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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
EMPLOYEE DISPUTE RESOLUTION
PLAN & EQUAL EMPLOYMENT
OPPORTUNITY PLAN

GENERAL ORDER 30

Effective today, the Court adopts the new, revised Employee Dispute Resolution (“EDR”) Plan and appended Equal Employment Opportunity (“EEO”) Plan covering the District Court, the Bankruptcy Court, the United States Probation Office and the United States Pretrial Services Agency in the Northern District of California attached herewith. This EDR Plan and the accompanying EEO Plan appended hereto supersede all previous versions of the EDR Plan and the EEO Plan.

IT IS SO ORDERED.

Dated: September 22, 2016


Roger Efremsky
Chief Bankruptcy Judge



UNITED STATES DISTRICT COURT
UNITED STATES BANKRUPTCY COURT
UNITED STATES PROBATION
UNITED STATES PRETRIAL SERVICES
NORTHERN DISTRICT OF CALIFORNIA

**EMPLOYEE DISPUTE
RESOLUTION PLAN
&
EQUAL EMPLOYMENT
OPPORTUNITY PLAN**

AMENDED EDR PLAN & EEO PLAN APPROVED BY THE
NINTH CIRCUIT JUDICIAL COUNCIL ON OCTOBER 20, 2016.



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EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER I. GENERAL PROVISIONS

§ 1. Preamble

This Plan shall be known as the Employment Dispute Resolution Plan (“EDR Plan”). This EDR Plan and the appended Equal Employment Opportunity Plan (“EEO Plan”) were adopted by the United States District Court for the Northern District of California (“District Court”) and the United States Bankruptcy Court (“Bankruptcy Court”) in accordance with the Federal Judiciary Employment Dispute Resolution Model Plan adopted on March 16, 2010 by the Judicial Conference of the United States (“JCUS”). The purpose of this EDR Plan and the EEO Plan is to provide rights and protections to employees of the District Court, the Bankruptcy Court, the United States Probation Office (“Probation”) and the United States Pretrial Services Agency (“Pretrial Services”) within the Northern District of California comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

The first EEO Plan adopted by the District Court in 1980 included Probation and the 1992 amended EEO Plan added Pretrial Services, while the Bankruptcy Court maintained its own plans. In 2016, the Bankruptcy Court and the District Court combined their EDR and EEO plans and adopted a new, revised plan covering the District Court, the Bankruptcy Court, Probation and Pretrial Services.

This EDR Plan provides procedures for addressing alleged violations of employment rights and discriminatory treatment in employment. The EEO Plan sets forth policies adopted in the Northern District for equal opportunity in various facets of employment, including recruitment, hiring, and advancement. Claims arising under Chapters II through VIII of this EDR Plan or under Chapters I through VI of the EEO Plan shall be treated in accordance with the procedures set forth in Chapter X of this EDR Plan.

This EDR Plan and the accompanying EEO Plan appended hereto supersede all previous versions of the EDR Plan and the EEO Plan. All modifications to this EDR Plan must be approved by the Ninth Circuit Judicial Council (“Judicial Council”) through the Office of the Circuit Executive. This EDR Plan shall be made available to each covered employee; posted on the internal and external websites of the District Court, Bankruptcy Court, Probation and Pretrial Services; and filed with the Office of the Circuit Executive and the Administrative Office of the United States Courts (“Administrative Office”).

The District Court and the Bankruptcy Court are required to submit a yearly report on the implementation of the EDR Plan to the Administrative Office for inclusion in the Director's Annual Report to the JCUS and to the Office of the Circuit Executive for forwarding to the Judicial Council.

This EDR Plan affects neither local employment grievance policies not involving rights and protections stated in this EDR Plan nor local policies related to rights stated in this EDR Plan, so long as those policies are consistent with the rights and procedures established herein. This EDR 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 herein.

§ 2. Scope of Coverage

This EDR Plan applies to:

- A. All district, bankruptcy and magistrate judges and staff;
- B. All district and bankruptcy clerks of court and staff; and
- C. All chief probation and chief pretrial services officers and staff.

§ 3. Definitions

For purposes of this Plan –

- **“Chief Judge,”** unless otherwise specified, refers to the Chief Judge of the District Court for a Claim or a report of wrongful conduct arising in the District Court, Probation and Pretrial Services and to the Chief Judge of the Bankruptcy Court for a Claim or a report of wrongful conduct arising in the Bankruptcy Court.
- **“Claim”** refers to a proceeding under the dispute resolution procedures set forth in Chapter X, commenced by the submission of a Request for Counseling as set forth in Chapter X § 8 and further pursued through the additional procedural steps of a Request for Mediation (§ 9) and a Complaint (§ 10). **“Claimant”** means any individual invoking the dispute resolution procedures set forth in Chapter X of this EDR Plan.
- **“Court”** refers to the specific court (District Court or Bankruptcy Court) in which is located the Employing Office responsible for redressing, correcting or abating the violation(s) alleged in a Claim.
- **“EDR Coordinator”** refers to a person designated pursuant to Chapter X § 6 of this EDR Plan to perform the duties and functions set forth by the EDR Plan and the EEO Plan.

- **“Employee”** encompasses all individuals listed in § 2 (Scope of Coverage) of this Chapter, as well as applicants for employment and former employees, subject to the following exclusions. The term “Employee” does not include: individuals providing gratuitous service, such as interns, externs and volunteer law clerks; 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.
- **“Employing Office”** includes all offices of the District Court, Bankruptcy Court, Probation and Pretrial Services in the Northern District of California, including any such offices that might be created in the future. The District Court or the Bankruptcy Court is the **“Employing Office”** of a Judicial Officer’s chambers staff.
- **“Judicial Officer”** means a judge appointed under Article III of the Constitution, a United States bankruptcy judge or a United States magistrate judge. **“Reviewing Judicial Officer”** refers to the judge responsible for carrying out the judicial responsibilities set out in Chapter X of this EDR Plan; this may be either the Chief Judge or another judge designated by the Chief Judge.
- **“Unit Executive”** means the individual with ultimate responsibility for hiring and firing within his or her work unit (subject to approval of the Court if required by federal statute). *See* 28 U.S.C. §§ 156(b), 751(b); 18 U.S.C. §§ 3153, 3602(a).

CHAPTER II.
EQUAL EMPLOYMENT OPPORTUNITY
& ANTI-DISCRIMINATION RIGHTS

§ 1. General

This Chapter fully incorporates by reference the EEO Plan.

As defined in Chapter IV of the EEO Plan, discrimination against an Employee based on race, color, religion, gender/sex (including sexual harassment), age (at least 40 years of age at the time of the alleged discrimination), national origin, ethnicity, disability and/or 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.

Editor's Note: This Section modifies the language of the Ninth Circuit Judicial Council Model EDR Plan and removes the sentence "All of the above constitute 'wrongful conduct,'" in order to avoid confusion with Reports of Wrongful Conduct in Chapter IX of this Plan, and to reflect that a violation of any of the enumerated rights under Chapters II through VIII this Plan amounts to wrongful conduct.

§ 2. Definition

"Disability" means:

- A physical or mental impairment that substantially limits one or more of the major life activities of an Employee;
- A record of such an impairment; or
- Being regarded as having such an impairment. See 42 U.S.C. § 12102(3).

§ 3. Special Provision for Probation and Pretrial Services Officers

The age discrimination provision of § 1 of this Chapter shall not apply to the initial hiring or mandatory separation of probation and pretrial services officers and officer assistants. See *JCUS Report of Proceedings* (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 & MEDICAL LEAVE RIGHTS

Office of Personnel Management (OPM) regulations regarding use of sick leave for family or bereavement purposes (5 CFR § 630.401) and Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381-6387, apply to Employees in the manner prescribed in Volume 12, Chapter 9 § 920.45 of the *Guide to Judiciary Policy*.

Editor's Note: This Chapter has been updated to cite the current version of the Guide to Judiciary Policies and Procedures re: applicability of FMLA: Vol. 12, Ch. 9 § 920.45 (formerly § 920.20.35).

**CHAPTER IV.
WORKER ADJUSTMENT & RETRAINING
NOTIFICATION RIGHTS**

§ 1. General

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 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

- **“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 full-time Employees.
- **“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 part-time employees) **and** at least 50 Employees (excluding part-time employees); **or**
 - b. At least 500 Employees (excluding part-time employees).

See 29 U.S.C. § 2101.

**CHAPTER V.
EMPLOYMENT & REEMPLOYMENT RIGHTS OF
MEMBERS OF THE UNIFORMED SERVICES**

An Employing Office shall not discriminate against an eligible Employee or deny an eligible Employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301-4335.

**CHAPTER VI.
OCCUPATIONAL SAFETY & HEALTH PROTECTIONS**

§ 1. General

Each Employing Office shall provide to its Employees a place of employment free from recognized hazards that cause, or are likely to cause, death or serious physical harm. 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 but rather should be submitted directly to the agency having jurisdiction.

§ 2. Court Program Requirements

The District Court, Bankruptcy Court, Probation and Pretrial Services shall implement programs to achieve the protections set forth in § 1 of this Chapter.

**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.
WHISTLEBLOWER PROTECTION**

§ 1. General

A supervisor is prohibited from taking, directing others to take, threatening, recommending, or approving an adverse employment action against any Employee (excluding applicants for employment) based upon a disclosure of information by the Employee to:

- An appropriate federal law enforcement authority,
- A supervisor or managerial official of an Employing Office,
- A Judicial Officer, or
- The Administrative Office,

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

- Is not specifically prohibited by law;

- 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
- Does not reveal information that would endanger the security of any federal judicial officer.

§ 2. Definition

For purposes of this Chapter -

- “Adverse employment action” means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the Employee’s job status, compensation, terms, responsibilities, or working conditions; and
- “Supervisor” means any employee who has authority to take, direct others to take, recommend, or approve any personnel action.

Editor’s Note: This Chapter modifies the language of the Judicial Council Model EDR Plan by utilizing the term “supervisor” as that phrase is used in the Civil Service Reform Act of 1978 (“CSRA”), 5 U.S.C. § 2302(b). See Mangano v. United States, 529 F.3d 1243, 1246 (9th Cir. 2008) (“The CSRA creates a remedial scheme through which federal employees can challenge their supervisors’ prohibited personnel practices.”) (citing Orsay v. U.S. Dept. of Justice, 289 F.3d 1125, 1128 (9th Cir. 2002), abrogated on other grounds by Millbrook v. United States, 133 S.Ct. 1441 (2013) (internal citation and marks omitted)).

CHAPTER IX. REPORTS OF WRONGFUL CONDUCT

Employees are encouraged to report wrongful conduct to an EDR Coordinator, the Chief Judge, a Unit Executive, a human resources manager, or their supervisor as soon as possible, before it becomes severe or pervasive. An Employee may use the optional Report of Wrongful Conduct Form (**CAND-EDR Form 5**, appended to this EDR Plan). Any individual receiving such a report has the responsibility to notify an EDR Coordinator as soon as possible.

Retaliation against any Employee making a report of wrongful conduct is prohibited.

Initiating a report of wrongful conduct is not the same as initiating or filing an EDR Claim under this Plan; rather, it invokes a wholly separate process from initiating an EDR Claim governed by the procedures in Chapter X. The report of wrongful conduct procedure is intended to provide a means for an Employee to

report wrongful conduct not reported by means of the dispute resolution procedures in Chapter X.

EDR Coordinators 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 by either an EDR Coordinator or a human resources manager. 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.

An Employee 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.

Editor's Note: This Chapter has been revised to clarify that any investigation would be conducted by either the EDR Coordinator or the human resources manager, and this District has chosen to delete the ambiguous reference to investigation by an "other person" in the Judicial Council Model EDR Plan.

User Notes:

1. According to the Office of Fair Employment Practices of the Administrative Office, this Chapter provides procedures to report wrongful conduct in cases in which the reporting Employee could not seek personal relief under the EDR process, but wants to report misconduct or have a situation investigated.

- Example A: an Employee who witnesses an incident of sexual harassment directed at another Employee would not have standing to submit a Claim under the dispute resolution procedures of Chapter X of the EDR Plan, but would be able to report wrongful conduct under Chapter IX to address the situation.
- Example B: if the time to submit a Request for Counseling has expired, an Employee who is time-barred from submitting an EDR Claim may make a report of wrongful conduct.

2. According to the Office of Fair Employment Practices, this Chapter governing "Reports of Wrongful Conduct" was intended to cover any form of discrimination based on violation of the rights protected under the EDR or EEO Plans. This Chapter providing for "Reports of Wrongful Conduct" is not intended to be broader in scope than the rights enumerated under the EDR plan, and is intended to give the Court wide discretion in addressing reports of wrongful conduct, without requiring the dispute resolution procedures applicable to EDR Claims.

CHAPTER X. DISPUTE RESOLUTION PROCEDURES

§ 1. General Procedure for Consideration of Alleged Violations

An Employee who claims a denial of the rights granted under Chapters II through VIII of this Plan, or who claims a violation of the prohibition against retaliation set forth in § 5.A, shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural steps consist of –

- Counseling (§ 8);
- Mediation (§ 9);
- Hearing before the Chief Judge or other Reviewing Judicial Officer (§ 10);
and
- Review of the hearing decision under procedures established by the Judicial Council (§ 11).

User Note: A process map illustrating the procedural steps authorized by this Chapter is appended to this Plan.

§ 2. Alleged Violation by Employee Who Is Not A Judicial Officer

Before submitting a Request for Counseling, an Employee is encouraged (to the extent feasible) to bring the concerns to his or her supervisor or Unit Executive; if the supervisor or Unit Executive is the alleged violator, the Employee should contact the Human Resources Manager for the Employing Office; the Human Resources Manager will, in turn, identify an alternative neutral point of contact for the initial inquiry.

An Employee who wishes to seek relief under this Plan must begin the process by submitting a Request for Counseling in accordance with § 8 of this Chapter.

§ 3. Alleged Violation by Judicial Officer

An Employee alleging that a Judicial Officer has violated rights granted under this EDR plan or the EEO Plan may initiate an EDR Claim by submitting a Request for Counseling in accordance with § 8 of this Chapter. In such an instance, however, all the procedures of this Chapter shall be performed by the Judicial Council or its designees, which may include the Chief Judge of the Ninth Circuit.

If a Judicial Officer becomes the subject of both an EDR Claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the Judicial Council or its designees 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 EDR Plan; all or part of the EDR Claim may, however, be ordered abated until action is taken on the judicial misconduct complaint.

§ 4. Confidentiality

The Court or Employing Office shall protect the confidentiality of the identities of the Claimant and the person(s) complained about and of allegations made in a Claim under this Plan to the extent possible; information about allegations filed under this Plan may be shared only on a need-to-know basis. Records relating to violations under this Plan will be kept confidential on the same basis, unless there is an express waiver by the parties in writing.

§ 5. General Provisions and Protections

A. Prohibition Against Retaliation

A Claimant has the right to be free from retaliation, coercion, or interference in relation to a Claim under this Plan. Likewise, any person who participates in the processing of a Claim, such as an EDR Coordinator, Mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation. Names of all persons contacted during any phase of the investigation, counseling, mediation or judicial hearing of a Claim submitted pursuant to this Plan shall be made available to the Claimant upon request.

B. Right To Representation

A Claimant, and the person complained against, have the right to be represented by a person of his or her choice if such person is available and consents to be a representative. An Employee may accept the responsibilities of representation if it will not unduly interfere with his or her work responsibilities or constitute a conflict of interest, as determined by the representative's appointing officer. *See* Appx. A: EEO Plan, Ch. IV § 2. A representative who is an 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 Claimant or the person complained against at any step in the dispute resolution procedure.

The Employing Office also has the right to representation.

C. Case Preparation

To the extent feasible, a Claimant 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 the Claimant's work duties.

D. Extensions of Time

The Chief Judge or Reviewing Judicial Officer may extend any of the deadlines set forth in this Chapter for good cause. Time may also be extended in accordance with § 8.D (in relation to counseling) and § 9.C (in relation to mediation).

If disqualification of any Counselor, Mediator or Reviewing Judicial Officer is sought pursuant to § 7, all time periods shall be extended by the number of days required for the Chief Judge (or the District Court ADR Director, if applicable), to rule on the disqualification and, where necessary, to obtain another Counselor, Mediator, or Reviewing Judicial Officer.

E. Records

At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the EDR Coordinator for the respondent Employing Office. No papers, files, or reports relating to a Claim will be filed in any Employee's personnel folder, except as necessary to implement an official personnel action.

F. Election of Remedies

If an Employee files an appeal of an adverse action or a grievance in addition to a Claim under this Plan concerning the same or substantially the same subject matter, the Employee must elect to proceed under either the EDR Plan or the grievance/adverse action appeal procedures, but may not proceed under both. Similarly, if a claim has already been processed under one of these procedures (i.e., the grievance/adverse action appeal procedure or the procedures in this EDR Plan), it may not be the subject of a claim under the other.

G. 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 court business day.

H. Dismissal of Claim

On his or her own initiative or at the request of any party, the Chief Judge or Reviewing Judicial Officer may, at any time in the proceedings, dismiss a Claim on any of the following grounds:

- It fails to state a violation of any right or protection granted under this Plan or the EEO Plan;
- It is untimely;
- It is unduly repetitive of a previous Claim, adverse action, or grievance;
- It is frivolous;
- It fails to state a claim upon which relief may be granted.

A Claim is stayed until a request for dismissal is decided.

§ 6. Designation and Duties of EDR Coordinators

The District Court, the Bankruptcy Court, Probation and Pretrial Services may each have a designated person to serve as EDR Coordinator. The Chief District Judge will designate the EDR Coordinators in consultation with the Clerk of the District Court, Chief of Probation and Chief of Pretrial Services. The Chief Bankruptcy Judge will designate the EDR Coordinator in consultation with the Clerk of the Bankruptcy Court.

The duties of the EDR Coordinators include the following:

- Provide information to the Employing Offices and Employees regarding the rights and protections afforded under this Plan;
- Coordinate and organize the procedures and establish and maintain official files of each Employing Office pertaining to Claims and other matters initiated and processed under this EDR Plan;
- Perform responsibilities with regard to processing individual Claims as set forth in this Chapter; and
- Collect, analyze, and consolidate statistical data and other information pertaining to each Employing Office's employment dispute resolution process. *See* Ch. X § 14.

§ 7. Disqualification Provision

Any person seeking disqualification or recusal of an EDR Coordinator, Counselor, or Reviewing Judicial Officer must 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 applies the factors, circumstances and considerations set forth in 28 U.S.C. § 455. If disqualification or recusal is warranted, the Chief Judge then designates another individual to act as the EDR Coordinator, Counselor, or Reviewing Judicial Officer.

In the event the Chief Judge is unavailable to serve under this section or has disqualified or recused himself or herself pursuant to this provision, the Chief Judge will designate another Judicial Officer to serve as the Reviewing Judicial Officer for a particular EDR Claim.

Disqualification or recusal of the EDR Coordinator, Counselor, or Reviewing Judicial Officer of a Court is not warranted merely because the Court is named as a respondent/party. To avoid possible conflicts of interest, if a Unit Executive is the alleged violator of this Plan's provisions, the Chief Judge may designate another party to represent the Employing Office in mediation and/or proceedings under Chapter X § 10 of this Plan.

A request to disqualify a Mediator selected from the District Court panel is reviewed and acted upon by that Court's ADR Director, who may deny the request or select another panel member within 10 business days.

§ 8. Counseling

A. Initiating a Claim; Formal Request for Counseling

An Employee who wishes to initiate a Claim under this EDR Plan must, as a first step, request counseling.

B. Form and Manner of Requests

1. Form

The request must be made in writing using the Request for Counseling Form (**CAND-EDR Form 1**, *appended to this EDR Plan*) and should contain all of the pertinent facts.

2. Submission of Request for Counseling

The Claimant may submit the Request for Counseling to any of the EDR Coordinators designated under § 6, not necessarily the one designated for the Court Unit where the Claimant is employed. The EDR Coordinator to whom the Request for Counseling is submitted, unless disqualified (see § 7), remains the EDR Coordinator for the matter for all remaining procedural steps under this Chapter.

The EDR Coordinator promptly notifies the Unit Executive and the Chief Judge that a Request for Counseling has been submitted. Notification to the Chief Judge does not identify the Claimant or the substance of the allegations in support of the Request for Counseling. Notification to the Unit Executive may include this identifying information. If the Request for Counseling alleges wrongdoing by a Judicial Officer, the EDR Coordinator refers the matter to the Judicial Council (see § 3).

3. Time for Submitting a Request for Counseling

The Request for Counseling must be submitted within 30 days of the alleged violation or within 30 days of the time the Employee first becomes aware of the alleged violation. Except with permission of the EDR Coordinator for purposes of clarification, a Request for Counseling may not be amended after submission. If the Employee wishes to seek counseling on issues not raised in an already-submitted Request for Counseling, the Employee must submit an additional Request for Counseling. The additional Request for Counseling must also be timely (that is, submitted within 30 days of the alleged violation or within 30 days of the time the Employee first becomes aware of the violation).

C. Procedures

1. Who may serve as Counselor

Counseling and appropriate investigation are conducted by the EDR Coordinator to whom the Request for Counseling is submitted, unless that EDR Coordinator is disqualified from serving as counselor under § 7 of this Chapter, or is otherwise unavailable. In such a case, the EDR Coordinator so notifies the Chief Judge, who then designates another qualified individual to perform the counseling function.

2. Counseling Purposes and Procedure

a. Purposes

The purposes of EDR counseling are to:

- Discuss the Employee's concerns and elicit information regarding the matter;
- Advise the Employee of his or her rights and responsibilities and the applicable EDR procedures;
- Evaluate the matter after appropriate investigation; and

- Assist the Employee in achieving an early resolution of the matter, if possible.

b. Procedures

The EDR Coordinator reviews the Request for Counseling to ensure that it is properly filed within the scope and time limits of this section. If not, the EDR Coordinator promptly informs the Employee and attempts to identify the correct avenue of redress. If the Request has been properly filed but the EDR Coordinator is not the Counselor (*see* § 8.C.1), the EDR Coordinator forwards the Request for Counseling to the designated Counselor. The Counselor gathers information as appropriate, including meeting with the Employee, the party or parties against whom the Claim is made and other persons involved.

The Counselor attempts to facilitate an early resolution of the matter. If the matter resolves:

- the Counselor commits the terms of the settlement to writing;
- the settlement must be signed by the Claimant, the Claimant's representative, if any, and an authorized official of the Employing Office; and
- the Counselor promptly notifies the Unit Executive and the Chief Judge of the settlement.

If the matter does not resolve, the Counselor prepares a summary report of findings of fact in the matter for the use of a Mediator or Reviewing Judicial Officer.

If the Counselor, after investigation, believes that the Claim should be dismissed, the Counselor may make a written recommendation of dismissal to the Chief Judge in accordance with § 5.H of this Chapter.

D. Duration of Counseling Period

The period for counseling is normally no more than 30 days beginning on the date the Request for Counseling is submitted. The counseling period may be extended to a date certain upon agreement of the Employee and the Counselor; the EDR Coordinator, if not serving as the Counselor, should be notified of the extension in writing. Counseling is deemed concluded when:

- The Counselor and the Claimant agree to conclude it;
- 30 days from the date the Request for Counseling was submitted; or

- The date to which the time has been extended in accordance with this paragraph.

E. Conclusion of the Counseling Period; Notice

The Counselor notifies the Claimant in writing that counseling has concluded. The notice should inform the Claimant that mediation is available if the Claimant submits, within 15 days, a Request for Mediation to the EDR Coordinator for the Claim. A copy of the Request for Mediation form (**CAND-EDR Form 2**, *appended to this EDR Plan*) should be included with the notice. The Counselor also notifies the Unit Executive and the Chief Judge and, for reporting purposes (see § 14 of this Chapter), the EDR Coordinator for the Employing Office, if different from the EDR Coordinator selected by the Claimant.

§ 9. Mediation

A. Initiation

To request mediation, the Claimant must submit to the EDR Coordinator a written Request for Mediation within 15 days of receiving the notice of conclusion of counseling. The Request for Mediation should be presented on CAND-EDR Form 2, appended to this EDR Plan. Only issues presented in the original Request for Counseling may be included in the Request for Mediation.

The EDR Coordinator promptly notifies the Unit Executive and the Chief Judge that a Request for Mediation has been submitted. Notification to the Chief Judge does not identify the Claimant or the substance of the allegations in support of the Request for Mediation. Notification to the Unit Executive may include this identifying information.

Failure to pursue mediation concludes the process under this Chapter for that Claim, unless mediation is waived by mutual agreement of the parties.

B. Procedures

1. Designation of Mediator

Promptly after receiving the Request for Mediation, the EDR Coordinator notifies the ADR Program Director, who in turn designates the Mediator and notifies the EDR Coordinator and the parties of the Mediator's contact information within 10 business days. The EDR Coordinator promptly provides the Mediator with copies of the Request for Counseling and Request for Mediation, as well as a copy of the summary findings of fact prepared by the Counselor at the conclusion of counseling.

“The parties” for purposes of this section include the Claimant; the Claimant’s representative, if any; and the Employing Office, represented by the Unit Executive of the Employing Office or the Unit Executive’s designee. The Unit Executive may not designate the Counselor from the counseling step in the same matter for this purpose.

2. Who May Serve As Mediator

The Director of the District Court’s ADR Program designates a mediator (the “Mediator”) from among those trained as part of the District Court’s ADR program or the ADR Program’s legal staff. The Mediator serves on a volunteer (uncompensated) basis.

User Note: If the Request for Mediation alleges that a Judicial Officer has violated rights protected by this Plan, the request will be handled by the Judicial Council pursuant to § 3 of this Chapter.

3. Mediation Procedures

In consultation with the parties, the Mediator sets a date for the mediation. The mediator may require the parties to prepare and submit written mediation statements. The Mediator may meet separately and/or jointly with the Employee and his or her representative, if any, and with an authorized representative or representatives of the Employing Office to discuss alternatives for resolving the matter, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.

4. Confidentiality

a. Confidential Treatment

Except as provided in subdivision (b) of this section, the Mediator, all parties and their representatives, and any other person attending the mediation shall treat as “confidential information” the contents of any written mediation statements, anything that happened or was said, any position taken, and any view of the merits of the case expressed by any participant in connection with any mediation. “Confidential information” shall not be:

- i. Disclosed to anyone not involved in the mediation;
- ii. Disclosed to the Judicial Officer who may be subsequently assigned to hear the dispute which is the basis for invoking procedures under this plan;

iii. Used for any purpose, including impeachment, in any judicial proceeding.

b. Limited Exceptions to Confidentiality.

The following are not prohibited by this section:

- i. Disclosures as may be stipulated by all parties and the mediator;
- ii. A report to or an inquiry by the ADR Magistrate Judge pursuant to ADR Local Rule 2-4(a) regarding a possible violation of the ADR Local Rules;
- iii. Discussions between the Mediator and the District Court's ADR staff, who shall maintain the confidentiality of the mediation;
- iv. A response by any participant or the Mediator to an appropriate request for information duly made by persons authorized by the court to monitor or evaluate the District Court's ADR program in accordance with ADR Local Rule 2-6; or
- v. Disclosures as are otherwise required by law.

The Mediator may ask the parties and all persons attending the mediation to sign a confidentiality agreement.

5. Form of Settlement

If the mediation achieves a settlement, the Mediator commits the terms to writing and secures the signatures of the parties. The Mediator then notifies the parties and the EDR Coordinator in writing that the matter is settled. The EDR Coordinator promptly notifies the Unit Executive and the Chief Judge of the settlement.

C. Duration of Mediation Period

The mediation period shall normally not be longer than 45 days, beginning on the date the Request for Mediation is received by the EDR Coordinator. The mediation period may be extended to a date certain upon agreement of the Mediator and the parties. The Mediator shall notify the EDR Coordinator of the extension in writing. The parties are required to attend at least one mediation session.

D. Conclusion of Mediation Period; Notice

At the conclusion of mediation, the Mediator notifies the EDR Coordinator and the parties in writing that mediation is concluded, indicating whether or not the matter is resolved.

If the Claim is resolved, any settlement must be reduced to writing, as provided in § 9.B.5, above.

If, at the end of the mediation period, the parties have not resolved the matter, the EDR Coordinator notifies the Claimant and the Claimant's representative, if any, in writing that the mediation period has concluded. The notice should inform the Employee of his or her right to file a Complaint under § 10 of this Chapter and of the deadline for doing so and should attach a copy of the Complaint form (**CAND-EDR Form 3**, *appended to this EDR Plan*). The EDR Coordinator also notifies the Unit Executive and the Chief Judge that the mediation period has concluded and, for reporting purposes (see § 14 of this Chapter), the EDR Coordinator for the Employing Office, if different from the EDR Coordinator selected by the Claimant.

§ 10. Complaint

A. Form and Manner of Filing Complaint

Not later than 15 days after receiving written notice of the end of the mediation period, unless the deadline has been extended in accordance with this Plan, the Employee may file a complaint alleging a violation of the EDR Plan ("Complaint"). The Complaint must be in the form approved by the Court (**CAND-EDR Form 3**, *appended to this EDR Plan*) and must be submitted to the Chief Judge and the EDR Coordinator.

Issues that were not presented in the Request for Mediation under § 9.A may not be included in the Complaint unless the parties waived mediation under that paragraph; if the parties waived mediation, the scope of issues that may be presented in the EDR Complaint is limited to those in the Request for Counseling.

The respondent in the Complaint is the Employing Office responsible for redressing, correcting, or abating the violation(s) alleged in the Complaint ("Respondent"). No individual shall be named as a respondent in the Complaint.

B. Hearing Procedures

1. Reviewing Judicial Officer and Scope of Review

The Chief Judge has primary responsibility for hearing EDR Complaints. In the event the Chief Judge is unavailable to hear a specific complaint or is disqualified or recused, the Chief Judge will designate another Judicial Officer to serve as the Reviewing Judicial Officer. In this section, all references to the "Reviewing Judicial Officer" refer to the Chief Judge when the Chief Judge is hearing an EDR Complaint and to the Chief Judge's designee when the Chief Judge is not hearing the EDR Complaint.

Upon receiving the Complaint, the Reviewing Judicial Officer examines it and any attendant documents and determines whether it:

- Warrants dismissal (see § 5.H); or
- Presents any material factual dispute warranting a hearing.

If the Reviewing Judicial Officer determines that a hearing on the merits of the Complaint is warranted, the scope of the hearing is generally limited to a review of the documents and other written evidence submitted, rather than a full evidentiary hearing with live witnesses. An evidentiary hearing may be held if extraordinary circumstances are presented or the Reviewing Judicial Officer otherwise believes determination of the issues in the Complaint requires live appearances.

2. Specific Provisions

The Reviewing Judicial Officer may provide for such discovery and investigation as is necessary, but extensive discovery and investigation are not required or expected. Among the goals of this EDR Plan is prompt resolution of disputes without the imposition of substantial costs on participants.

If the Reviewing Judicial Officer holds an evidentiary hearing, he or she sets the time, place, and manner of conducting the hearing, including the extent, if any, to which the Federal Rules of Evidence shall apply. The following specific provisions shall apply to hearings in which appearances are required under this section:

a. Time

The hearing shall be commenced no later than 60 days after the filing of the Complaint, unless the deadline is extended in accordance with this Plan.

b. Notice

The parties 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. Representation; Presentation of Evidence

At the hearing, the Claimant has the rights to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the Respondent will have the rights to present evidence on its behalf and

to cross-examine adverse witnesses. The Reviewing Judicial Officer may, as a discretionary matter, permit the alleged violator and/or any witness to be represented at the hearing. The Reviewing Judicial Officer may exclude evidence if its probative value is outweighed by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

d. Rules

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

e. Record

All testimony is to be given under oath. A verbatim record of the hearing must be kept which shall be the sole official record of the proceeding.

f. Precedents

In adjudicating the matter, the Reviewing Judicial Officer should be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this Plan and the EEO Plan and by decisions of the Judicial Council under § 11 of this Chapter applying similar provisions from other courts.

g. Standard of Review

The Reviewing Judicial Officer, upon finding that the Claimant has established by a preponderance of the evidence that a substantive right protected by this EDR Plan or the EEO Plan has been violated, may provide one or more remedies in accordance with § 12 of this Chapter.

h. Time for Rendering Decision

The final decision of the Reviewing Judicial Officer must be issued in writing not later than 30 days after the conclusion of the hearing, unless the deadline is extended in accordance with this Plan; all parties shall be notified in writing of the final decision.

§ 11. Review of EDR Decision by the Executive Committee of the Judicial Council

A. Scope of Rules

These rules govern procedures for petitioning for review of a final decision on an EDR Complaint or summary dismissal of an EDR Claim rendered by the

Reviewing Judicial Officer. Review is conducted by the members of the Executive Committee of the Judicial Council ("Executive Committee") or their designees.

B. Filing of Petition for Review

1. Who May Petition for Review

A Claimant or a Respondent Employing Office may petition for review of a final decision on an EDR Complaint or a summary dismissal of an EDR Claim.

Editor's Note: This Section modifies the language of the Judicial Council Model EDR Plan by removing a phrase that appears to give non-party aggrieved individuals the right to petition for review. ("A party or individual aggrieved by a final decision of the chief judge ... may petition for review of that decision."). By clarifying that only parties may petition for review of a final decision or summary dismissal of an EDR Claim, this Section is consistent with the Procedures for Review of EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit (rev. 5/2014) ("A party aggrieved ... may petition for review ...").

2. Form of Petition and Supporting Arguments

The petition should conform with **CAND-EDR Form 4**, appended to this EDR Plan. The petition should include a statement, not to exceed 2500 words in length, setting forth the basis for the petition and all arguments and information supporting it. The petition must be timely filed with the Executive Committee as set forth in § 11.C below and should attach the final decision or summary dismissal for which review is sought.

3. Filing and Serving the Petition for Review

The petitioning party ("Petitioner") may submit the petition to the Executive Committee in one of the following ways:

- By email to the Assistant Circuit Executive for the Human Resources Unit of the Ninth Circuit Office of the Circuit Executive
- By mail at the following address:
Office of the Circuit Executive
Assistant Circuit Executive – EDR Plan
P.O. Box 193939
San Francisco, CA 94119
- By fax to: (415) 355-8901

- By parcel delivery to:
95 Seventh Street
San Francisco, CA 94103

Petitioner must serve a copy of the petition (and all attachments thereto) on the opposing party, and include a proof of service with the petition filed with the Executive Committee. If the petition is submitted by email, email cc's to all other parties are sufficient to satisfy the service requirement.

C. Filing Deadlines

1. 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 Reviewing Judicial Officer or summary dismissal of the Complaint.

2. 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 deadline and the petitioner shows good cause or excusable neglect.

3. Determining Time Periods

The word "days" in all filing deadlines in these procedures means 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.

D. Consideration by the Executive Committee

1. General

All reviews will be conducted by the members of the Executive Committee, and shall be based on the final decision of the Reviewing Judicial 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.

2. Scope of Record and Documents to be Considered

Within 20 days following receipt of the petition for review, the Executive Committee may request additional submissions such as transcripts, documents and evidence in the record and briefs. Unless otherwise notified by the Executive Committee, neither party is to submit further information.

3. Oral Argument

Oral argument normally may be held only if ordered by the Executive Committee. Either party may request oral argument in writing. Petitioner may do so within 7 days of submitting the petition; the responding party may do so within 7 days of receiving the petition. The request must explain why oral argument is necessary. If granted, oral argument, may, at the discretion of the Executive Committee, be conducted via teleconference using video and/or audio technology.

4. Standard of Review

The decision or summary dismissal of the Reviewing Judicial Officer shall be affirmed if supported by substantial evidence.

5. Summary Disposition

If at any time prior to the final submission of the case for review, the Executive Committee finds the request for review so insubstantial as not to justify further proceedings, it may issue an appropriate dispositive order.

6. Form of Final Review

The Executive Committee shall issue its final decision in writing.

§ 12. Remedies

If a final decision issued pursuant to § 10 or § 11 of this Plan includes a determination that a substantive right protected by this EDR Plan or the EEO Plan has been violated, the final decision may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with protected rights, or both. A remedy should be narrowly tailored to the specific violation involved.

A. Remedies Available Under the Plan

Remedies which may be provided to successful Claimants under this Plan include, but are not limited to:

- Placement of a Claimant in a position previously denied;
- Placement in a comparable alternative position;
- Reinstatement to a position from which the Claimant was previously removed;
- Prospective promotion to a position;
- Priority consideration for a future promotion or position;

- Back pay and associated benefits, including attorney fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
- Records modification and/or expungement;
- “Equitable” relief, such as temporary stays of adverse actions;
- Granting of family and/or medical leave; and/or
- Accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.

B. Remedies Not Available

Remedies not legally available include:

- Payment of attorney fees (except as authorized under the Back Pay Act);
- Compensatory damages; and
- Punitive damages.

§ 13. Record of Final Decisions

The conclusion of the Executive Committee in a final decision reached in accordance with the provisions of § 11 of this Chapter will be made available to the public from the Office of the Circuit Executive upon written request. Only in the event the Executive Committee determines that all or portions of the entire decision should be made public will additional portions of the decision be published. The Executive Committee, in the interests of justice and of fairness to the parties, may decide not to publish the conclusion of any final decision:

- if public disclosure would compromise the integrity or legitimate confidentiality of the parties or the Court;
- to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense; or
- for any other reason that the interests of justice may require.

§ 14. Annual Report

The EDR Coordinator for each Employing Office will prepare an annual report for the fiscal year setting forth the number and type of:

- Alleged violations for which counseling was conducted;
- Alleged violations for which mediation was conducted;
- Complaints filed;
- Hearings conducted;

- Final decisions rendered (reflecting the number for which some relief was granted).

With respect to all the data supplied in the items listed 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.

***Editor's Note:** The deadline to submit the annual report, as required by this section, is the deadline set by the Administrative Office for submitting the Fair Employment Practices System (FEPS) report for the fiscal year.*

***User Note:** If, as of the deadline for compiling data for the annual FEPS report, an EDR Claim is pending with an EDR Coordinator who is not the EDR Coordinator for the respondent Employing Office for the Claim in question, the EDR Coordinator handling the Claim provides the EDR Coordinator for the respondent Employing Office with sufficient data about the Claim to meet FEPS reporting requirements.*

APPENDIX A: EQUAL EMPLOYMENT OPPORTUNITY PLAN

I. PREAMBLE

In 1987, the Judicial Conference of the United States directed each court to 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, ethnicity, religion, age, or handicap. Pursuant to this directive, in 1995 the Judicial Council of the Ninth Circuit (“Judicial Council”) adopted a model equal employment opportunity plan for all courts of the Ninth Circuit. The Judicial Council modified this model plan in 1997 with the adoption of employment dispute resolution procedures, and directed each court in the Ninth Circuit to adopt the modified model plan and accompanying employment dispute resolution procedures or to submit an alternative plan for the review and approval by the Judicial Council.

This Equal Employment Opportunity Plan (“EEO Plan”) is adapted from the Judicial Council’s model plan.

II. STATEMENT OF POLICY

All facets of employment such as recruitment, hiring, work assignments, compensation, benefits, education, disciplinary actions, terminations, training, promotion, advancement, and supervision are included in this EEO Plan. Each Appointing Officer in the Northern District shall promote:

- Equal employment opportunity to all persons or classes of persons regardless of their race, color, religion, gender/sex, age, national origin, ethnicity, disability or sexual orientation or combination of these factors, and
- A court or office environment free of discrimination and discriminatory harassment.

Retaliation by an Appointing Officer or by any other Employee against an Employee for pursuing dispute resolution procedures in accordance with this EEO Plan and the EDR Plan, or against any person involved in implementing such procedures, including, but not limited to, employee representatives or witnesses, is prohibited and constitutes grounds for disciplinary action. Conversely, the repeated pursuit of frivolous or harassing Claims may also be grounds for disciplinary action.

The employment dispute resolution procedures and the separate process for reporting wrongful conduct provided by the EDR Plan are not intended to replace the working relationship that must exist between and among Employees and Appointing Officers.

III. SCOPE OF COVERAGE

This EEO Plan applies to all Judicial Officers and Employees of, and all applicants for employment in, non-Article I positions in the District Court, Bankruptcy Court, Probation and Pretrial Services as defined in Chapter I § 2 of the EDR Plan.

Article I and III judges and applicants for Article I judgeships may not file Claims pursuant to this EEO Plan. Complaints about the conduct of the bankruptcy judge merit selection process should be submitted to the Chief Judge of the Ninth Circuit. Complaints about the conduct of the magistrate judge merit selection process should be submitted to the Chief Judge of the District Court.

IV. 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. Appointing Officer

The Judicial Officer or Unit Executive with ultimate responsibility for hiring and firing within his or her work unit.

3. Disability

Formerly referred to as a handicap, is any 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 impairment. A qualified person with a disability is one who, with or without reasonable accommodation, can perform the essential functions of the position in question and who meets the criteria for appointment. Further clarification of this definition can be found in 29 CFR § 1615.103.

Temporarily disabling conditions such as pregnancy and childbirth are treated as disabilities for purposes of this plan. HIV infection is considered a non-interfering

disability absent medical and workplace documentation regarding the extent to which the infection may affect job performance, leave or conduct.

4. Discrimination Complaint

A written allegation that a person has been denied employment or has been affected in any other aspect of employment because of his or her race, color, religion, gender/sex, age, national origin, ethnicity, disability or sexual orientation or combination of these factors. Allegations of retaliation because a person has submitted an EDR Claim or has served as a representative, witness, or EDR Coordinator or Counselor in connection with a Claim may also be included. Complaints relating to other dissatisfactions with conditions of employment, commonly known as grievances or adverse actions, are not included.

5. Discriminatory Harassment

Threats, insinuations, innuendo, slurs, or other offensive statements or conduct based on race, color, religion, gender/sex, age, national origin, ethnicity, disability or sexual orientation directed at an individual or a specific class or group, when such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

6. Gender Discrimination

Discrimination on the basis of marital status, pregnancy, parenthood, biological sex, or gender identity.

7. Job Vacancy Announcement

A reasonable attempt to notify 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 an in-house announcement.

8. National Origin

National origin includes ethnicity.

9. Sexual Harassment

A form of gender discrimination defined as unwelcome sexual advances such as an overture, an offer, or request for sexual favors, or 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.

V. IMPLEMENTATION

The Northern District shall implement this EEO Plan.

1. Appointing Officers

Appointing Officers must make reasonable attempts to ensure that applicants and potential applicants are notified about job vacancies (with the exception of chambers law clerk and judicial assistant vacancies), to attract candidates who represent the make-up of persons available in the relevant labor market. All hiring and other employment decisions must be based solely on job-related factors.

2. Judges, Court Managers, Supervisors

Judges, court managers and supervisors must apply equal employment opportunity practices and policies in their work units. This includes giving each Employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As applicable, and resources permitting, this also requires providing training programs which enable Employees to develop their job skills fully.

3. EDR Coordinators

The EDR Coordinators will perform the duties set forth in Chapter X § 6 of the EDR Plan.

VI. OBJECTIVES

When the Appointing Officer deems it necessary or desirable, he or she will develop annual objectives that reflect improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan (report) for the EDR Coordinator explaining how those objectives will be achieved. The EDR Coordinator may suggest the filing of such a report in appropriate circumstances.

VII. ANNUAL REPORT

The EDR Coordinators for the District Court, Probation, Pretrial Services and the Bankruptcy Court will each prepare data to be included in an annual report for the year ending September 30. The annual report for the District Court will consolidate information, such as workforce data and personnel actions, received from the District Court, Probation, and Pretrial Services, and will be submitted for approval by the Chief District Judge. The Bankruptcy Court will prepare a separate annual report for approval by the Chief Bankruptcy Judge.

The annual report will include tables or summary reports, to be provided by the Administrative Office, consolidating the information provided by each court unit. The annual report will also 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 objectives. Upon approval, such reports will be submitted by the Chief District Judge and the Chief Bankruptcy Judge to the Administrative Office no later than the deadline set by the Administrative Office. A copy of the annual report will also be submitted to the Judicial Council. Copies of these annual reports will be made available to the public upon request.

Editor's Note: The annual report required under this Chapter is contained in the Fair Employment Practices System (FEPS) report submitted annually by the District Court and the Bankruptcy Court to the Administrative Office. The deadline for submitting the annual report is the deadline set by the Administrative Office for submitting the FEPS report for each fiscal year. Additional reporting requirements, such as reporting the number of Claims alleging discrimination under the procedures of the EDR Plan, are provided for in Chapter X § 14 of the accompanying EDR Plan.

VIII. DISTRIBUTION & PUBLIC NOTICE

This EEO Plan will be made available to all Employees and furnished upon request to applicants for positions of employment in the Northern District.

**NORTHERN DISTRICT OF CALIFORNIA
EMPLOYMENT DISPUTE RESOLUTION (EDR) PLAN**

REQUEST FOR COUNSELING

IMPORTANT: Please review Chapter X § 8 of the EDR Plan for detailed information about submitting a Request for Counseling.

I. INFORMATION ABOUT THE PERSON REQUESTING COUNSELING

Full Name:

Mailing Address:

Email Address:

Home Phone:

Work Phone:

Court Unit in which you are employed:

Job Title:

II. INFORMATION ABOUT THE REASONS FOR THE REQUEST

Provide the date(s) and location of the alleged incident or decision giving rise to this Request:

Summarize the actions or occurrences giving rise to this Request. Attach additional pages if necessary.

II. (CONTINUED)

Identify the Chapter(s) of the EDR Plan under which this Request is submitted.

Chapter II - Equal Employment Opportunity & Anti-Discrimination Rights; specify:

Race	Sexual Orientation	Gender/Sex
Color	Religion	Age
National Origin	Disability	

Chapter III - Family and Medical Disability Leave Rights

Chapter IV - Worker Adjustment & Retraining Notification Rights

Chapter V - Employment & Reemployment Rights of Members of the Uniformed Services

Chapter VI - Occupational Safety & Health Protections

Chapter VII - Polygraph Tests

Chapter VIII - Whistleblower Protection

III. INFORMATION ABOUT REPRESENTATIVE *(if applicable)*

Complete this section if you have an attorney or other person representing you in preparing this Request.

Representative or attorney name:

Mailing address:

Email address:

Contact Phone:

Signature of Representative:

IV. STATEMENT OF RELIEF OR REMEDY SOUGHT WITH THIS REQUEST

What corrective action do you seek by means of this Request?

Are you willing to waive confidentiality for the limited purpose of permitting the counselor to attempt a resolution of this matter? Yes No

I affirm that all the information I have provided in this Request for Counseling is true and correct.

Date:

Signature:

**NORTHERN DISTRICT OF CALIFORNIA
EMPLOYMENT DISPUTE RESOLUTION (EDR) PLAN**

REQUEST FOR MEDIATION

IMPORTANT: Please review Chapter X § 9 of the EDR Plan for detailed information about submitting a Request for Mediation.

I. INFORMATION ABOUT THE PERSON REQUESTING MEDIATION

Full Name:

Mailing Address:

Email Address:

Home Phone:

Work Phone:

Court Unit in which you are employed:

Job Title:

II. INFORMATION ABOUT THE REASONS FOR THE REQUEST

Attach a copy of the *Request for Counseling* previously submitted in connection with this matter. If any information supplied in the *Request for Counseling* is no longer accurate, state the change(s) here. Attach additional pages if necessary.

II. (CONTINUED)

Date Counseling Initiated:

Date Claimant Received
Notice of Conclusion of
Counseling Period:

Name of Counselor:

III. INFORMATION ABOUT REPRESENTATIVE *(if applicable)*

Complete this section if you have an attorney or other person representing you in preparing this Request.

Representative or attorney name:

Mailing address:

Email address:

Contact Phone:

Signature of Representative:

IV. STATEMENT OF RELIEF OR REMEDY SOUGHT WITH THIS REQUEST

What corrective action do you seek by means of this Request?

Are you willing to waive confidentiality for the limited purpose of permitting the mediator to attempt a resolution of this matter? Yes No

I affirm that all the information I have provided in this Request for Mediation is true and correct.

Date:

Signature:

**NORTHERN DISTRICT OF CALIFORNIA
EMPLOYMENT DISPUTE RESOLUTION (EDR) PLAN**

COMPLAINT

IMPORTANT: Please review Chapter X § 10 of the EDR Plan for detailed information about filing a Complaint.

I. INFORMATION ABOUT THE PERSON FILING THE COMPLAINT

Full Name:

Mailing Address:

Email Address:

Home Phone:

Work Phone:

Court Unit in which you are employed:

Job Title:

II. INFORMATION ABOUT THE REASONS FOR THE COMPLAINT

Provide the name and address of the Employing Office against whom this Complaint is filed
(A Complaint must be filed against an Employing Office, not an individual):

Date(s) of alleged violation(s):

Date Counseling Requested:

Date Counseling Concluded:

Date Mediation Requested:

Date Mediation Concluded:

Name of EDR Coordinator For This Claim:

Name of Mediator For This Claim:

II. (CONTINUED)

Identify the Chapter(s) of the EDR Plan under which this Complaint is filed.

Chapter II - Equal Employment Opportunity & Anti-Discrimination Rights; specify:

Race	Sexual Orientation	Gender/Sex
Color	Religion	Age
National Origin	Disability	

Chapter III - Family and Medical Disability Leave Rights

Chapter IV - Worker Adjustment & Retraining Notification Rights

Chapter V - Employment & Reemployment Rights of Members of the Uniformed Services

Chapter VI - Occupational Safety & Health Protections

Chapter VII - Polygraph Tests

Chapter VIII - Whistleblower Protection

Summarize the actions or occurrences giving rise to this 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 you need more space, attach additional pages.) Attach a copy of any documents that relate to your Complaint, such as an application form, resume, letters, notices of discipline or termination, etc.

III. INFORMATION ABOUT REPRESENTATIVE *(if applicable)*

Complete this section if you have an attorney or other person representing you in preparing this Complaint.

Representative or attorney name:

Mailing address:

Email address:

Contact Phone:

Signature of Representative:

IV. STATEMENT OF RELIEF OR REMEDY SOUGHT BY THIS COMPLAINT

What corrective action do you seek by means of this Complaint?

I affirm that all the information I have provided in this Complaint is true and correct.

Date:

Signature:

III. INFORMATION ABOUT REPRESENTATIVE *(if applicable)*

Complete this section if you have an attorney or other person representing you in preparing this Petition.

Representative or attorney name:

Mailing address:

Email address:

Contact Phone:

Signature of Representative:

I affirm that all the information I have provided in this Petition for Review is true and correct.

Date:

Signature:

**NORTHERN DISTRICT OF CALIFORNIA
EMPLOYMENT DISPUTE RESOLUTION (EDR) PLAN**

REPORT OF WRONGFUL CONDUCT

IMPORTANT: Please review Chapter IX of the EDR Plan for detailed information about submitting a Report of Wrongful Conduct.

I. INFORMATION ABOUT THE PERSON SUBMITTING THIS REPORT

Full Name:

Mailing Address:

Email Address:

Home Phone:

Work Phone:

Court Unit in which you are employed:

Job Title:

II. INFORMATION ABOUT THE REASONS FOR THIS REPORT

Provide the date(s) and location(s) of the alleged incident(s), and summarize the actions and occurrences giving rise to this Report. Explain in what way you believe rights or protections under the EEO Plan and/or the EDR Plan were violated. Identify all persons who participated in or who can provide relevant information concerning the matter you are reporting. Attach a copy of any documents that relate to this Report. If you need more space, attach additional pages.

FOR EDR COORDINATOR USE

DATE RECEIVED:

INITIALS:

II. (CONTINUED)

Identify the Chapter(s) of the EDR Plan under which this Report is submitted.

Chapter II - Equal Employment Opportunity & Anti-Discrimination Rights; specify:

Race	Sexual Orientation	Gender/Sex
Color	Religion	Age
National Origin	Disability	

Chapter III - Family and Medical Disability Leave Rights

Chapter IV - Worker Adjustment & Retraining Notification Rights

Chapter V - Employment & Reemployment Rights of Members of the Uniformed Services

Chapter VI - Occupational Safety & Health Protections

Chapter VII - Polygraph Tests

Chapter VIII - Whistleblower Protection

III. INFORMATION ABOUT REPRESENTATIVE *(if applicable)*

Complete this section if you have an attorney or other person representing you in preparing this Report.

Representative or attorney name:

Mailing address:

Email address:

Contact Phone:

Signature of Representative:

I affirm that all the information I have provided in this Report of Wrongful Conduct is true and correct.

Date:

Signature:

Northern District of California - Employment Dispute Resolution (EDR) Plan Procedures for Submission and Process of Claims

Before submitting a Request for Counseling at Step 1, employees are encouraged, but not required, to bring an alleged violation to a supervisor, unit executive or neutral contact for an informal resolution. If not resolved, or if relief per the EDR Procedures is sought, timely submit a Request for Counseling. **EDR Plan Ch. X §2**

