UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED
JAN 31 2013
Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE MATTER OF)
EMPLOYMENT DISPUTE) GO 13-1
RESOLUTION PLAN)

Before the Court is the matter of the adoption of an Employment Dispute Resolution Plan. The Tenth Circuit has modified its Model plan to extend whistleblower protection to employees of the federal judiciary. The Court has considered the Tenth Circuit's EDR Plan and adopts the same without deviation.

Accordingly, the Court adopts the attached Employment Dispute Resolution Plan of the United States District Court for the Northern District of Oklahoma.

IT IS SO ORDERED this 31 day of January 2013.

GREGORY K. FRIZZELL
CHIEF UNITED STATES DISTRICT JUDGE

CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE

JOHN E. DOWDELL
UNITED STATES DISTRICT JUDGE

JAMES H. PAYNE
UNITED STATES DISTRICT JUDGE

TERENCE C. KERN
UNITED STATES DISTRICT JUDGE

EMPLOYMENT DISPUTE RESOLUTION PLAN
of the
UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF OKLAHOMA

JANUARY 31, 2013

Table of Contents

CHAPTER I - GENERAL PROVISIONS. 1
§ 1 Preamble. 1
§ 2 Scope of coverage. 2
§ 3 Definitions. 2
§ 4 Proper Forum. 3

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY
AND ANTI-DISCRIMINATION RIGHTS. 3
§ 1 General.. 3
§ 2 Special provision for probation and pretrial services of officers. 4

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS. 4
§ 1 General 4

CHAPTER IV - WORKER ADJUSTMENT
AND RETRAINING NOTIFICATION RIGHTS. 4
§ 1 General 4
§ 2 Definitions. 4

CHAPTER V - EMPLOYMENT AND REEMPLOYMENT RIGHTS
OF MEMBERS OF THE UNIFORMED SERVICES. 5
§ 1 General.. 5

CHAPTER VI - OCCUPATIONAL SAFETY
AND HEALTH PROTECTIONS.. 5
§ 1 General.. 5
§ 2 Court program requirements. 5

CHAPTER VII - POLYGRAPH TESTS.. 6
§ 1 General.. 6

CHAPTER VIII - WHISTLEBLOWER PROTECTION. 6
§ 1 General 6
§ 2 Definition.. 6

CHAPTER IX - REPORTS OF WRONGFUL CONDUCT. 7

CHAPTER X - DISPUTE RESOLUTION PROCEDURES.. 7

§ 1 General procedure for consideration of alleged violations. 7
§ 2 Alleged Violation by Employee.. 8
§ 3 Alleged Violation by Judge 8
§ 4 Confidentiality 8
§ 5 General provisions and protections. 9
A. Prohibition against retaliation 9
B. Right to representation. 9
C. Case preparation. 9
D. Extensions of time 9
E. Dismissal of claim. 9
F. Notice 10
G. Settlement. 10
H. Records 10
§ 6 Designation and duties of EDR Coordinator 10
§ 7 Designation of Presiding Judge; impartiality; disqualification 11
§ 8 Counseling. 12
A. Initiating a proceeding; formal request for counseling.. 12
B. Form and manner of requests. 12
C. Procedures. 12
1. Who may serve as counselor 12
2. Purposes of counseling 12
3. Confidentiality. 12
D. Duration of counseling period. 13
E. Conclusion of the counseling period and notice.. 13
§ 9 Mediation.. 13
A. Initiation. 13
B. Procedures. 13
1. Designation of mediator 13
2. Who may serve as Mediator. 13
3. Purpose of mediation 14
4. Confidentiality 14
C. Duration of mediation period. 14
D. Conclusion of mediation period and notice. 14
§ 10 Complaint and hearing.. 14
A. Complaint 14
B. Hearing procedures.. 15
1. Presiding Judge. 15
2. Specific provisions. 15
§ 11 Review of decision 16
§ 12 Remedies. 16
§ 13 Record of final decisions. 18

EMPLOYMENT DISPUTE RESOLUTION PLAN
of the
UNITED STATES DISTRICT COURT
for the NORTHERN DISTRICT OF OKLAHOMA

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Employment Dispute Resolution Plan of the United States District Court for the Northern District of Oklahoma. ("EDR Plan"). It was approved by the Judicial Council of the Tenth Circuit in order to provide its employees the rights and protections of the Model Employment Dispute Resolution Plan ("Model EDR Plan") adopted by the Judicial Conference of the United States in March 2010, and may be modified only by approval of the Judicial Council. The EDR Plan's rights and protections are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

This EDR Plan supersedes any and all previous versions of the District Court's Employment Dispute Resolution Plan. This Court and each employing office listed in Section 2 of this Chapter shall prominently post this EDR Plan on their internal and external websites. This court and each employing office shall post notices stating where employees can locate a copy of the court's EDR Plan and identifying the name and contact information of the court's EDR Coordinators.

Employees of this Court are afforded certain additional rights and protections regarding adverse action or general grievance proceedings which are set forth in the court's Personnel Manuals. These rights and protections are not modified and remain in effect as they are currently detailed in the Personnel Manuals, which may be amended from time to time.

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

§ 2 Scope of coverage

This EDR Plan applies to all Article III judges and other judicial officers of the United States District Court for the Northern District of Oklahoma; all chambers staff of the District Court Judges, and all employees of the District Court, including the unit executives and staff of the Clerk's Office, and the Probation and Pretrial Services Office.

§ 3 Definitions

For purposes of this Plan:

A. The term "claim" means the filing of a request for counseling as set forth in Chapter X, which may be pursued further by the filing of a request for mediation and a complaint.

B. The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include interns or externs providing gratuitous service; applicants for bankruptcy judge or magistrate judge positions; private attorneys who apply to represent indigent defendants under the Criminal Justice Act; criminal defense investigators not employed by federal public defenders; volunteer counselors or mediators; or other individuals who are not employees of an "employing office" as that term is defined below.

C. The term "employing office" includes all offices of the United States District Court for the Northern District of Oklahoma, including the Clerk's Office and the United States Probation and Pretrial Services Office for the District Court. The District Court is the employing office for all chambers staff of District Court judges.

D. The term "judge" means a District Court Judge of the United States District Court for the Northern District of Oklahoma appointed under Article III of the Constitution, a United States Magistrate Judge for the Northern District of Oklahoma; a judge sitting by designation; or a recalled District Court Judge or Magistrate Judge. The term "Chief Judge" means the Chief Judge of the United States District Court for the Northern District of Oklahoma. The term "Presiding Judge" means the Chief Judge or other district court judge designated by the Chief Judge

under Chapter X, § 7 to assume the duties of Chief Judge under this EDR Plan.

E. The term "court" refers to the United States District Court for the Northern District of Oklahoma.

F. The term "EDR Coordinator" means the person designated by the Chief Judge under Chapter X, § 6 to serve as the employment dispute resolution coordinator, and any alternate designee(s), unless otherwise noted.

§ 4 Proper Forum

If an employee seeks redress of an employment dispute under both the EDR Plan and under the general grievance procedures set forth in the court's Personnel Manuals with respect to the same or substantially the same adverse action or wrongful conduct, as defined in Chapter II, § 1, the Chief Judge will craft a procedure for processing both claims, including determining any common issues of fact, that is consistent with the substantive and procedural rights relating to both such claims. In doing so, the Chief Judge may determine that all or part of the grievance claim must be abated until action is taken on the EDR claim, or that only one forum is the appropriate forum for the claims.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **General** - Discrimination against employees based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. The term "disability" means (1) a physical or mental impairment that substantially limits one or more of the major life activities of an employee, (2) a record of such an impairment, or (3) being regarded as having such an impairment. *See 42 U.S.C. § 12102(2).* Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. All of the above constitute "wrongful conduct." The rights and protections of Sections I through VII of the Judiciary's Model Equal Employment Opportunity Plan ("Model EEO Plan"), a copy of which is attached and incorporated by reference, shall also

apply to employees (except that the duties of the EEO Coordinator under the Model EEO Plan are assumed by the EDR Coordinator, as set forth in Chapter X, § 6).

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

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

§ 1 **General** - Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381 et. seq., applies to court employees in the manner prescribed in Volume 12, Chapter 9, Section 920.20.35 of the *Guide to Judiciary Policy*.

CHAPTER IV - WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

§ 1 **General** - No "employing office closing" or "mass layoff" (as defined in Section 2 of this Chapter) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff which results from the absence of appropriated funds.

§ 2 **Definitions**

A. The term "employing office closing" means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

B. The term "mass layoff" means a reduction in force which:

1. is not the result of an employing office closing; and
2. results in an employment loss at the single site of employment during any 30 day period for

a. (1) at least 33 percent of the employees (excluding any part-time employees); and
(2) at least 50 employees (excluding any part-time employees); or
b. at least 500 employees (excluding any part-time employees).
See 29 U.S.C. § 2101.

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

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

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

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

§ 2 **Court program requirements** - The court shall implement a program to achieve the protections set forth in Section 1 of this Chapter.

CHAPTER VII - POLYGRAPH TESTS

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

CHAPTER VIII – WHISTLEBLOWER PROTECTION

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

A. the appropriate federal law enforcement authority, or

B. 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 –

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

CHAPTER IX - REPORTS OF WRONGFUL CONDUCT

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

Judges and employees are encouraged to report any racial or sexual harassment or other wrongful conduct as defined in Chapter II, §1, to one of the court's EDR Coordinators, the Chief Judge, a unit executive, human resources manager, or their supervisor as soon as possible, before it becomes severe or pervasive. Retaliation against any employee making a report of wrongful conduct is prohibited.

The person receiving such report of wrongful conduct shall promptly (a) create a written summary of the report and (b) inform the Chief Judge, one of the EDR Coordinators and the appropriate unit executive of such report. The Chief Judge and/or unit executive shall ensure that the allegations in the report are appropriately and impartially investigated, either by an EDR Coordinator, the human resources manager, or other person who is not supervised by the alleged violator and who is otherwise impartial.

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

Employees found by the Chief Judge and/or unit executive to have engaged in wrongful conduct, as defined in this Plan, may be subject to disciplinary action. Whenever it is determined that wrongful harassment has occurred in violation of this EDR Plan, the court will undertake immediate and corrective and remedial action designed to stop the harassment, correct its effects on the employee, and ensure that the harassment does not recur.

CHAPTER X - DISPUTE RESOLUTION PROCEDURES

§ 1 General procedure for consideration of alleged violations - An employee who claims a denial of the rights granted under the Model EEO Plan or Chapters II through VIII of this EDR Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the process consists of:

A. counseling and mediation;

B. hearing before a Presiding Judge; and

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

§ 2 **Alleged Violation by Employee** - An employee alleging that any of the rights granted under the Model EEO Plan or this EDR Plan have been violated, and who seeks relief under this EDR Plan, must timely file a request for counseling with one of the court's EDR Coordinators in accordance with Section 8 of this Chapter. Before invoking a request for counseling, an employee is encouraged (to the extent feasible) to bring his or her concerns to his or her supervisor or unit executive, unless the supervisor or unit executive is the alleged violator. In such a situation, the employee is encouraged to bring his or her concerns to an EDR Coordinator or a human resources manager.

§ 3 **Alleged Violation by Judge** - Any employee alleging that a judge violated any rights granted under the Model EEO Plan or this EDR Plan may file an EDR claim in accordance with this Plan. In such an instance, however, all the claims procedures of this Chapter shall be performed by the Judicial Council of the Tenth Circuit, either by members of the Council directly or by persons designated to act on its behalf, which may include the Chief Circuit Judge. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the Judicial Council or its designee will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, the EDR Plan. In so doing, the Judicial Council or its designee may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

§ 4 **Confidentiality** - The court, as well as the Chief Judge, EDR Coordinator, Mediator, Presiding Judge, and the employing office, shall protect the confidentiality of allegations and claims filed under this Plan to the extent possible. However, information about allegations filed under this EDR Plan may be shared on a need-to-know basis. Records relating to violations under this EDR Plan shall be kept confidential on the same basis.

§ 5 General provisions and protections

A. Prohibition against retaliation - Claimants under this EDR Plan have the right to be free from retaliation because of filing a claim pursuant to this Plan. Likewise, any person who participates in the filing or processing of a claim, such as an EDR Coordinator, Mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.

B. Right to representation - Every individual involved in the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice at their own expense, if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's unit executive or appointing officer, or if that person is involved in the dispute, then by the Chief Judge.

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

D. Extensions of time - The Presiding Judge may extend any of the deadlines set forth in this Chapter for good cause. If any deadline required by this EDR Plan falls on a Saturday, Sunday or court holiday, the deadline shall be extended to the next following court business day.

E. Dismissal of claim - After notice and opportunity to respond, the Presiding Judge, on his or her own initiative or at the request of any party, may at any time in the proceedings, dismiss a claim or complaint on the grounds that it does not invoke violations of the rights or protections granted under the Model EEO Plan or this EDR Plan; is untimely; is unduly repetitive of a previous claim, adverse action, or grievance; is frivolous; fails to state a claim upon which relief may be granted; or asserts a claim that was not presented in the request for counseling or request for mediation under this Plan.

F. **Notice** - Any notice or communication required by this EDR Plan to be sent by the Chief Judge, EDR Coordinator or Presiding Judge will be deemed to have been delivered if it is sent either by (1) certified mail or (2) email, so long as the sender uses a Return Receipt to Confirm delivery option, and receives a Delivery Confirmation Notice in response.

G. **Settlement** - The EDR Counselor, Mediator, Chief Judge or Presiding Judge, as appropriate, shall reduce to writing any settlement achieved during the employment dispute resolution process and shall secure the signature of the employee, his or her representative, if any, the member of the employing office who is authorized to enter into settlement on the employing office's behalf, and all other relevant individuals who are necessary to implement the settlement. The original settlement agreement shall be filed with the court's primary EDR Coordinator.

Any disputes concerning the enforcement, interpretation or application of a settlement agreement achieved under this EDR Plan shall be submitted to the EDR Coordinator, and shall be resolved consistent with the rules and general procedures in this EDR Plan. Such action to enforce a settlement agreement shall be limited solely to matters concerning compliance with the settlement agreement.

H. **Records** - At the conclusion of formal and informal proceedings under this EDR Plan, all papers, files, and reports (except those maintained by the Mediator) will be filed with the court's primary EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.

§ 6 **Designation and duties of EDR Coordinator** - The Chief Judge shall designate an EDR Coordinator and one or more Alternate Coordinators under this EDR Plan, and shall notify the Circuit Executive of any and all such designations. The EDR Coordinator and Alternate Coordinators shall include individuals of the opposite sex so that employees have a comfortable forum for the discussion of possibly sensitive issues during the counseling process. The duties of such persons shall include the following:

1. to provide information to the court and its employees regarding the rights and protections afforded under this Plan;

2. to coordinate and organize the procedures and establish and maintain official files pertaining to claims and other matters initiated and processed under this Plan;

3. to counsel individuals in the counseling stage of the claims process; designate a Mediator in the mediation stage; assist the Presiding Judge as needed or requested during the complaint stage; inform the parties of the procedures for seeking review by the Judicial Council; and if a petition for review is filed, coordinate and assist with the submission of the complete record to the Judicial Council, as needed or requested, all in accordance with Sections 8, 9 , 10 and 11 of this Chapter; and

4. as to the primary EDR Coordinator, to collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process, and to perform all of the duties assigned to the EEO Coordinator under the Model EEO Plan.

§ 7 Designation of Presiding Judge; impartiality; disqualification - If the Chief Judge is unavailable to perform any of the duties assigned to the Chief Judge under this EDR Plan, he or she may designate another district court judge who is available and impartial to assume any or all of those duties (the "Presiding Judge").

The Chief Judge, EDR Coordinator, Mediator and Presiding Judge shall be impartial, meaning they shall not have participated substantively in any manner in the employment dispute or adverse employment action that is the subject of the EDR claim, or otherwise have an interest in the dispute which would conflict with their impartiality.

A party may seek disqualification of the Presiding Judge, EDR Coordinator, or Mediator by written request to the Chief Judge. Such written request shall contain facts regarding why the individual should be disqualified.

If the Chief Judge substantively participated in the alleged adverse employment action or is named as being involved in the EDR claim, the Chief Judge shall designate another district court judge who is available and impartial to assume all of the duties of the Chief Judge under this EDR Plan.

§ 8 Counseling

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

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

1. are to be submitted to an EDR Coordinator;

2. must be made in writing and contain all the violations and claims asserted by the claimant;

3. must be submitted to an EDR Coordinator within 60 days of the alleged violation or within 60 days of the time the employee becomes aware of the alleged violation.

C. Procedures

1. Who may serve as counselor - The counseling shall be conducted by one of the court's EDR Coordinators unless such person is disqualified from serving as counselor under Section 7 of this Chapter, or is otherwise unavailable. In such instances, the Chief Judge shall designate an Alternative EDR Coordinator or another qualified individual to perform the counseling function.

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

3. Confidentiality - Upon receipt, the EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive of the relevant employing office (or the judge, if the employee is a member of chambers staff) and to the Chief Judge. Unless waived by the employee, the court and the employing

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

D. Duration of counseling period - The period for counseling shall be 30 days (or a shorter period if counseling is concluded at an earlier date), beginning on the date that the request for counseling is received by the EDR Coordinator. The counseling period may be extended for up to an additional 30 days by mutual agreement of the EDR Coordinator, the employee and the employing office.

E. Conclusion of the counseling period and notice - The EDR Coordinator shall send written notice to the employee, the employee's representative, if any, and the employing office that the counseling period has concluded. As part of the notice, the EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator a request for mediation in accordance with Section 9 of this Chapter.

§ 9 Mediation

A. Initiation - Within 15 days after the notice of the conclusion of the counseling period is sent, the employee may file with the EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented. The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive of the employing office and the Chief Judge. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.

B. Procedures

1. Designation of mediator - As soon as possible after receiving the request for mediation, the EDR Coordinator shall designate a Mediator and provide written notice of such designation.

2. Who may serve as Mediator - Any person who has the skills and experience to assist in resolving disputes, except one of the court's EDR Coordinators, may serve as Mediator.

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

4. **Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. Other than the Request for Mediation, records relating to mediation will not be filed with the EDR Coordinator under Section 5(H) of this Chapter.

C. **Duration of mediation period** - The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, he or she may proceed to file a complaint. The mediation period may be extended for up to an additional 30 days by mutual agreement of the Mediator, the employee and the employing office.

D. **Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator shall send the employee, the employee's representative, if any, and the employing office written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 10 of this Chapter.

§ 10 Complaint and hearing

A. **Complaint** - Not later than 15 days after the notice of the end of the mediation period is sent, an employee may file a complaint with the EDR Coordinator, who will transmit a copy to the Chief Judge and the unit executive of the employing office. 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 that

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

B. Hearing procedures

1. Presiding Judge - If the complaint has not been dismissed under Section § 5(E) of this Chapter, the Presiding Judge shall hold a hearing on the merits of the complaint unless the Presiding Judge determines that no material factual dispute exists.

2. Specific provisions - The Presiding Judge may provide for such pre-hearing discovery, investigation, conferences and pre- and post-hearing memorandum or briefing as he or she determines necessary. In general, the Presiding Judge shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:

a. the hearing shall be commenced no later than 60 days after the filing of the complaint;

b. the complainant and the unit executive of the employing office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to any individual alleged to have violated rights protected by this EDR Plan;

c. at the hearing, the complainant, the employing office, and any individual alleged to have violated rights under this Plan will have the right to representation, at their own expense, to present evidence on their behalf, and to cross-examine adverse witnesses;

d. a verbatim record of the hearing must be kept, at the expense of the employing office, and shall be the sole official record of the proceeding;

e. in reaching his or her decision, the Presiding Judge shall be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this EDR Plan and by decisions of the Judicial Council of the Tenth Circuit under Section 11 of this Chapter;

f. remedies may be provided in accordance with Section 12 of this Chapter where the Presiding Judge finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this EDR Plan has been violated;

g. the final decision of the Presiding Judge must be issued in writing not later than 30 days after the conclusion of the hearing; and

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

§ 11 Review of decision - A party or individual aggrieved by a summary dismissal of a claim or complaint by the Presiding Judge, or by a final decision of the Presiding Judge, may petition for review of that decision under the procedures established by the Judicial Council of the Tenth Circuit. The petition for review must be filed within 30 days of the issuance of the summary dismissal or final decision. The EDR Coordinator shall inform all persons served with notice of a final decision or summary dismissal of the procedures for seeking review by the Judicial Council. Any review will be conducted by the Judicial Council based on the record created by the Presiding Judge, and shall be affirmed if the legal standards applied are consistent with judicial and administrative decisions under the laws related to the rights protected by the EDR Plan and decisions of the Judicial Council, the factual findings are supported by substantial evidence on the record as a whole, and any discretionary rulings are not an abuse of discretion.

§ 12 Remedies

A. Where the Presiding Judge or Judicial Council acting pursuant to Section 10 or 11 of this Chapter find that a substantive right protected by this Plan has been violated, they may order a necessary and

appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.

B. Remedies that may be provided to successful complainants under this Plan include, but are not limited to:

1. placement of an employee in a position previously denied;

2. placement in a comparable alternative position;

3. reinstatement to a position from which the employee was previously removed;

4. prospective promotion to a position;

5. priority consideration for a future promotion or position;

6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied, as determined by the Presiding Judge or, if so designated by the Presiding Judge to make these requisite findings, the unit executive of the applicable employing office;

7. records modification and/or expungement;

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

9. granting of family and medical leave; and

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

C. Remedies that are *not* legally available include:

1. payment of attorney's fees (except as authorized under the Back Pay Act);

2. compensatory damages; and

3. punitive damages.

§ 13 Record of final decisions - Final decisions under this Plan shall be made available to the public, free of charge, by written request to the primary EDR Coordinator. They shall not name the complainant or any individuals, and shall be captioned as follows:

In the matter of a [Request for Counseling or Complaint] filed under the Employment Dispute Resolution Plan of the United States District Court for the Northern District of Oklahoma.

Case No. [year-number]

The [United States District Court for the Northern District of Oklahoma] or [the United States Probation Office for the Northern District of Oklahoma] or [the Clerk of the United States District Court of the Northern District of Oklahoma] as the Designated Employing Office.

Appendix A
Judiciary Equal Employment Opportunity Policy

AO 342
(Rev. 11/87)

JUDICIARY EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MODEL EQUAL EMPLOYMENT OPPORTUNITY PLAN

Judicial Conference of the United States
March 1980

(Rev. September 1986)

I. PREAMBLE.

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the Federal courts as such standards have been approved by the Judicial Conference of the United States.

II. SCOPE OF COVERAGE.

This Equal Employment Opportunity Program applies to all court personnel including judges' staffs and court officers and their staffs.

III. ORGANIZATION.

A. Implementation.

The court shall implement the Equal Employment Opportunity Program. On behalf of the court, the Chief Judge will submit modifications in the plan for judicial council approval.

B. Heads of Court Support Units.

The heads of each court support unit must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and all hiring decisions are based solely on job-related factors. They should make reasonable efforts to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits and within the limits of available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training.

C. Judges, Court Managers, and Supervisors.

Judges and designated 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 resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

D. Equal Employment Opportunity Coordinator.

The court will designate one person to be the Equal Employment Opportunity Coordinator. This person will be responsible for collecting, analyzing, and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the court's achievements in providing equal employment opportunities, identifying those areas in which improvements are needed, and explaining those factors inhibiting achievement of equal employment opportunity objectives. Based upon this evaluation and report, the Coordinator will recommend modifications in the plan to the court. The Coordinator will also seek to resolve discrimination complaints informally and will provide EEO information to the public.

IV. PERSONNEL PRACTICES.

A. Recruitment.

Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will publicize all vacancies.

B. Hiring.

Each court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

C. Promotion.

Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

D. Advancement.

Each court unit will seek insofar as reasonably practicable to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.

E. Discrimination Complaints.

The court adopts the procedures for resolving discrimination complaints set forth in Appendix 1.

V. EVALUATIONS.

Each court unit will prepare a brief report for the EEO Coordinator describing its efforts to provide equal employment opportunities in:

1. **Recruitment.** Each court unit will describe briefly efforts made to bring a fair cross-section of the pool available for the position into its applicant pool, including listing all employment sources used (e.g., state employment offices, schools, organizations, etc.). Each unit will also explain the methods it uses to publicize vacancies.
2. **Hiring.** Each court unit will identify where its recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment with the court when it was offered.
3. **Promotions.** Each court unit will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.
4. **Advancement.** Each court unit will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives such as no vacancies, minimal numbers of qualified applicants in the relevant labor market, and on all persons in the unit who have received all relevant training. This report will also include a breakdown according to the race, sex, national origin, and handicap of the court's personnel involved on forms to be provided by the Administrative Office of the United States Courts. The reports will cover personnel actions occurring in the year ending September 30 and will be submitted to the EEO Coordinator by November 1 of each year.

4. **VI. OBJECTIVES.**

Each court unit will develop annually its own objectives which reflect those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EEO Coordinator explaining how those objectives will be achieved.

VII. ANNUAL REPORT.

The EEO Coordinator will prepare for the court's approval an annual report for the year ending September 30, consolidating the data and statements received from each court unit. The report will include tables to be provided by the Administrative Office of the United States Courts consolidating the information provided by each court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will explain factors inhibiting achievement of equal employment opportunity objectives. Upon approval of the court, this report will be submitted by the Chief Judge to the Administrative Office of the United States Courts by November 30 of each year.

Appendix B
Sample EDR Forms

Sample Request for Counseling, Request for Mediation and Complaint forms are provided, but Complainants may use alternative written formats.

EDR File No. ___ – _____

Request for Counseling
Under the Employment Dispute Resolution Plan
for the Northern District of Oklahoma

Prior to completing this form, please refer to the Employment Dispute Resolution (EDR) Plan for the Northern District of Oklahoma. This form must be submitted to the [Name of Court]'s EDR Coordinator or an Alternate Coordinator within 60 days of the alleged violation or within 60 days of the time you became aware of the alleged violation. The period for counseling is 30 days or less, beginning on the date this form is received by the EDR Coordinator.

1. Today's Date:_____

2. Name and Contact Information of Person Requesting Counseling

   Name:_____

   Home Address:_____

   _____

   Email address:_____

   Phone numbers:

   Home:_____ Work:_____ Cell:_____

3. Please state whether you are a current court employee, a former court employee or an applicant for a court position:

   _____

4. If a current or former employee, please state:

   Your employing office and the name of the employing office from whom you seek resolution of your dispute (if different):

   _____

   Your Job Title:_____

5. If an applicant, the office to which you applied and the position you sought:

_____

_____

6. Date(s) of incidents or adverse employment action giving rise to this dispute:

_____

_____

7. Please describe the incidents or actions giving rise to this dispute and the claims you wish to assert. Please attach additional pages if necessary:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

8. Please state the corrective action, result or resolution of this claim that you seek:

_____

_____

_____

_____

9. Please identify the EDR claims you wish to assert, by identifying the relevant

Chapter(s) of the EDR Plan, or the Model EEO Policy, under which this Request for Counseling is being filed:

☐ Chapter II – Anti-Discrimination Rights
- ☐ Race
- ☐ Color
- ☐ Religion
- ☐ Sex (includes Sexual Harassment)
- ☐ National Origin
- ☐ Age (at least 40 years old at the time of the alleged discrimination)
- ☐ Disability

☐ Chapter III – Family and Medical Leave Rights

☐ Chapter IV – Worker Adjustment and Retraining Notification Rights

☐ Chapter V – Employment and Reemployment Rights of Members of the Uniformed Services

☐ Chapter VI – Occupational Safety and Health Protections

☐ Chapter VII – Polygraph Tests

☐ Model EEO Policy

10. Name and Contact Information of Any Attorney or Other Person Representing You

Name:_____

Address:_____

_____

Email address:_____

Phone:_____ Fax:_____

This Request for Counseling is submitted by:

_____
Signature

_____ _____
EDR Coordinator's Signature Date of Receipt

EDR File No. ___ – _____

Request for Mediation
Under the Employment Dispute Resolution Plan
for the Northern District of Oklahoma

Prior to completing this form, please refer to the Employment Dispute Resolution (EDR) Plan for the Northern District of Oklahoma. This form must be submitted to the EDR Coordinator or Alternate EDR Coordinator within 15 days after notice of the conclusion of the counseling period is sent. Please attach a copy of your REQUEST FOR COUNSELING form. The period for mediation is 30 days or less beginning on the date this form is received by the EDR Coordinator. The employee is required to attend at least one mediation session. Failure to pursue mediation will preclude further processing of your claim(s).

1. Today's Date:_____

2. Name and Contact Information of Person Requesting Mediation

   Name:_____

   Home Address:_____

   _____

   Email address:_____

   Phone numbers:

   Home:_____ Work:_____ Cell:_____

3. Name and Contact Information of Employing Office Responding to Mediation Request

   Name:_____

   Address:_____

   Email address:_____

   Phone number(s):_____

4. If any of the information supplied in the REQUEST FOR COUNSELING form (attached) filed in connection with this EDR manner is no longer accurate or needs to be updated, supplemented or revised, please note the number of the entry on the REQUEST FOR COUNSELING form to be changed, and state the changes or revisions you wish to make:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

5. Describe below all of the claims you wish to raise in mediation. You may refer to your identification of EDR claims in your REQUEST FOR COUNSELING, (Question No. 9), but you are encouraged to explain in more detail in what way your believe your rights under the EDR Plan were violated (You may attach additional pages if necessary). **Any claims not advanced in mediation may not be pursued in a complaint under the EDR Plan**:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6. Please identify the EDR or EEO claims you wish to assert, by identifying the

relevant Chapter(s) of the EDR Plan, or the Model EEO Policy, under which this Request for Counseling is being filed:

- ☐ EDR Plan Chapter II - Anti-Discrimination Rights
  - ☐ Race
  - ☐ Color
  - ☐ Religion
  - ☐ Sex (includes Sexual Harassment)
  - ☐ National Origin
  - ☐ Age (at least 40 years old at the time of the alleged discrimination)
  - ☐ Disability
- ☐ Chapter III – Family and Medical Leave Rights
- ☐ Chapter IV – Worker Adjustment and Retraining Notification Rights
- ☐ Chapter V – Employment and Reemployment Rights of Members of the Uniformed Services
- ☐ Chapter VI – Occupational Safety and Health Protections
- ☐ Chapter VII – Polygraph Tests
- ☐ Model EEO Policy

This request for mediation is submitted by:

_____
Signature

_____ _____
EDR Coordinator's Signature Date of Receipt

Name of Mediator to whom referred (to be completed by EDR Coordinator):

_____ _____
Name Date

_____ _____
Address Phone:

EDR File No. ___ – _____

Complaint
Under the Employment Dispute Resolution Plan
for the Northern District of Oklahoma

Prior to completing this form, please refer to the Employment Dispute Resolution (EDR) Plan for the Northern District of Oklahoma. This form must be submitted to the EDR Coordinator or Alternate EDR Coordinator within 15 days after notice of the conclusion of the mediation period is sent. Please attach a copy of your REQUEST FOR COUNSELING form and your REQUEST FOR MEDIATION form.

1. Today's Date:_____

2. Name and Contact Information of Person Filing Complaint:

   Name:_____

   Home Address:_____

   _____

   Email address:_____

   Phone numbers:

   Home:_____ Work:_____ Cell:_____

3. Name and Contact Information of Employing Office Responding to Complaint

   Name:_____

   Address:_____

   Email address:_____

   Phone number(s):_____

4. If any of the information supplied in the REQUEST FOR COUNSELING form (attached) or the REQUEST FOR MEDIATION form (attached) filed in connection with this EDR matter is no longer accurate or needs to be updated, supplemented or revised, please note the number of the entry on the

appropriate form to be changed, and state the changes or revisions you wish to make:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

5. Please fully describe the incidents or actions giving rise to your complaint. Explain in what way you believe your rights under the EDR Plan were violated. Identify all person who participated in this matter or who were witnesses or who can otherwise provide relevant information concerning this complaint. (You may attach additional pages if necessary.) Please attach a copy of relevant documents that relate to your Complaint, such as an application or notice of termination:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

6. Please identify the EDR claims you are asserting in your Complaint, by identifying the relevant Chapter of the EDR Plan, or the Model EEO Policy, under which your complaint is being filed:

- ☐ EDR Plan Chapter II – Anti-Discrimination Rights
  - ☐ Race
  - ☐ Color
  - ☐ Religion
  - ☐ Sex (includes Sexual Harassment)
  - ☐ National Origin
  - ☐ Age (at least 40 years old at the time of the alleged discrimination)
  - ☐ Disability
- ☐ Chapter III – Family and Medical Leave Rights
- ☐ Chapter IV – Worker Adjustment and Retraining Notification Rights
- ☐ Chapter V – Employment and Reemployment Rights of Members of the Uniformed Services
- ☐ Chapter VI – Occupational Safety and Health Protections
- ☐ Chapter VII – Polygraph Tests
- ☐ Model EEO Policy

7. Please state the desired corrective action, result or resolution of each claim listed in your Complaint:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

I affirm that the information provided in this Complaint is true and correct to the best of my ability:

_____

Signature of Complainant

_____ _____

EDR Coordinator's Signature Date of Receipt