tests of employees

<u>This Plan does not apply to</u>:

■Workplace disputes such as promotions, work assignment issues, job performance disputes, and challenges to disciplinary actions and terminations (that do not allege discrimination or retaliation for filing a claim).

This Plan is to be implemented in the same manner as the EEO Plan. This Court has adopted and implemented this Plan based upon the Model EDR Plan adopted by the Judicial Conference of the United States. All modifications from the Model EDR Plan have been approved by the Ninth Circuit Judicial Council. All future modifications to the EDR Plan must likewise be approved by the Ninth Circuit Judicial Council through the Office of the Circuit Executive. A copy of this Plan and any subsequent modifications shall be available to each covered employee and shall be posted on this Court's/court unit's internal and external website(s). A copy of the Plan and any subsequent modifications shall be filed with the Office of the Circuit Executive and the Administrative Office. This Court shall annually submit a report on the implementation of the Plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference. A copy of this annual report shall also be provided to the Ninth Circuit Judicial Council through the Office of the Circuit Executive.

Policies adopted by offices within this district or within this Court pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections afforded under this Plan are not affected by the Plan. Further, other 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.

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 employee relating to rights enumerated under the Plan.

Neither this Plan, nor the procedures set forth in Chapter IX, shall constitute a contract or create any legally enforceable obligation. All Court employees are federal employees in the excepted service. This excepted status is in contrast to Executive Branch agencies, most of whose employees are in the competitive service. Court employees are "at-will" employees and have no contractual or statutory grant of tenure. Of note, the Sentencing Reform Act of 1984, 18 U.S.C. § 3602(a), specifies that a district court may, for cause, remove a probation officer. Accordingly, such officers may have a limited property right in their employment and be entitled to some form of due process before being terminated.

No actions taken or documents created or processed pursuant to this Plan or the procedures in Chapter IX are discoverable in any court proceeding.

§ 2 Scope of Coverage

This Plan applies to all Article III judges and other judicial officers of this district as well as to all employees of the United States District Court, Eastern District of Washington, and employing offices in this district including judges' chambers staffs, court unit heads and their staffs, i.e., the District Court Executive/Clerk of Court and Clerk's Office staff and the Chief Probation/Pretrial Services Officer and Probation/Pretrial Services Office staff.

§ 3 Definitions

For purposes of this Plan –

A. The term "claim" means the filing of a request for counseling as set forth in Chapter IX, 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 interns or externs providing gratuitous service, applicants for bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators not employed by federal public defenders, volunteer counselors or mediators, or other individuals who are not employees of an "employing office" as that term is defined below.

C. The term "employing office" includes all offices of the United States District Court, Eastern District of Washington, including the offices of District Court Executive/Clerk of Court, Chief Probation/Pretrial Services Officer, and any such offices that might be created in the future. This 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, 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 Court of Appeals.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **General** – Discrimination against employees based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), disability and sexual orientation is prohibited. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. All of the above constitute "wrongful conduct." The rights and protections of Chapters I through VII of the EEO Plan *(Part A)* shall also apply to employees.

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

A. a physical or mental impairment that substantially limits one or more of the major life activities of an employee,

B. a record of such an impairment, or

C. being regarded as having such an impairment. See 42 U.S.C. § 12102(2).

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

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381 - 6387, 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:

1. is not the result of an employing office closing; and

2. results in an employment loss at the single site of employment during any 30-day period for

a. at least 33 percent of the employees (excluding any part-time employees); and

b. at least 50 employees (excluding any part-time employees); or

c. 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 re-employment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301 - 4335.

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

§ 1 Court Program - This district provides to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration (GSA) or the United States Postal Service (USPS) to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.

CHAPTER VII - POLYGRAPH TESTS

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

CHAPTER VIII - REPORTS OF "WRONGFUL CONDUCT"

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, Section 1 must follow the procedures set forth in Chapter IX of this Plan.

Judges and employees are encouraged to report "wrongful conduct" to the Court's EDR Coordinator, the chief judge, 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 EDR Coordinator as soon as possible.

The 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 IX – 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 VII of this Plan, or who claims a violation of the prohibition against retaliation set forth in Section 5(A), 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 judge of the Court (or a designated judicial officer) in which the alleged violation arises; and

C. review of the hearing decision under procedures established by the Judicial Council of the Circuit.

§ 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 the EEO Plan or this Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with their court's 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 the EEO Plan or this 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 Judicial Council, either by members of the Council directly or by persons designated to act on its behalf, which may include the chief judge of the Circuit. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the 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, this Plan. In so doing, the Council or its designee, who may include the chief judge of the Circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

§ 4 Confidentiality - The Court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent 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 claim pursuant to this Plan. Likewise, any person who participates in the filing or processing of a claim, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.

B. Right to Representation - Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's appointing officer. A representative who is an office employee shall be free from restraint, interference, coercion, discrimination, and reprisal, and shall have a reasonable amount of official time to accompany, represent, and advise the complainant or the person complained against at any stage in the complaint procedures. The employing office also has the right to representation.

C. Case Preparation - To the extent feasible, every individual invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her court duties.

D. Extensions of Time - The chief judge of the Court, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause. The EDR Coordinator and the assigned mediator may likewise, after notification to the parties involved, extend the deadlines related to their functions 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 the EEO Plan or 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. The complaint will be stayed until the request for dismissal 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 EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.

§ 6 **Designation and duties of the EDR Coordinator -** The Court shall designate a person to serve as the EDR Coordinator. The Court may designate more than one EDR Coordinator. The duties of such person shall include the following:

A. to provide information to the Court and employees regarding the rights and protections afforded under this Plan;

B. to coordinate and organize the procedures and establish and maintain official files of the Court pertaining to claims and other matters initiated and processed under the Court's EDR Plan;

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

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

§ 7 Disqualification Provision - Any person seeking disqualification or recusal of an EDR coordinator, counselor, mediator, or reviewing official shall promptly submit a written statement to the chief judge explaining the reasons for the requested disqualification or recusal. In determining whether disqualification or recusal is warranted, the chief judge shall consider the factors, circumstances and considerations set forth in 28 U.S.C. § 455. If disqualification or recusal is warranted, the chief judge shall designate another individual to act as the EDR coordinator, counselor, mediator, or reviewing official. In the event the chief judge is unavailable to serve under this subsection or has disqualified or recused himself or herself pursuant to the provision, the chief judge will designate another judicial officer to serve as the reviewing official. Disqualification or recusal of the EDR coordinator, counselor, mediator or reviewing official of the Court shall not be warranted merely because the Court is named as a responding party. However, to avoid possible conflict of interests if the Court/office unit executive, e.g., Clerk of Court, is the alleged violator of the Plan's provisions, the chief judge may designate another party to represent the employing office in mediation and/or at the formal hearing.

§ 8 Counseling

A. Initiating a proceeding; formal request for counseling - An employee who believes that his or her rights under Chapters II through VII of this Plan have been violated must first request counseling.

B. Form and manner of requests - Requests for counseling:

1. are to be submitted to the Court's/office's EDR Coordinator;

2. must be made in writing and contain all the violations asserted by the claimant (copy of approved form is contained in Appendix 1); and

3. must be made within 30 days of the alleged violation or within 30 days of the time the employee first becomes aware of the alleged violation.

C. Procedures

1. **Who may serve as counselor -** Nancy Wideman will serve as the EDR Coordinator when the request for counseling is submitted by an employee of the Probation/Pretrial Services Office; Grace Capri Miller will serve as the EDR Coordinator when the request for counseling is submitted by an employee of the U.S. District Court. The counseling shall be conducted by the Court's/Office's EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 7 of this Chapter, or is otherwise unavailable. In such instances, the chief judge of this Court shall designate another qualified individual to perform the counseling function and the EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and the chief judge of the Court.

2. **Purposes of counseling -** The purposes of the counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the Court applicable to the employment dispute resolution process; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.

3. **Confidentiality -** Unless the employee agrees in writing to waive 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.

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

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

E. Conclusion of the counseling period and notice - The EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator a request for mediation in accordance with Section 9 of this Chapter.

§ 9 Mediation

A. Initiation - Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented (copy of approved form is included as Appendix 2). 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 (unless waived by mutual agreement of both parties) 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 EDR Coordinator shall: Designate a mediator and provide written notice to the parties of such designation.

2. **Who may serve as mediator -** Any person with the skills to assist in resolving disputes, except the Court's EDR Coordinator, may serve as a mediator under this Plan.

3. **Purpose of mediation -** The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.

4. **Confidentiality -** Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties.

5. **Form of settlement -** The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf. A notice that settlement was reached will be provided to the EDR Coordinator for report purposes.

C. Duration of mediation period - The mediation period shall be 30 days unless waived (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation

session. Thereafter, he or she may proceed to file a complaint and request for hearing.

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 mediator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. A copy of this notice shall be sent to the EDR Coordinator who, in turn, shall 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 may file a complaint alleging a violation of the EDR Plan. The complaint shall be in the form approved by the Court (see approved form in Appendix 3), and must be filed with the chief judge of the Court of the employing office with a copy to the employing office and to the EDR Coordinator. Claims that were not presented in the request for mediation under Section 9(A) may not be pursued except in instances in which mediation has been waived. The respondent in all complaints 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. Hearing procedures

1. Presiding judicial officer - If the chief judge or designated judicial officer does not dismiss the complaint, the chief judge or designated judicial officer shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists. Generally, the scope of the hearing should be limited to a review of the documents and other written evidence submitted, rather than a full evidentiary

hearing or trial with live witnesses, except where extraordinary circumstances are presented or the presiding judicial officer believes the allegation(s) contained in the complaint require appearances.

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 (if appearances are required). However, the following specific provisions shall apply to hearings in which appearances are required 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 written notice of the hearing; such notice shall also be provided to the individual alleged to have violated rights protected by this Plan;

c. at the hearing, the complainant will have the right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the rights to present evidence on its behalf and to cross-examine adverse witnesses;

d. the Federal Rules of Evidence need not be followed, but may be used as a guide;

e. a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;

f. in reaching his or her decision, the chief judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII of this Plan and by decisions of the Judicial Council of the Ninth Circuit under Section 11 of this Chapter;

g. 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;

h. the final decision of the chief judge or presiding judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing with or without appearances; and

i. all parties, or any aggrieved individual, shall have the right to written notice of any action taken as a result of a hearing.

§ 11 Review of decision - A party or individual aggrieved by a final decision of the chief judge or presiding judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision. Such review must be requested in writing to the Judicial Council of the Ninth Circuit no later than 30 days following the date of the final decision of the chief judge or the presiding judicial officer or following the date of a summary dismissal of the complaint. Any review will be conducted by the members of the Executive Committee of the Ninth Circuit Judicial Council or their designees. The decision of the Executive Committee shall be based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence. (See Appendix 4 for "Procedures for Review of EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit")

§ 12 Remedies

A. Where judicial officers acting pursuant to Section 10 or 11 of this Plan 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 the employee was previously removed;

4. prospective promotion to a position;

5. priority consideration for a future promotion or position;

6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;

7. records modification and/or expungement;

8. "equitable" relief, such as temporary stays of adverse actions;

9. granting of family and medical leave; and

10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.

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 - The conclusion of the reviewing panel in any final decisions reached in accordance with the provisions of Section 11 of this Chapter shall be made available to the public from the Office of the Circuit Executive upon written request. Only in the event the panel determines that all or portions of the entire decision should be made public shall additional portions of the decision be made available to the public. The reviewing panel, in the interests of justice and of 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 other reason that the administration of justice may require.

§ 14 Election of remedies - If an employee or an employee representative files a grievance or an appeal of an adverse action in addition to a complaint under this Plan concerning the same or substantially the same subject matter, the employee must elect only one procedure under which the complaint is to be processed: (a) the EDR Plan or (b) the grievance/adverse action appeal procedures under which the complaint is to be processed. An employee may not utilize both (a) and (b). Similarly, if a complaint has already been processed under one of these procedures (i.e., the grievance/adverse action

appeal procedure or the procedures in this Plan), it may not be the subject of a complaint under the other.

§ 15 Determining time periods - The word "days" in all filing and other time periods specified in this Plan shall mean calendar days, except that if the deadline date falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following Monday or court business day respectively.

§ 16 Annual Report - The EDR Coordinator will prepare an annual report for the fiscal year, indicating:

1. The number and type of alleged violations for which counseling was conducted.

2. The number and type of alleged violations for which mediation was conducted.

3. The number and type of complaints filed.

4. The number and type of hearings conducted.

5. The number and type of final decisions rendered reflecting the number for which some relief was granted.

6. With respect to all the data supplied in items 1 through 5 above, the allegations or complaints shall be reported according to the Chapter(s) of the EDR Plan involved and, with respect to allegations or complaints under Chapter II, according to the type(s) of discrimination alleged.

■■■

This EEO and EDR Plan (Parts A and B) and the procedures included herein are hereby adopted by this Court this 10th day of January, 2011.

Lonny R. Suko
Chief United States District Judge

Edward F. Shea
United States District Judge

Rosanna Malouf Peterson
United States District Judge

Justin L. Quackenbush
Senior United States District Judge

Wm. Fremming Nielsen
Senior United States District Judge

Fred Van Sickle
Senior United States District Judge

Robert H. Whaley
Senior United States District Judge

Appendix 1 - Request For Counseling Under EDR Plan

Submitted under the Procedures of the Employment Dispute Resolution Plan for the U.S. District Court, Eastern District of Washington. Prior to completing this form, please refer to the EDR Plan for the U.S. District Court, Eastern District of Washington.
Please complete this form legibly.

1. Full Name of Person Requesting Counseling _____

2. Mailing Address _____
_____

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

4. If you are a court employee, state the following:

Court Unit in which employed: _____

Job Title: _____

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

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

_____

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

8. 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? ___Yes ___ No

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

■This request for counseling is submitted by:

_____
Print Name Signature Date

■Name of Counselor to whom submitted:_____

■Counselor's Signature _____ ■Date of Receipt _____

Appendix 2 - Request For Mediation Under EDR Plan

Submitted under the Procedures of the Employment Dispute Resolution Plan for the U.S. District Court, Eastern District of Washington. Prior to completing this form, please refer to the EDR Plan for the U.S. District Court, Eastern District of Washington.
Please complete this form legibly.

Please attach a copy of the *Request for Counseling* form filed in connection with this matter.

1. Full Name of Person Requesting Mediation _____

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

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

3. Date counseling was initiated _____

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

5. Name of person who provided counseling _____

■This request for mediation is submitted by:

_____ _____
Signature Date

■Name of Person to whom submitted _____

■Signature of recipient:

_____ Date of receipt: _____

Sample Record of Mediation
Employment Dispute Resolution Procedures

Date Request for Mediation Received: _____

Received By: _____

Date Mediator Assigned: _____

Name of Mediator: _____

Date(s) of Mediation: _____

Place of Mediation: _____

Participants in Mediation: _____

_____

Issues Addressed: _____

_____

_____

Remedies Requested by Claimant: _____

_____

Proposal by Employing Office: _____

_____

For Employing Office: _____

Name Signature Date

1. Accepted by Claimant: _____

Name Signature Date

2: Not Accepted by Claimant: _____

Name Signature Date

Mediator: _____

Name Signature Date

SAMPLE MEDIATION WAIVER

RE: Employment Dispute Resolution (EDR) Complaint

Dear XXX:

Today you requested that you be permitted to file a complaint under the XXX EDR Plan alleging XXXXXXXX. We spoke about the unlikely resolution of your claim through counseling and you, therefore, elected to waive counseling and to move forward with the process.

Further, although you have the right and obligation to request mediation in accordance with Section XXX of the XXX Employment Dispute Resolution Plan (Plan), you have expressed that you want to waive your right to mediation in order to expeditiously move this matter forward. We agree that mediation will not serve to satisfactorily resolve this dispute. In order to waive your right to mediation under the Plan, please sign below and return your signed waiver to me.

This serves as notice that the mediation period will end on the date you sign the waiver. You will have 15 days from that date to file a formal complaint in this matter in accordance with the Plan. Once filed, your complaint will be directed to XXX for consideration.

Sincerely,

XXX

I hereby voluntarily waive my right to mediation under the XXX EDR Plan as it relates to my EDR claim requesting XXX.

____ _____

Date XXX

Appendix 3 - **Complaint Under EDR Plan**

Filed under Procedures of the Employment Dispute Resolution Plan for the
U.S. District Court, Eastern District of Washington.
Prior to completing this form, please refer to the EDR Plan for the U.S. District Court, Eastern District of Washington. Please complete this form legibly.

1. Full Name of Person Filing Complaint: _____

2. Mailing Address: _____
_____

3. Home Phone: (___) _____ Work Phone: (___) _____

4. If you are a court employee, state the following:

Court Unit in which employed: _____

Job Title: _____

5. Name and address of the employing office against whom this complaint is filed (under the EDR Plan, all complaints must be filed against an "employing office," not an individual):
_____
_____
_____

6. 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	□ Gender/Sex (includes 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 - Occupational Safety and Health Protections

☐ Chapter VII - Polygraph Tests

7. Date(s) of alleged violation:_____

8. Date on which counseling was requested:_____

Date on which counseling was completed:_____

Date on which mediation was requested: _____

Date on which mediation was concluded: _____

Date on which mediation was waived: _____

9. Name of person who served as Counselor on this matter _____

10. Name of person who served as Mediator on this matter _____

11. Please summarize the actions or occurrences giving rise to your complaint. Explain in what way you believe your rights under the 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.)

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

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

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

_____

_____

_____

_____

_____

_____

_____

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

□Yes □No

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

Name: _____

Address: _____

_____

Work Phone: (___) _____ Fax: (___) _____

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

_____ _____

Signature Date

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 Argument*s-- 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 ½ 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) 556-6179

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.

B. *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.

B. *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.

B. *Standard of Review*-The decision or summary dismissal of the Hearing Officer shall be affirmed if supported by substantial evidence.

B. *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.

B. *Form of Final Review*- The Executive Committee shall issue its decision in writing.

Petition for Review to the Executive Committee of the Judicial Council of the Ninth Circuit from a EDR Hearing Officer's Decision.

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)
v	)	Employment Dispute Resolution
	)	Plan Complaint
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 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 for this petition for review is (reason why review is requested – this basis may be included as an attachment).

Submitted this ___ day of _____, 20__.

(s) _____

(Representing _____)

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Petition for Review to the Executive Committee of the Judicial Council of the Ninth Circuit from a EDR Hearing Officer's Decision.

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)
v	)	Employment Dispute Resolution
	)	Plan Complaint
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 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 for this petition for review is (reason why review is requested – this basis may be included as an attachment).

Submitted this ___ day of _____, 20__.

(s) _____

(Representing _____)

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