

EMPLOYMENT DISPUTE RESOLUTION PLAN  
OF THE  
UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF RHODE ISLAND  
(DISTRICT COURT, BANKRUPTCY COURT AND  
PROBATION/PRETRIAL SERVICES OFFICE)

Adopted April 26, 2000

Revised January 25, 2013

## CHAPTER 1 - GENERAL PROVISIONS

### A. PREAMBLE

This Employment Dispute Resolution (“EDR”) Plan was approved by the United States District Court for the District of Rhode Island and by the Judicial Council of the First Circuit in order to provide court employees with a means of resolving certain issues which arise in the course of their employment. This Plan is intended to provide court employees the rights and protections of the Model EDR Plan adopted by the Judicial Conference of the United States in March 1997, as amended in March, 2010. The Judicial Conference adopted its Model EDR Plan in response to the Congressional Accountability Act of 1995, in which legislative branch employees were provided with certain rights. The rights conferred by the Judicial Conference to employees of the judiciary are comparable to those available to legislative branch employees or to any of the rights available under various federal statutes which relate to employment matters addressed by this Plan.<sup>1</sup> However, certain workplace and employment issues cannot be resolved by the courts under this Plan, since the court does not have the authority to do so.

This Plan addresses the following workplace and employment issues:

- Equal Employment Opportunity and Anti-Discrimination Rights
- Sexual Harassment
- Family and Medical Leave Rights
- Employment and Reemployment Rights of Members of the Uniformed Services
- Occupational Safety and Health Protections
- Polygraph Tests
- Whistleblower Protection
- Employee Dispute Resolution Procedures for Claims of the Denial of the Rights Afforded Under this Plan

Chapter 1 of this Plan sets forth general provisions, provides definitions of terms used throughout the Plan and provides information relating to coverage. Chapters 2 - 7 summarize the rights that are protected under the Plan. Chapter 8 sets forth the dispute resolution procedures that should be invoked by any individual who feels his or her rights were violated.

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<sup>1</sup> Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act of 1990; Age Discrimination in Employment Act of 1967; Family and Medical Leave Act of 1993; Occupational Health and Safety Act of 1970; Employee Polygraph Protection Act of 1988; Rehabilitation Act of 1973; Chapter 43 of Title 38 (relating to veterans’ employment and reemployment).

Court units may also provide additional rights and protections to employees through general grievance or adverse action procedures. This Plan does not affect the operation of such plans. However, an employee may bring a particular complaint only once. Therefore, if the court unit has a grievance or adverse action procedure in addition to this Plan, an employee should carefully evaluate under which procedure he or she wishes to proceed. If unsure, the employee is encouraged to discuss the issue with the EDR Coordinator.

Complaints alleging that a judicial officer engaged in conduct prejudicial to the efficient and expeditious administration of the business of the courts or is unable to discharge all of the duties of office by reason of mental or physical disability are to be brought exclusively pursuant to 28 U.S.C. Sec. 351 et seq. To bring such a complaint, one should follow the procedures set forth in the Rules of the Judicial Council of the First Circuit Governing Complaints of Judicial Misconduct or Disability, a copy of which may be obtained from the Circuit Executive's Office.

## B. DEFINITIONS

1. The term “claim” means the filing of a request for counseling and/or mediation as set forth in Chapter 8, which may be further pursued by the filing of a complaint.
2. EMPLOYEE OR STAFF. The terms “employee” and “staff” include all applicants for employment, current employees and former employees, except the following individuals, who are *specifically excluded and are not covered* under this Plan:
  - (a) Temporary employees and applicants for temporary positions;
  - (b) Interns and externs, and applicants for law clerk and intern and extern positions;
  - (c) Applicants for the position of secretary to a judicial officer;
  - (d) Applicants for Magistrate Judge positions;
  - (e) Applicants for Bankruptcy Judge positions;
  - (f) Private attorneys who represent or apply to represent indigent defendants under the Criminal Justice Act;
  - (g) Criminal defense investigators who are retained on a contract basis and are not full-time or part-time employees of a Federal Public Defender's Office;
  - (h) Volunteer counselors or mediators, including members of the District Court ADR Panel; or
  - (i) Other individuals who are not employees of an “employing office” as defined in § 3 below.

2. UNIT EXECUTIVE. The term “unit executive” includes:
  - (a) The clerks of the district and bankruptcy courts;
  - (b) The chief probation officer; and
  - (c) The chief executive officer of any unit of the court that may be created in the future.
3. EMPLOYING OFFICE. The term “employing office” includes any office of the United States District Court for the District of Rhode Island including:
  - (a) district, bankruptcy and magistrate judges' chambers;
  - (b) offices of the clerks of court; and
  - (c) probation/pretrial services office.

The court in which the judicial officer sits is the employing office of the judicial officer and his or her chambers staff.

4. JUDICIAL OFFICER OR JUDGE. The terms “judicial officer” and “judge” mean a judge appointed under Article III of the Constitution, a United States Bankruptcy Judge, or a United States Magistrate Judge.
5. COURT UNIT. The term “court unit” applies to the different offices of the court in the District of Rhode Island, i.e., district court, bankruptcy court and probation/pretrial services office.
6. DAY. For purposes of determining periods of time in the procedural sections of this Plan, the word “day” pertains to a calendar day, not a business day. If the deadline falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following Monday or the next court business day.
7. CHIEF JUDGE. Unless otherwise specified, the term “chief judge” shall mean the Chief Judge of the District Court for all matters arising out of the District Court and Probation/Pretrial Services Office; and the term shall mean the Bankruptcy Judge for the District of Rhode Island for all matters arising out of the Bankruptcy Court. Unless otherwise specified, the term shall also include any “delegatee” under Chapter 7(E) of this Plan.

## C. SCOPE OF COVERAGE

1. WHO IS COVERED. This Plan applies to:
  - (a) All district, bankruptcy and magistrate judges of the United States Courts in the District of Rhode Island;
  - (b) Judges' chambers staff, excluding interns or externs;
  - (c) The unit executive and staff of the following court support offices:
    - (1) Office of the Clerk of the District Court;
    - (2) Probation/Pretrial Services Office;
    - (3) Office of the Clerk of the Bankruptcy Court; and
    - (4) Any additional court support office created after the adoption of this Plan.

## CHAPTER 2 — EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

### A. 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), or disability is prohibited, subject to the specific exemptions set forth in Sections B, C, D and E of this chapter. The rights and protections of Sections I through VII of the District of Rhode Island's Equal Employment Opportunity Plan shall also apply to employees.

### B. DISABILITY

1. The term "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 impairment, or being regarded as having such impairment. See 42 U.S.C. § 12102(2).
2. The provisions of Section A of this Chapter do not preclude consideration of a person's physical or mental impairments if they would significantly affect that individual's ability to perform important aspects of the job in question. Before a person is rejected from or removed from a job because of physical or mental impairments, reasonable accommodations shall be considered in making the decision.
3. Because probation officers are placed in high risk situations where a physical or mental disability could place them and others in extreme jeopardy, probation officers are excluded from this section.

### C. AGE

1. The provisions of Section A of this Chapter relating to age are subject to special provisions of law and regulations approved by the Judicial Conference with respect to the maximum age at initial hiring of probation and pretrial services officers and to mandatory retirement ages for such persons.
2. The provisions of Section A of this Chapter relating to age do not preclude (subject to the protections afforded in Section B of this Chapter) consideration of a particular individual's physical or mental impairment or limitation that significantly affects that person's ability to perform important aspects of a job even though that impairment or limitation may be the result of the aging process.

### D. RELIGION

Reasonable accommodation shall be made for an individual's religious observances and practices unless it would impair the operations or dignity of the court or impose undue hardship on other court personnel.

### E. SEXUAL HARASSMENT

The prohibition against discrimination based on “gender” stated in Chapter 2 (Equal Employment Opportunity and Anti-Discrimination Rights) includes a prohibition against sexual harassment.

Sexual harassment includes, but is not necessarily limited to: unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature when it is unwelcome and: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

## **CHAPTER 3 — FAMILY AND MEDICAL LEAVE RIGHTS**

An employing office shall comply with the Family and Medical Leave Act of 1993, which entitles federal court employees to receive up to 12 administrative workweeks of unpaid leave per year. For more information, see Volume 12, Chapter 9, Section 920.20.35 of the *Guide to Judiciary Policy*.

## **CHAPTER 4 — EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

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

## **CHAPTER 5 — OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS**

[Not to be effective until such time as the Administrative Office of the United States Courts provides a set of guidelines governing occupational safety and health protections.]

Each employing office shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Complaints which seek a remedy that is within the jurisdiction of the General Services Administration (“GSA”) or the United States Postal Service (“USPS”) to provide, or complaints which relate to matters under the control of a private landlord, are not cognizable under this Plan; such requests should be filed directly with GSA, the USPS, or the private landlord, as appropriate.

## **CHAPTER 6 — 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 7 — WHISTLEBLOWER PROTECTION**

### **A. GENERAL**

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take an adverse employment action with respect to any employee (excluding applicants for employment) because of any disclosure of information to—

1. the appropriate federal law enforcement authority, or
2. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts,

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

1. is not specifically prohibited by law,
2. does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the Guide to Judiciary Policy, Vol. 20, Ch. 8), and
3. does not reveal information that would endanger the security of any federal judicial officer.

## B. DEFINITION

For purposes of this Chapter, an "adverse employment action" means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee's job status, compensation, terms, or responsibilities, or the employee's working conditions.

## CHAPTER 8 — DISPUTE RESOLUTION PROCEDURES

### A. ALLEGED VIOLATION BY JUDGE

Any employee alleging that a judge violated any rights granted under the District of Rhode Island's EEO Plan or this EDR Plan may file an EDR claim in accordance with this Plan. In such instance, all claims will be referred to the Chief Judge of the First Circuit Court of Appeals who will administer the claim pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. § 351et seq., and the Rules for the Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference, pursuant to 28 U.S.C. §§ 331 and 358. See 28 U.S.C. §§ 351-362. At the conclusion of the Judicial Conduct proceeding, the Chief Circuit Judge has the discretion to refer the matter back to the EDR claims procedures. If the claim is against the Chief Circuit Judge, the most-senior active circuit judge not disqualified shall administer the claim pursuant to the Act.

The court or employing office shall protect the confidentiality of allegations filed against a judge to the same extent as claims filed under 28 U.S.C. § 351 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference, pursuant to 28 U.S.C. §§ 331 and 358. See 28 U.S.C. §§ 351-362.

### B. ALLEGED VIOLATIONS BY OTHERS

Before invoking a request for counseling or mediation, 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 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 District of Rhode Island's EEO Plan or this EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling and mediation with his or her court's EDR Coordinator in accordance with Section F of this Chapter.

An employee who claims a denial of the rights granted under Chapters 2 through 7 of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of:

- (a) an informal resolution process consisting of counseling and mediation;
- (b) a complaint and a determination by the chief judge or a judicial officer designated by the chief judge as to whether the complaint should be summarily dismissed;
- (c) a hearing before the chief judge of the court (or a judicial officer designated by the chief judge); and



- (d) a review of the hearing decision by a panel consisting of three judicial officers who are not disqualified.

The court or employing office shall protect the confidentiality of the 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.

### C. GENERAL PROVISIONS AND PROTECTIONS

1. **PROHIBITION AGAINST RETALIATION.** The Court, any unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint. Likewise, any person who participates in the filing or processing of a complaint, such as an EDR coordinator, mediator, witness or co-worker, is also entitled to freedom from retaliation.
2. **RIGHT TO REPRESENTATION.** At the mediation, complaint and review stages only, every individual invoking the dispute resolution procedures of this Plan or who may be affected uniquely and adversely by the resolution of a complaint under this Plan (such as, for example, a person whose promotion is claimed to have constituted a discriminatory practice) has the right (at his or her own expense) to be represented by counsel. Any individual alleged to have violated rights under the Plan is also entitled to representation by counsel, at his or her own expense. The head of the employing office involved in proceedings under this Plan is likewise entitled to representation by counsel in the processing and resolution of such a matter.
3. **CASE PREPARATION.** To the extent feasible, every individual who is involved in 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, as determined by the court employee's appointing officer. If the appointing officer is involved in the dispute, then the determination shall be made by the chief judge of the relevant court.
4. **NOTICE.** Beginning at the mediation stage and until final resolution of the complaint, every individual alleged to be involved in a violation of the provisions of this Plan has the right to have reasonable notice of the charge and an opportunity to respond to the allegation.

5. EXTENSIONS OF TIME. The chief judge, or his or her delegatee, may extend any of the deadlines set forth in this Chapter for good cause.
6. DISMISSAL OF CLAIM. On his or her own initiative or at the request of any party, the chief judge of the relevant court 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 District of Rhode Island's EEO Plan or this EDR 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.
7. RECORDS. At the conclusion of proceedings under this Plan, all papers, files and reports will be filed with the EDR Coordinator for the employing office in which the matter arose. No papers, files, or reports relating to a dispute shall be filed in an employee's personnel folder, except as necessary to implement an official personnel action.

#### D. DESIGNATION AND DUTIES OF EMPLOYMENT DISPUTE RESOLUTION COORDINATOR

1. DESIGNATION OF EDR COORDINATORS. Each court unit shall designate an EDR Coordinator and may designate an alternate EDR coordinator. (The term "EDR Coordinator" shall include the EDR Coordinator and any alternate EDR coordinator unless otherwise specified.) Employees may bring an EDR complaint to the EDR Coordinator in a different court unit if their complaint is against their court unit's EDR Coordinator or if they are uncomfortable discussing the issue with their court unit's EDR Coordinator.
2. DUTIES OF EDR COORDINATOR. The duties of the EDR Coordinator shall include the following:
  - (a) INFORMATION. The EDR Coordinator shall provide information to the judicial officers and employees of the court unit regarding the rights and protections afforded under this Plan;
  - (b) ADMINISTRATION. The EDR Coordinator shall coordinate and organize the procedures and establish and maintain official files of the court unit pertaining to complaints and other matters initiated and processed under this Plan.
  - (c) COUNSELING. The EDR Coordinator shall coordinate the counseling of individuals in the initial stage of the complaint process, in accordance with this Plan;
  - (d) STATISTICS. The EDR Coordinator shall collect, analyze and consolidate statistical data and other information pertaining to the court's EDR Plan for the court unit. The EDR Coordinator will draft for the court's approval an Annual Report to the Administrative Office. If a consolidated report is required, the EDR Coordinator for the district court unit shall coordinate the preparation and dissemination of this information.

#### E. GENERAL DELEGATION & DISQUALIFICATION PROVISION

The chief judge may, from time to time, either by a continuing delegation or by a delegation for purposes of a particular matter, designate another judicial officer of the court, or a judicial officer authorized to sit by designation, to perform the duties assigned in this Section to the chief judge. A party may seek disqualification of a judicial officer, employee or other person involved in the dispute by written request to the chief judge. Such written request shall specify why the individual should be disqualified.

#### F. INFORMAL RESOLUTION: COUNSELING AND MEDIATION

The dispute resolution process is initiated by an attempt at informal resolution. An employee who believes that his or her rights under this Plan have been violated must first request counseling. If at the conclusion of counseling the employee chooses to further pursue his or her claim, the employee must then request mediation. The chief judge may waive these requirements for good cause.

1. COUNSELING. Requests for counseling shall be submitted to the EDR Coordinator for the court unit in which the request arises; shall be made within 15 days of the alleged violation or within 15 days of the time the employee becomes aware of the alleged violation; contain all the violations asserted by the claimant; and shall be made in writing and signed. The procedures are as follows:
  - (a) WHO MAY SERVE AS COUNSELOR. The counseling shall be conducted by the EDR Coordinator for the court unit in which the request arises. However, if that EDR Coordinator is disqualified from serving as counselor under Section E of this Chapter, or is otherwise unable to perform this function in a particular case, the chief judge shall designate another individual to conduct the counseling.
  - (b) PURPOSES OF COUNSELING. The purposes of 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.
  - (c) CONFIDENTIALITY. All contacts made, information obtained or exchanged and representations made by the complainant, the unit executive by whom they are employed, any witness(es) and all other information obtained during the counseling process shall be treated in the same manner as other sensitive personnel issues which are normally confidential and for official use only. However, this confidentiality provision shall not prevent disciplinary action against the individual alleged to have violated rights under the Plan, where such action is deemed appropriate.
  - (d) FORM OF SETTLEMENT. The counselor shall reduce to writing any

settlement or other resolution achieved during the counseling process. Any settlement shall be signed by the employee and all other individuals who are necessary to implement the settlement, but need not be signed by all employees who may claim to be adversely affected thereby. Any settlement which involves the expenditure of funds must be approved by the chief judge or the chief judge's designee.

- (e) DURATION OF COUNSELING PERIOD. The period of counseling shall not exceed 30 days, beginning on the date that the request for counseling is received by the EDR Coordinator, unless both the employee and counselor agree in writing to extend this period an additional 30 days.
- (f) CONCLUSION OF THE COUNSELING PERIOD AND NOTICE. If a settlement or other resolution is not reached during the counseling period, the EDR Coordinator shall notify the employee in writing of the end of the counseling period. The notice shall be sent by regular mail to the employee's last known address. As part of the notice, the EDR Coordinator shall inform the employee that he or she may file a request for mediation and the time in which to do so.

2. MEDIATION. Requests for mediation shall be submitted to the EDR coordinator for the court unit in which the request arises within 15 days after the notice of the conclusion of the counseling period is mailed. The request shall be made in writing and shall state the claim(s) presented. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter. The procedures are as follows:

- (a) WHO MAY SERVE AS MEDIATOR. As soon as possible after receiving the request for mediation, the EDR Coordinator shall, subject to the approval of the chief judge, designate a mediator and provide written notice of such designation. The mediator shall be selected from a panel of individuals designated by the chief judge. A court unit's EDR Coordinator may not serve as mediator on matters arising out of that court unit. If the complaint alleges that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the chief judge.
- (b) PURPOSE OF MEDIATION. The mediator shall meet separately and/or jointly with the employee and his or her counsel, if any, the individual(s) alleged to have violated the complaining employee's rights and the head of the employing office. Such meetings may be held separately and/or jointly with the people involved to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.

- (c) CONFIDENTIALITY. No person or party involved in the mediation process shall disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, or as necessary to discipline the individual alleged to have violated rights under the Plan, where appropriate. In addition, in the event the employee files a complaint pursuant to Section G of this Chapter, the Chief Judge and hearing officer shall have access to the record of claims raised in mediation.
- (d) 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 counsel, if any, the individual who is authorized to enter into settlement on the employing office's behalf, and all other individuals who in the judgment of the mediator are necessary to implement the settlement; but need not be signed by all employees who may claim to be adversely affected thereby. The original settlement agreement shall be filed with the EDR Coordinator, who will promptly transmit copies to the parties. Any settlement which involves the expenditure of funds must be approved by the chief judge or the chief judge's designee.
- (e) DURATION OF MEDIATION PERIOD. The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, she or he may proceed to file a complaint. The mediation period may be extended by mutual agreement of the mediator and the parties.
- (f) CONCLUSION OF MEDIATION PERIOD AND NOTICE. If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator shall provide the employee, the employee's counsel, if any, the individual who is the subject of the complaint and the head of the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section G of this Chapter and the time within which to do so.

#### G. COMPLAINT, REVIEW AND HEARING

1. COMPLAINT. Complaints shall be filed with the EDR Coordinator for the court unit in which the complaint arises no later than 15 days after the notice of the end of the period of informal resolution is mailed. The EDR Coordinator will retain the original and transmit copies to the chief judge, the respondent (by service on the head of the employing office), and any individual who is the subject of the complaint. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought. Claims not

presented during counseling or mediation may not be pursued. The respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint.

2. **RESPONSE.** Both the respondent, as defined in paragraph 1 above, and any individual alleged to have violated rights protected under this Plan, shall file a written response to the allegations contained in the complaint with the EDR Coordinator within 15 days after the complaint is filed.
3. **SUFFICIENCY OF COMPLAINT**
  - (a) **EXAMINATION OF COMPLAINT.** The complaint and any other relevant documents shall be examined by the chief judge or a judicial officer designated by the chief judge. In the event the chief judge is disqualified under Section E of this Chapter, or is unavailable to serve, the next most senior judge of the court in regular active service who is available and qualified to serve shall assume the responsibilities of the chief judge under this Chapter. In the case of a complaint alleging that an Article III judge has violated a right protected by this Plan, that judge may elect to have a hearing conducted by a judge of another court, as designated by the First Circuit Judicial Council. Any designation of a judicial officer from another court to hear and decide the case shall be arranged by agreement of the chief judges of the affected courts.
  - (b) **SUMMARY DISMISSAL.** After receipt of the complaint and any responses, the chief judge or designated judicial officer may dismiss in writing any complaint that is found to be frivolous; to be unduly repetitive of a previous complaint; to fail to state a claim upon which relief may be granted; or to make a claim or claims that were not advanced in counseling or mediation. The EDR Coordinator shall immediately send written notice of such action to all parties.
  - (c) **HEARING PROCEDURES**
    - (1) **HEARING OFFICER.** If the complaint is not summarily dismissed under the preceding subsection, the judicial officer who examined the complaint, or any other judicial officer designated by the chief judge, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
    - (2) **SPECIFIC PROVISIONS.** Such officer (i.e., the “hearing officer”) may provide for such discovery and investigation as is necessary. In general, the hearing officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this section:
      - (i) **TIMING FOR HEARING.** The hearing shall be commenced no

later than 60 days after receipt of the complaint by the EDR Coordinator.

- (ii) NOTICE REQUIREMENTS. All parties, including but not limited to, the complainant, the head of the employing office against which the complaint has been filed and any individual alleged to have violated rights protected by this Plan must be sent reasonable written notice of the hearing by the EDR Coordinator. Where the complaint is filed against a judge or other judicial officer by chambers staff, the chief judge will also receive notice.
- (iii) PROCEEDINGS. At the hearing, the complainant, the employing office and any individual alleged to have violated rights under the Plan will have the right to present evidence and to cross-examine adverse witnesses.
- (iv) RECORD. A verbatim record of the hearing must be kept and shall be the sole official record of the proceeding.
- (v) DECISION. In reaching his or her decision, the hearing officer shall be guided by judicial and administrative decisions under the laws related to this Plan and by decisions of the First Circuit Judicial Council.
- (vi) REMEDIES. Remedies may be provided in accordance with Section I 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.
- (vii) TIMING FOR DECISION. The final decision of the hearing officer must be issued in writing no later than 60 days after the conclusion of the hearing.
- (viii) RECORD OF FINAL DECISION. Final written decisions under Sections G and H of Chapter 7 shall not name the complainant or individual respondents and shall be captioned as follows:

*In the matter of a Complaint Arising Under the Employee  
Dispute Resolution Plan of the [insert court title]*

*Case No. [year-number]*

*The [enter court office name] as the  
Designated Employee Office*

- (ix) NOTICE OF ACTION. The EDR Coordinator shall send written notice of any action taken as a result of the hearing to all parties, including any individual alleged to have violated rights protected by this Plan.
  - (x) MALICIOUS FILING. A finding by the hearing officer that a complaint has been filed maliciously will constitute grounds for adverse action.
- (d) RECORD UNDER SEAL. All proceedings and documents under Sections G and H shall be under seal and shall not be disclosed with the following exceptions: as required under paragraph (viii) above; to the extent necessary to implement any settlement reached or remedy ordered; as permitted under Chapter 9 of this Plan; or by order of the chief judge for good cause.

#### H. PROCEDURES FOR REVIEW OF DECISION

A party or individual aggrieved by a final decision of the hearing officer, or by summary dismissal of the complaint, may petition for review of the final decision by a “Review Panel.” The standard governing such review shall be whether the final decision is supported by substantial evidence on the record as a whole. The petition shall be in writing and filed with the EDR Coordinator within 15 days of the mailing of the final decision of the hearing officer or the order of summary dismissal. The EDR Coordinator shall retain the original petition and promptly provide a copy to the Chief Judge of the District Court, who will designate three judicial officers to serve on the Review Panel. Any judicial officer of the court and any judicial officer authorized to sit by designation, who is not disqualified, may be so designated. The EDR Coordinator shall then provide a copy of the petition to members of the Review Panel and to all other parties to the proceedings under Section G above. The Review Panel shall determine the manner of conducting the review, and shall issue its decision within 60 days of the filing of the petition. The decision of the Review Panel is final and not subject to further review.

#### I. REMEDIES

1. ORDER FOR REMEDY. Where judicial officers acting pursuant to Section G or H of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.



2. AVAILABLE REMEDIES. Remedies which may be provided under this Plan, include, but are not limited to:
  - (a) placement of an employee in a position previously denied;
  - (b) placement in a comparable alternative position;
  - (c) reinstatement to a position from which previously removed;
  - (d) prospective promotion to a position;
  - (e) priority consideration for a future promotion or position;
  - (f) back pay, including attorneys' fees and associated benefits, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
  - (g) personnel records modification and/or expungement;
  - (h) "equitable" relief, such as temporary stays of adverse actions;
  - (i) granting of family and medical leave;
  - (j) reasonable accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours;
3. JUDGES' SECRETARIES, ASSISTANTS AND LAW CLERKS. Remedies available to judges' secretaries, assistants and law clerks include those listed in paragraph 2, above, except that a judge will not be required to continue any employer/employee relationship as a form of remediation.
4. REMEDIES NOT AVAILABLE. Remedies which are not available to any complainant include:
  - (a) payment of attorneys' fees, except as available under the Back Pay Act, see 2(f) above;
  - (b) compensatory damages; and
  - (c) punitive damages.

#### **CHAPTER 9 - EXCLUSIVE & FINAL PROCESS**

This Plan contains the sole and exclusive process for addressing all workplace and employment issues covered by this Plan. A final decision rendered under Chapter 7 will not be reconsidered through a court unit's grievance, adverse action or any other procedure.

## **CHAPTER 10 - PUBLIC ACCESS**

The EDR Coordinator shall prepare an annual statistical report in a form approved by the Chief Judge of the District Court, which may be made available to the public upon written request.

## **CHAPTER 11 - NOTICE**

Copies of this Plan shall be given to all employees upon implementation. After that date, copies will be given to each new employee when hired, and, upon request, to members of the public.