

**United States District Court
Southern District of West Virginia**

**Consolidated Equal Employment Opportunity
and Employment Dispute Resolution Plan**



November 5, 2015

(Approved by the Fourth Circuit Judicial Council – December 2, 2015)

TABLE OF CONTENTS

1. General Provisions 1

 1.1 Preamble 1

 1.2 Scope of Coverage 1

 1.3 Definitions..... 2

2. Equal Employment Opportunity and Anti-Discrimination Rights 2

 2.1 General 2

 2.2 Definition 3

 2.3 Special Provision for Probation and Pretrial Services Officers 3

 2.4 Organization..... 3

 2.5 Personnel Practices 4

3. Family and Medical Leave Rights 4

 3.1 General 4

4. Worker Adjustment and Retraining Notification Rights 5

 4.1 General 5

 4.2 Definitions..... 5

5. Employment and Reemployment Rights of Members of the Uniformed Services 5

 5.1 General 5

6. Occupational Safety and Health Protections..... 6

 6.1 General 6

 6.2 Court Program Requirements 6

7. Polygraph Tests..... 6

 7.1 General 6

8. Whistleblower Protection..... 6

 8.1 General 6

 8.2 Definition 7

9. Reports of Wrongful Conduct..... 7

10.	Dispute Resolution Procedures	8
10.1	General Procedure for Consideration of Alleged Violations	8
10.2	Alleged Violation by Employee.....	8
10.3	Alleged Violation by Judge	8
10.4	Confidentiality	9
10.5	General Provisions and Protections	9
10.6	Designation and Duties of Employment Dispute Resolution Coordinator.....	10
10.7	General Disqualification Provision.....	10
10.8	Counseling	11
10.9	Mediation	12
10.10	Complaint and Hearing	14
10.11	Review of Decision.....	16
10.12	Remedies.....	17
10.13	Record of Final Decisions.....	18

APPENDIX

FORM 1 – Request for Counseling	19
FORM 2 – Request for Mediation	21
FORM 3 – Complaint Form	23

Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan

1. General Provisions

1.1 Preamble

This Plan shall be known as the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan of the United States District Court for the Southern District of West Virginia (“Plan”). It is based on the Federal Judiciary Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States Courts, which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995, and the current Equal Opportunity Employment Plan.

This Plan supersedes the Court’s Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan adopted January 25, 2013, and approved by the Fourth Circuit Judicial Council on February 12, 2013.

A copy of this Plan will be posted on the Court’s internal and external websites. A copy of this Plan and any subsequent modifications will be filed with the Administrative Office, and the Court shall annually submit a report on the implementation of its Plan to the Administrative Office for inclusion in the Director’s Annual Report to the Judicial Conference.

Policies adopted by individual offices pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections under the Plan are not affected by the Plan. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein will not be affected by the Plan.

This Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial officer misconduct or disability under 28 U.S.C. §§ 351, et seq., and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

1.2 Scope of Coverage

This Plan applies to:

- A. Article III judges of the United States District Court for the Southern District of West Virginia and Magistrate Judges; and
- B. Chambers staff of District Judges and Magistrate Judges.

The unit executive and staff of the following Court units:

- A. Office of the Clerk of Court; and
- B. U. S. Probation Office.

1.3 Definitions

For purposes of this Plan:

- A. The term “claim” means the filing of a request for counseling as set forth in Chapter 10.8, which may be further pursued by the filing of a request for mediation and a request for hearing.
- B. The term "employee" includes all individuals listed in Section 1.2, 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 magistrate judge or law clerk 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 Southern District of West Virginia, including the Office of the Clerk of the District Court and the U. S. Probation Office, and any such offices that might be created in the future. The Court is the employing office of a judicial officer’s chambers staff.
- D. The term "judicial officer" means a judge appointed under Article III of the Constitution, a United States magistrate judge, a judge on the Court of Federal Claims, or a judge of any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.
- E. The term "court" or “Court” refers to the United States District Court for the Southern District of West Virginia, including the U.S. Probation Office.

2. Equal Employment Opportunity and Anti-Discrimination Rights

2.1 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. 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 1 through 7 of the Plan shall also apply to employees.

2.2 Definition

For purposes of this Plan, the term "disability" means:

- A. a physical or mental impairment that substantially limits one or more of the major life activities of an employee;
- B. a record of such an impairment; or
- C. being regarded as having such an impairment.

See 42 U.S.C. § 12102(2).

2.3 Special Provision for Probation and Pretrial Services Officers

The age discrimination provision of Section 2.1 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.

2.4 Organization

- A. Unit Executives

The Clerk of Court and Chief Probation Officer must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market 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.

B. Judges, Court Managers, and Supervisors

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

2.5 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 appropriately.

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. Hiring decisions shall be made without regard to race, color, religion, sex, national origin, age, or disability.

C. Promotion

Each Court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level. Promotion decisions shall be made without regard to race, color, religion, sex, national origin, age, or disability.

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.

3. Family and Medical Leave Rights

3.1 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 Policies and Procedures*.

4. Worker Adjustment and Retraining Notification Rights

4.1 General

No "employing office closing" or "mass layoff" (as defined in Section 4.2) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff that results from the absence of appropriated funds.

4.2 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.

5. Employment and Reemployment Rights of Members of the Uniformed Services

5.1 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.

6. Occupational Safety and Health Protections

6.1 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.

6.2 Court Program Requirements

The Court will implement a program to achieve the protections set forth in Section 6.1.

7. Polygraph Tests

7.1 General

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

8. Whistleblower Protection

8.1 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 an 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:
 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.

8.2 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.

9. Reports of Wrongful Conduct

A report of wrongful conduct is not the same as initiating or filing a claim under this Plan; thus, employees who wish to file an EDR claim relating to any alleged wrongful conduct as defined in Section 2.1 must follow the procedures set forth in Section 10 of this Plan.

Judges and employees are encouraged to report wrongful conduct to an EDR Coordinator in the Southern District of West Virginia, the Chief Judge, unit executive, human resources manager, or their supervisor as soon as possible, before it becomes severe or pervasive. Retaliation against any employee making a report of wrongful conduct is prohibited. The person receiving such a report has the responsibility to notify the EDR Coordinators as soon as possible.

The EDR Coordinators shall promptly inform the Chief Judge and unit executive of any report. The Chief Judge and/or unit executive shall ensure that the allegations in the report are appropriately investigated, either by the human resources manager or other person.

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

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

10. Dispute Resolution Procedures

10.1 General Procedure for Consideration of Alleged Violations

An employee who claims a denial of the rights granted under Sections 2 through 8 of this Plan shall seek resolution of such claims through the procedures of this Section. Generally, the procedural process consists of:

- A. Counseling and mediation;
- B. Hearing before the Chief Judge of the United States District Court for the Southern District of West Virginia (or other designated judicial officer); and
- C. Review of the hearing decision under procedures established by the Fourth Circuit Judicial Council.

10.2 Alleged Violation by Employee

Before invoking a request for counseling, an employee (to the extent feasible) is encouraged to bring his or her concerns to his or her supervisor or unit executive, unless the supervisor or unit executive is the alleged violator. In such a situation, the employee is encouraged to discuss the matter with an EDR Coordinator or the human resources manager. An employee alleging that any of the rights granted under this Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with one of the Court's EDR Coordinators in accordance with Section 10.8.

10.3 Alleged Violation by Judge

Any employee alleging that a judge violated any rights granted under this Plan may file an EDR claim in accordance with this Plan. In such an instance, however, all the claims procedures of this Section shall be performed by the Fourth Circuit Judicial Council ("Judicial Council"), either by members of the Judicial Council directly or by persons designated to act on its behalf, which may include the Chief Circuit Judge of the circuit. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the Judicial Council or its designee, which may include the Chief Circuit Judge, 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 doing so, the Judicial Council or its designee, which may include the Chief Circuit Judge, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

10.4 Confidentiality

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

10.5 General Provisions and Protections

A. Prohibition Against Retaliation

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

B. Right to Representation

Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's appointing officer.

C. Case Preparation

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

D. Extensions of Time

The Chief Judge of the Court, or other presiding judicial officer, may extend any of the deadlines set forth in this Plan for good cause. The time periods for counseling and mediation may also be extended as provided in Sections 10.8 and 10.9.

E. Dismissal of Claim

On his or her own initiative or at the request of any party or the EDR Coordinator, the Chief Judge or presiding judicial officer may at any time in the proceedings, dismiss a claim on the grounds that it does not invoke violations of the rights or protections granted under this 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.

F. Records

At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the EDR Coordinators. 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.

10.6 Designation and Duties of Employment Dispute Resolution Coordinator

Angie Volk, Kris Gerencir, and Joseph “Alex” Alvarez shall serve as the Employment Dispute Resolution Coordinators (EDR Coordinators). If all three EDR Coordinators are disqualified pursuant to Section 10.7, then Cheryl Riley, Clerk of the United States District Court for the Northern District of West Virginia, shall serve as EDR Coordinator. Should any EDR Coordinator leave the employment of the Court, the Chief Judge may enter an Order appointing another individual to serve as EDR Coordinator without the need for further amendment to this Plan provided notice is given to all affected employees. An employee may elect to initiate a proceeding with either EDR Coordinator, but may not commence counseling with one of the coordinators and subsequently seek to substitute another, absent a written request for disqualification as permitted under Section 10.7. The duties of the EDR Coordinators consist of the following:

- A. To provide information to the court and employees regarding the rights and protections afforded under this Plan;
- B. To coordinate and organize the procedures and establish and maintain official files of the court pertaining to claims and other matters initiated and processed under this Plan;
- C. To coordinate the counseling of individuals in the initial stages of the claims process, in accordance with Section 10.8; and
- D. To collect, analyze, and consolidate statistical data and other information pertaining to the court’s employment dispute resolution process.

10.7 General Disqualification Provision

A written request must be made to the Chief Judge if a party seeks the disqualification of a judicial officer, an employee, or other person involved in a dispute under this Section. The written request must include all individuals for which the disqualification is requested and the reasons for the request. If the Chief District Judge is named as being involved in a dispute, the Chief District Judge

will ask the next most senior judge of the District Court in regular active service who is available and qualified to serve to decide the disqualification request.

10.8 Counseling

A. Initiating a Proceeding; Formal Request for Counseling

An employee who believes that his or her rights under Sections 2 through 8 of this Plan have been violated must first request counseling.

B. Form and Manner of Requests - Requests for Counseling:

Requests for counseling:

1. are to be submitted to one of the Court's EDR Coordinators;
2. must be made in writing and contain all the violations asserted by the claimant (*copy of approved form is contained in Appendix*); and
3. must be made within 30 days of the alleged violation or within 30 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 the EDR Coordinators are disqualified from serving as counselors under Section 10.7, or are otherwise unavailable. In such instances, the Chief Judge shall designate another qualified individual to perform the counseling function. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and the Chief Judge.

2. Purposes of Counseling

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

3. Confidentiality

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

4. Form of Settlement

The EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf. The original settlement agreement shall be filed with the EDR Coordinator, with copies served on the parties and their representatives.

D. Duration of Counseling Period

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

E. Conclusion of the Counseling Period and Notice

The EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator a request for mediation in accordance with Section 10.9.

10.9 Mediation

A. Initiation

Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file a request for mediation with the EDR Coordinator. The request must be made in writing and must state the claim(s) presented (*copy of approved form is contained in Appendix*). The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive and the Chief Judge of the

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

B. Procedures

1. Designation of Mediator

As soon as possible after receiving the request for mediation, the Chief District Judge or the EDR Coordinator shall designate a mediator and provide written notice of such designation.

2. Who May Serve as Mediator

Any person with the skills to assist in resolving disputes, except the court's EDR Coordinators, may serve as a mediator under this Plan.

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 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. A written record of all such contacts must be kept and made available for review by the affected person(s). In addition, in the event the employee files a complaint pursuant to Section 10.10, the hearing officer shall have access to the Request for Mediation form for the purpose of determining whether the claims made in the complaint were raised in mediation.

5. Form of Settlement

The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf. The original settlement agreement shall

be filed with the EDR Coordinator, who will promptly transmit copies to the parties and their representatives.

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 and request a hearing. The mediation period may be extended by the mutual agreement of the mediator and the employee for an additional 30-day period.

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 provide the employee, the employee's representative, if any, and 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 10.10.

10.10 Complaint and Hearing

A. Complaint

Not later than 15 days after receiving written notice of the end of the mediation period, an employee may file a complaint with the EDR Coordinator, who will transmit the complaint to the Chief Judge and to the respondent. The complaint must be in the form approved by the court (*a copy of the approved form is contained in the Appendix*). Claims that were not presented for mediation in Section 10.9.A 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.

B. Response

The respondent shall have 15 days to file a written response to the complaint with the EDR Coordinator, who will transmit the response to the Chief Judge and the complainant.

C. Review of Pleadings

1. Reviewing Official

The complaint, response, and any other documents shall be reviewed by the Chief Judge or his designee, who shall make recommendations to the Chief Judge regarding disposition of the complaint. In the event the Chief Judge is disqualified under Section 10.3, or is unavailable to serve, the next most senior judge in regular active service who is available and qualified to serve shall assume the responsibilities of the Chief Judge under this Section.

2. Review Procedures

After notice to the complainant, including notice of any recommendations made by the Chief Judge's designee upon review of the complaint, and an opportunity to respond, the Chief Judge may dismiss in writing any complaint that is found to be frivolous, unduly repetitive of a previous complaint, fails to state a claim upon which relief may be granted, makes claims that were not advanced in mediation or where no material factual dispute exists. Failure to object to recommendations made by the designee for dismissal of the complaint shall constitute a waiver of such objections.

D. Hearing Procedures

1. Hearing Officer

If the Chief Judge or the presiding judicial officer does not dismiss the complaint, the Chief Judge or presiding judicial officer shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.

2. Specific Provisions

The presiding judicial officer may provide for such discovery and investigation as is necessary. In general, the presiding judicial officer shall determine the time, place, and manner of conducting the hearing. 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 head of the office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to the individual alleged to have violated rights protected by this Plan;
- c. at the hearing, the complainant will have the rights to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the rights to representation, to present evidence on its behalf and to cross-examine adverse witnesses;
- d. a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;
- e. in reaching a decision, the Chief Judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Sections 2 through 8 of this Plan and by decisions of the Fourth Circuit Judicial Council under Section 10.11 of this Plan;
- f. remedies may be provided in accordance with Section 10.12 where the Chief Judge finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated;
- g. the final decision of the Chief Judge or presiding judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing; and
- h. all parties, or any aggrieved individual, shall have the right to written notice of the Chief Judge's decision. The original written decision shall be filed with the EDR Coordinator who shall promptly transmit copies to all parties, their representatives, and any aggrieved individual.

10.11 Review of Decision

A party or individual aggrieved by a final decision of the Chief Judge, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the Fourth Circuit Judicial Council. The EDR Coordinator shall inform all persons served with notice of the final decision of the Chief Judge of the procedures to be followed for seeking review by the Judicial Council.

10.12 Remedies

- A. Where judicial officers acting pursuant to Section 10.10 of this Plan find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively ensuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B. Remedies which may be provided to successful complainants under this Plan include, but are not limited to:
1. placement of an employee in a position previously denied;
 2. placement in a comparable alternative position;
 3. reinstatement to a position from which the employee was previously removed;
 4. prospective promotion to a position;
 5. priority consideration for a future promotion or position;
 6. back pay and associated benefits, including attorneys' fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
 7. records modification and/or expungement;
 8. "equitable" relief;
 9. granting of family and medical leave; and
 10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.
- C. Remedies which are *not* legally available include:
1. payment of attorneys' fees (except as otherwise provided under the Back Pay Act), and as otherwise provided by this Plan;
 2. compensatory damages; and
 3. punitive damages.

10.13 Record of Final Decisions

Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Fourth Circuit Judicial Council.

**REQUEST FOR COUNSELING
UNDER THE CONSOLIDATED
EQUAL EMPLOYMENT OPPORTUNITY
and
EMPLOYMENT DISPUTE RESOLUTION PLAN OF THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

Prior to completing this form, please refer to the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan (“ Plan”). Please complete this form legibly. If there is insufficient space, you may attach additional pages.

1. Full Name of Person Requesting Counseling:

2. Address:

3. Home Phone:

Work:

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

Court Unit in which employed:

Job Title:

5. Name and address of the Employing Office from which you seek resolution of your dispute:

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

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

8. What corrective action do you seek in this matter?

9. Are you willing to waive confidentiality in order to permit the counselor to contact the Employing Office or to attempt a resolution of the disputed matter?

Yes

No

This request for counseling is submitted by:

Signature

Date

Counselor's Signature

Date of Receipt

**REQUEST FOR MEDIATION
UNDER THE CONSOLIDATED
EQUAL EMPLOYMENT OPPORTUNITY
and
EMPLOYMENT DISPUTE RESOLUTION PLAN OF THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

Prior to completing this form, please refer to the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan (“ Plan”). Please complete this form legibly. If there is insufficient space, you may attach additional pages.

1. Name of Person Requesting Mediation: _____

2. Address: _____

3. Home Phone: _____ Work: _____

4. If you are a court employee, state the following:
Court Unit in which employed: _____
Job Title: _____

5. Name and address of the Employing Office from which you seek resolution of your dispute:

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

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

8. List below all claims you wish to raise in mediation. Any claims not advanced in mediation may not be pursued in a complaint filed under this Plan.

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

10. Date counseling was initiated: _____

11. Date of receipt of notice of conclusion of counseling: _____

12. Name of person providing counseling: _____

This request for mediation is submitted by:

Signature

Date

Recipient's Signature

Date of Receipt

**COMPLAINT OF DISCRIMINATION
UNDER THE CONSOLIDATED
EQUAL EMPLOYMENT OPPORTUNITY
and
EMPLOYMENT DISPUTE RESOLUTION PLAN OF THE
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

Prior to completing this form, please refer to the Equal Employment Opportunity and Employment Dispute Resolution Plan (“ Plan”). Please complete this form legibly. If there is insufficient space, you may attach additional pages.

1. Name of Person Filing Complaint: _____

2. Address: _____

3. Home Phone: _____ Work: _____

4. If you are a court employee, state the following:
Court Unit in which employed: _____

Job Title: _____

5. Name and address of the Employing Office against whom this complaint is filed (under the terms of the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan of the United States District Court for the Southern District of West Virginia, all complaints must be against the Employing Office, *not an individual*):

6. Identify the Section(s) of the Plan under which your complaint is being filed.

Section 2 - Equal Employment Opportunity and Anti-Discrimination Rights:

Race

Color

- Religion
- Gender/Sex (includes Sexual Harassment)
- National Origin
- Age
- Disability

- Section 3 – Family and Medical Leave Rights
- Section 4 – Worker Adjustment and Retraining Notification Rights
- Section 5 – Employment and Reemployment Rights of Members of the Uniformed Services
- Section 6 – Occupational Safety and Health Protections
- Section 7 – Polygraph Tests
- Section 8 - Whistleblower
- Section 9 – Reports of Wrongful Conduct

7. Date(s) of alleged violation: _____

8. Date on which counseling was requested: _____

Date on which counseling was completed: _____

Date on which mediation was requested: _____

Date on which mediation was completed: _____

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

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

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

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

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

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

- Yes No

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

Name: _____

Address: _____

Work Phone: _____ Fax: _____

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

Signature

Date