

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS**

**REVISED GENERAL ORDER NO. 3
(Replacing Order signed December 22, 2011)**

Now on this 9th day of January, 2013, the Court hereby adopts the Equal Employment and Employee Dispute Resolution Plan for the Western District of Arkansas, a copy of which is attached to this order.

IT IS SO ORDERED.



**Honorable P.K. Holmes, III
Chief U.S. District Judge**

**US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED**

JAN 30 2013

CHRIS R. JOHNSON, Clerk
By

Deputy Clerk

**EQUAL EMPLOYMENT OPPORTUNITY
AND EMPLOYMENT DISPUTE RESOLUTION PLAN
FOR THE
WESTERN DISTRICT OF ARKANSAS**

**Adopted by the Western District of Arkansas
January 9, 2013**

Adopted by the Eighth Circuit
Judicial Council
January 29, 2013

**EQUAL EMPLOYMENT OPPORTUNITY
AND EMPLOYMENT DISPUTE RESOLUTION PLAN**

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EQUAL EMPLOYMENT OPPORTUNITY AND EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Equal Employment Opportunity and Employment Dispute Resolution Plan for the Western District of Arkansas ("EEO/EDR Plan"). This EEO/EDR Plan supercedes all previous versions of the Western District of Arkansas EEO/EDR Plan.

Under EEO, the Judicial Conference of the United States has suggested 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 disability. Each court will promote equal employment opportunity through a program encompassing all facets of human resource management, including recruitment, hiring, promotion, and advancement. This program does not modify or reduce the qualification standards for employment established in the federal court system.

Under EDR, the Judicial Conference has suggested that this Plan provide to all court employees rights and protections comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

Policies adopted by this court pertaining to adverse action or general grievance proceedings not invoking the rights and protections afforded under this EEO/EDR Plan are not affected. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein are not affected.

The EEO/EDR Plan is not intended to duplicate the protections provided for the resolution of complaints under the *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, 28 U.S.C. §351, et seq and is intended to be the exclusive remedy of employees relating to rights enumerated under the Plan.

§ 2 Scope of coverage

This Plan applies to all district, bankruptcy and magistrate judges and to all employees of the United States courts in the Western District of Arkansas, including judges' chambers staff and court unit heads and their staffs.

§ 3 Definitions

For purposes of this Plan—

A. The term "claim" means the filing of a request for counseling as set forth in Chapter

VIII, which may be further pursued by the filing of a request for mediation and a request for hearing.

- B. The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include interns, externs, 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, bankruptcy court, and court units including the offices of the clerk of court, chief probation/pretrial services officer, and any such offices that might be created in the future. The court in which the judge sits is the employing office of the judge and his or her chambers staff.
- D. The term "court" refers to the district court of the Western District of Arkansas which is the employing office responsible for redressing, correcting, or abating the violation alleged in the complaint.
- E. The term "judicial officer" means a judge appointed under Article III of the Constitution, a United States bankruptcy judge, a United States magistrate judge, a judge on the court of appeals, or any 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.

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. Harassment against an employee based upon any of these protected categories is prohibited.
- § 2 **Prohibition Against Retaliation**-Any person who has opposed any discriminatory practice prohibited by Section 1, and/or has filed a claim, testified, assisted, or participated in any manner in an investigation, proceeding, hearing or any other stage under this Plan shall be free from retaliation.

§ 3 **Definition** - The term "disability" means:

- A. a physical or mental impairment that substantially limits one or more of the major life activities of an employee,
- B. a record of such an impairment, or
- C. being regarded as having such an impairment. *See* 42 U.S.C. § 12102(2).

§ 4 **Special provision for probation and pretrial services officers** - The age discrimination provision of Section 1 of this Chapter shall not apply to the initial hiring or mandatory separation of probation and pretrial services officers. *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.

§ 5 **EEO Implementation** - All court unit heads must ensure that all vacancies are publicly announced in an effort to attract candidates representing 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. Judges and court managers must apply EEO practices and policies. This includes giving all employees fair and equal opportunity to demonstrate their skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit, training programs may be provided to enable employee development of job skills.

§ 6 **Personnel Practices** - Each court unit will:

- A. seek qualified applicants reflecting the make-up of all such persons in the relevant labor market and publicize all vacancies;
- B. make hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform satisfactorily the duties of the position;
- C. promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level;
- D. seek, insofar as reasonably practicable, to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.

§ 7 **Annual EEO Report** - Each court unit will prepare a brief report describing its efforts to provide equal employment opportunity in --

- A. **Recruitment** - Each court unit will briefly describe efforts made to bring a fair cross-section of the available pool into its applicant pool, including listing all employment sources and the methods used to publicize vacancies.
- B. **Hiring** - Each court unit will identify recruitment efforts resulting 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 offered.
- C. **Promotions** - Each court unit will briefly describe promotional opportunities, analyzing the distribution thereof, and describing those promoted to supervisory positions.
- D. **Advancement** - Each court unit will describe the efforts 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 a lack of vacancies and minimal numbers of qualified applicants in the relevant labor market, and on all persons in the unit who have received relevant training. This report also will include a breakdown according to the race, sex, color, national origin, and disability of the court's personnel on forms to be provided by the Administrative Office. The report will cover personnel actions occurring in the year ending September 30 and will be submitted each year to the Administrative Office of the United States Courts.

The Employment Dispute Resolution Coordinator ("EDR Coordinator") will prepare for the court's approval an annual report ending September 30, consolidating the data and statements received from each court unit. Upon approval of the court, this report will be submitted by the chief judge to the Administrative Office of the United States Courts as directed.

§ 8 **EEO Objectives** - Each court unit will develop annual objectives reflecting those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EDR Coordinator explaining how those objectives are to be achieved.

§ 9 **EEO Report of Complaints** - Each court will prepare an annual report on complaints, for the year ending September 30, reflecting:

- A. the number filed;
- B. the types according to race, sex, color, national origin, religion, age, or disability; and
- C. the number resolved, identifying the stage at which each was resolved.

The annual report will not identify the names of the involved parties. The report will be available to the public upon request.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

§ 1 General - Title II of the Family and Medical Leave Act of 1993, 5 USC §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*.

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 caused by non-appropriation of 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. (i) at least 33 percent of the full-time employees; and
 - (ii) at least 50 full-time employees; or
 - b. at least 500 full-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.

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 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.

§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 - DISPUTE RESOLUTION PROCEDURES

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

- A. counseling and mediation; and
- B. hearing before the chief judge of the court (or a designated judicial officer) in which the alleged violation arises; and
- C. review of the hearing decision under procedures set forth in Section 11 of this Chapter.

§ 2 Alleged Violation by Employee - Before invoking a request for counseling, an employee (to the extent feasible) is encouraged to bring his or her concerns to his or her supervisor or unit executive, unless the supervisor or unit executive is the alleged violator. In such a situation, the court or employing office should specify alternative neutral points of contact for the initial inquiry. An employee alleging that any of the rights granted under this EEO/EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with their court’s EDR Coordinator in accordance with Section 8 of this Chapter.

§ 3 Alleged Violation by Judge-Any employee alleging that a judge violated any rights granted under this EEO/EDR Plan may file an EDR claim in accordance with the Plan. In such an instance, however, all the claims procedures of this Chapter shall be performed by the circuit council, either by members of the council directly or by persons designated to act on its behalf, which may include the chief judge of the circuit. If a judge becomes the subject

of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. 351-364, the circuit judicial council or its designee, which may include the chief judge of the circuit, will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial Conduct and Judicial Disability Proceedings, and, as practicable, the EDR Plan. In so doing, the council or its designee, who may include the chief judge of the circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

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

§ 5 General Provisions and Protections

- A. **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.
- B. **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.
- C. **Extensions of time** - The chief judge of the court, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause.
- E. **Dismissal of Claim** - On his or her own initiative or at the request of any party, the chief judge or presiding judicial officer may at any time in the proceedings, dismiss a claim on the grounds that it does not invoke violations of the rights or protections granted under this EEO/EDR Plan, is untimely, is unduly repetitive of a previous claim, adverse action, or grievance, is frivolous, or fails to state a claim upon which relief maybe granted.
- F. **Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the court's Employment Dispute Resolution Coordinator ("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 employment dispute resolution coordinator - The clerk of court is designated as EDR Coordinator for probation office personnel and chamber's staff. The chief probation officer is designated as EDR Coordinator for clerk's office personnel. The duties of the EDR Coordinator shall include the following:

- A. to provide information to the court and employees regarding the rights and protections afforded under this Plan;
- B. to coordinate and organize the procedures and establish and maintain official files of the court pertaining to claims and other matters initiated and processed under the court's EDR plan;
- C. to coordinate the counseling of individuals in the initial stages of the claims process, in accordance with Section 8 of this Chapter; and
- D. to collect, analyze, and consolidate statistical data and other information pertaining to the court's EDR process.

§ 7 Disqualification Provisions

- A. **General disqualification** - A party may seek the disqualification of an EDR Coordinator, counselor, mediator, or judicial officer involved in a dispute by making a written request to the chief judge, and explaining the reasons why the individual should be disqualified. If disqualification is warranted, the chief judge shall designate another individual to handle the matter. If the chief judge is named as being involved in a dispute, the next most senior active judge shall decide the disqualification request.
- B. **Presiding Judicial Officer** - A judicial officer who has been involved in any decision affecting the claimant with respect to the claim(s) at issue shall not serve as the presiding judicial officer in a hearing on a complaint involving such claim(s). In such cases, a judicial officer shall recuse him or herself subsequent to a designation to serve as the presiding judicial officer, or a party may seek disqualification of the judicial officer in the same manner as set forth above in Section 7A.

§ 8 Counseling

- A. **Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through VII of this Plan have been violated must first request counseling.
- B. **Form and manner of requests** - Requests for counseling:
 - 1. are to be submitted to the court's EDR Coordinator;

2. must be made in writing and contain all the violations asserted by the claimant; and
3. must be made within thirty (30) days of the alleged violation or within thirty (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 the court's EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 7 of this Chapter, or is otherwise unavailable. In such instances, the chief judge of the court 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 of the court.
2. **Purposes of counseling** - The purposes of the counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.
3. **Confidentiality** - Unless waived by the employee, the court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent practicable. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.
4. **Form of settlement** - The EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

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

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

§ 9 Mediation

- A. **Initiation** - Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EDR Coordinator a request for mediation. The request must be in writing, stating the claim(s) presented. 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 Chapter.
- B. **Procedures** -
1. **Designation of mediator** - As soon as possible after receiving the request for mediation, the chief judge or EDR Coordinator shall designate a mediator and provide written notice of such designation.
 2. **Who may serve as mediator** - Any person with the skills to assist in resolving disputes, except the court's EDR Coordinator, may serve as a mediator under this Plan.
 3. **Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.
 4. **Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties.
 5. **Form of settlement** - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office authorized to enter into settlement on the employing office's behalf.
- 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 request for hearing.
- D. **Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the 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 also shall 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 receiving the notice concluding the mediation period, an employee may file a complaint with the chief judge, who will forward it to the EDR Coordinator. The EDR Coordinator will forward a copy of the complaint to the employing office and to the individual(s) alleged to have violated rights protected by this Plan. 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 9A may not be pursued. The respondent shall be the employing office responsible for redressing, correcting, or abating the violations alleged in the complaint. No individual shall be named as a respondent in the complaint.

B. Hearing Procedures

1. **Presiding judicial officer.** If the chief judge or 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 right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the right 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 his or her decision, the chief judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this Plan and by decisions of the Eighth Circuit Judicial Council under Section 11 of this Chapter;
- f. remedies may be provided in accordance with Section 12 of this Chapter where the chief judge or presiding judicial officer 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, including any individual alleged to have violated rights under the Plan, shall have the right to written notice of any action taken as a result of a hearing.

§ 11 Review of decision - Anyone aggrieved by a final decision of the chief judge or presiding judicial officer, or by a summary dismissal of a complaint, may petition for review of that decision. Such review must be requested in writing to the Judicial Council of the Eighth Circuit no later than 30 days following the day of the final decision of the chief judge or presiding judicial officer, or the date of the summary dismissal of the complaint. The review will be conducted by the members of the Judicial Council of the Eighth Circuit, or by a committee appointed from among the members in such manner as the Council may direct. The decision of the Council, or of the committee, as the case may be, shall be based on the record created by the hearing officer, and the decision reviewed shall be affirmed if supported by substantial evidence. The Council or committee, as the case may be, may receive written submissions, hold hearings, or adopt such other detailed procedures as to it may seem proper. Review by the Judicial Council, or by a committee, is the final stage of review under this Plan.

§ 12 Remedies

- A. Where the chief judge or presiding judicial officer, acting pursuant to Section 10 or 11 of this Plan finds 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 provided to successful complainants under this Plan may 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 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, 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.

C. Remedies *not* legally available include:

1. payment of attorneys' fees (except as authorized under the Back Pay Act);
2. compensatory damages; and
3. punitive damages.

§ 13 Record of final decisions - The conclusion of the Judicial Council, or of its committee, as the case may be, under Section 11 of this Chapter shall be available to the public, free of charge, upon written request to the Office of the Circuit Executive. The reviewing panel, whether Judicial Council or committee, shall determine whether the names of the complaining party, the employing office, or other individuals shall be included in the material released to the public. The reviewing panel shall also decide whether additional portions of the decision shall be released. The reviewing panel, in the interests of justice and of fairness to the parties, shall consider, in deciding what shall be publicly available, whether public disclosure would compromise the integrity of legitimate confidentiality of the parties or the Court, or would subject a party or person to undue annoyance, embarrassment, oppression, burden, or expense, and shall also take into account the public interest in the

administration of justice, including the interest of the public in determining whether the courts are operating properly and without discrimination.

APPROVED:

A handwritten signature in black ink, appearing to read "P. K. Holmes, III", written over a horizontal line.

P. K. Holmes, III
Chief Judge

Date Approved: January 09, 2013

EEO/EDR CHECKLIST

- You are covered by this plan if you are an employee, applicant for employment or former employee of one of the following offices:
 - District Judge
 - Bankruptcy Judge
 - Magistrate Judge
 - District Court Clerk's Office
 - Bankruptcy Clerk's Office (Fayetteville Division)
 - Probation Office/Pretrial Services Office

- You are not covered by this plan if you are not an employee, applicant or former employee of the above including:
 - an intern
 - an extern
 - an applicant for magistrate judge
 - an attorney representing an indigent CJA defendant
 - a volunteer counselor or mediator

- Your complaint involves:
 - discrimination based on race, color, religion, sex (including pregnancy and sexual harassment), national origin, age (at least 40 years of age at time of alleged discrimination), disability [or sexual orientation]
 - violation of Family and Medical Leave Act
 - violation of Worker Adjustment and Retraining Notification Rights
 - violation of Employment and Reemployment Rights of Members of the Uniformed Services
 - Occupational Safety and Health Matters
 - Polygraph Tests
 - Whistleblower Protection

- COUNSELING
 - To initiate a proceeding you must first submit a request for counseling
 - to EDR Coordinator
 - in writing
 - including all violations which you are asserting
 - within 30 days of alleged violation or of time you became aware of alleged violation, and
 - indicate in writing whether you want to waive confidentiality of personnel information and records
 - Counselor must notify you in writing of conclusion of counseling period
 - Counseling lasts 30 days,
 - Counselor must inform you of your right to request mediation as a condition of filing a formal complaint

- MEDIATION:
 - To proceed, you must then file a request for mediation
 - within 15 days after the Counselor notifies you that the counseling has ended
 - in writing
 - to the EDR Coordinator
 - stating all your claims
 - You must attend at least one mediation session
 - Mediation will last 30 days (but the time may be extended for another 30 days if you agree)
 - If you reach a settlement, the mediator will reduce the settlement to writing
 - you must sign it
 - your representative, if any, must sign it, and
 - an authorized member of the employing office must sign it.

 - If you do not reach a settlement, the EDR Coordinator will give you, your representative, and the employing office written notice that the mediation period has ended, and tell you how to proceed with a complaint

- COMPLAINT:
 - To proceed, you must then file a complaint
 - 15 days after EDR Coordinator notifies you mediation has ended
 - in writing
 - identifying the complainant and all others involved
 - setting forth a short and plain statement of your claim
 - stating what relief you want
 - naming the respondent as your employing office, not an individual
 - file it with the Chief Judge, who will forward it to the EDR Coordinator
 - the respondent will have a chance to respond to your complaint
 - the Chief Judge or Presiding Judicial Officer, will review the complaint and may dismiss it if it is:
 - untimely
 - unduly repetitive of a previous complaint, adverse action or grievance
 - frivolous
 - a claim that fails to state a basis upon which relief may be granted
 - a claim that does not invoke violations of the right or protections granted under the EEO/EDR Plan; or
 - a claim that has not been the subject of mediation
- HEARING PROCEDURES:
 - You may have a hearing (unless the Chief Judge or Presiding Judicial Officer dismisses the complaint or believes there are no material facts in dispute)
 - The Chief Judge or Presiding Judicial Officer will provide for necessary discovery and investigation, and determine the time, place and manner of the hearing
 - not more than 60 days after you file your complaint
 - you and the employing office will receive written notice of the

- hearing
 - any individual alleged to have violated rights protected by the EEO/EDR Plan will also receive written notice of the hearing
 - you may have a representative
 - you or your representative may present evidence and cross-examine adverse witnesses
 - the employing office may present evidence and cross-examine adverse witnesses
 - a verbatim record of the hearing will be kept
- You will receive a decision within 30 days of the hearing

- REVIEW OF HEARING DECISION
 - To request a review of the Chief Judge or Presiding Judicial Officer's final decision, you must submit a petition for review
 - within 30 days of the decision or summary dismissal
 - in writing
 - to the Judicial Council of the Eighth Circuit
 - The Judicial Council or a committee appointed by the Council will review the record created by the hearing officer
 - The decision will be affirmed if it is supported by substantial evidence.