

U.S. DISTRICT COURT  
FILED AT WHEELING, WV

APR 2 2013

NORTHERN DISTRICT OF WV  
OFFICE OF THE CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

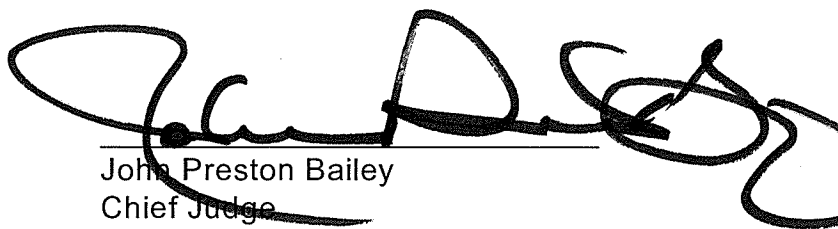
IN RE: CONSOLIDATED EQUAL EMPLOYMENT OPPORTUNITY and  
EMPLOYMENT DISPUTE RESOLUTION PLAN

Miscellaneous No.: 5:13-MC-11

ORDER

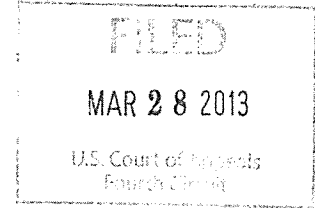
The March 2013 version of the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan for the Northern District of West Virginia is hereby adopted in accordance with the copy attached and made a part hereof, and as approved by the attached order of the Fourth Circuit Judicial Council dated March 28, 2013.

ENTERED this 2<sup>ND</sup> day of April, 2013, by the United States District Court for the Northern District of West Virginia.



John Preston Bailey  
Chief Judge  
United States District Court  
Northern District of West Virginia

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
JUDICIAL COUNCIL



In the Matter of the Review of the \*  
Amendment to the Consolidated Equal \*  
Employment Opportunity and Employment \* No. 301  
Dispute Resolution Plan of the \*  
United States District Court for the \*  
Northern District of West Virginia \*

**ORDER**

The Plan of the United States District Court for the Northern District of West Virginia, as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:

  
Samuel W. Phillips, Secretary

Date: March 28, 2013

**UNITED STATES DISTRICT COURT**  
**FOR THE**  
**NORTHERN DISTRICT OF WEST VIRGINIA**

**CONSOLIDATED EQUAL EMPLOYMENT OPPORTUNITY**  
**and**  
**EMPLOYMENT DISPUTE RESOLUTION PLAN**



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**March 2013**

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**United States District Court  
for the  
Northern District of West Virginia**

**CONSOLIDATED EQUAL EMPLOYMENT OPPORTUNITY  
and  
EMPLOYMENT DISPUTE RESOLUTION PLAN**

**CHAPTER I – GENERAL PROVISIONS**

**Preamble**

This Plan shall be known as the Consolidated Equal Employment Opportunity and Employment Dispute Resolution Plan for the United States District Court for the Northern District of West Virginia. 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 model Equal Opportunity Employment Plan adopted by the Judicial Conference in March 1980, as revised in September 1986.

This Consolidated Plan supersedes all previous versions of the Equal Employment Opportunity Plan for this district adopted on January 26, 1998, the United States Bankruptcy Court's Equal Employment Opportunity and Affirmative Action Plan dated July 1, 1997, the Employee Dispute Resolution Plan as amended on May 23, 2005, and approved by the Fourth Circuit Judicial Council on June 14, 2005, and the United States Bankruptcy Court for the Northern District of West Virginia's Employee Dispute Resolution Plan and Equal Opportunity Plan dated September 2, 2011 and September 6, 2011, respectively.

This Plan, and any subsequent modifications, must first be approved by the Fourth Circuit Judicial Council. A copy of this Consolidated Plan, and any subsequent modifications, shall be filed with the Administrative Office and posted on the Court's internal and external websites. The district 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.

### **§ 1.1 Scope of Coverage**

The Plan applies to all Article III Judges, the United States Bankruptcy Judge, Magistrate Judges and all Judges' chambers' staff. The Plan also applies to the unit executives and staff of the Office of the Clerk of the United States District Court, Office of the Clerk of the United States Bankruptcy Court and the U.S. Probation and Pretrial Services Office.

### **§ 1.2 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 1.1, 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 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 Northern District of West Virginia, including the Office of the Clerk of the District Court, the Office of the Clerk of the Bankruptcy 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 Bankruptcy Judge, a United States Magistrate Judge, 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 Northern District of West Virginia, including the United States Probation

Office, and the United States Bankruptcy Court for the Northern District of West Virginia.

- F. The term "days" in all filing and other time periods specified in this Consolidated Plan shall mean calendar days, except that if the deadline date falls on a Saturday, Sunday or legal holiday, the deadline shall be extended to the following court business day.

## **CHAPTER II - 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."

### **§2.2 Definition**

For purposes of the Plan, the term "disability" means, with respect to an individual:

- A. a diagnosis of 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 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.



## **§2.4 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 vacancies when and as appropriate.

### **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. At Will Employment**

With the exception of probation officers<sup>1</sup>, all employees of the court are hired "at will." "At will" is defined as allowing either the employee or the Court to terminate employment at any time, for any reason permitted by law, with or without cause and with or without notice.

### **D. 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.

### **E. Advancement**

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

## **CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS**

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*.

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<sup>1</sup>See, The Guide, Vol. 12, Chap. 3, § 320.40.10.

## **CHAPTER IV - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE ARMED SERVICES**

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

## **CHAPTER V - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS**

### **§5.1 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 are 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.

### **§5.2 Court Program Requirements**

The Court will implement a program to achieve the protections set forth in Section 5.1.

## **CHAPTER VI - POLYGRAPH TESTS**

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

## **CHAPTER VII - WHISTLEBLOWER PROTECTION**

### **§7.1 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.

### **§7.2. 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 VIII - 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 or EEO claim relating to any alleged wrongful conduct as defined in Section 2.1 or 2.4 of Chapter II must follow the procedures set forth in Chapter IX of this Plan.

Judges and employees are encouraged to report wrongful conduct to the EDR Coordinators for the Northern District of West Virginia, the Chief Judge, their 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 Coordinator as soon as possible.

The EDR Coordinator shall promptly inform the Chief Judge and the unit executive of the employing office against which the report of wrongful conduct has been filed, of any report. The Chief Judge and/or that unit executive shall ensure that the allegations in the report are appropriately investigated, either by the human resources manager or other designated 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 the unit executive of the employing office against which the report has been filed, to have engaged in wrongful conduct, as defined in this Plan, may be subject to disciplinary action.

## **CHAPTER IX - DISPUTE RESOLUTION PROCEDURES**

### **§9.1 General Procedure for Consideration of Alleged Violations**

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

- A. Counseling and mediation;
- B. Hearing before the Chief Judge of the United States District Court for the Northern 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.

### **§9.2 Alleged Violation by Employee**

Before invoking these procedures 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 the Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with his or her EDR Coordinator in accordance with Section 9.8 of this Chapter.

### **§9.3 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, 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 doing so, the council or its designee, which 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.

#### **§9.4 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.

#### **§9.5 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 such preparation 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 9.8 and 9.9 of this Chapter.

##### **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 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 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.

**§9.6 Designation and Duties of Employment Dispute Resolution Coordinators**

The Northern District of West Virginia has determined that it is in the best interests of the employees of this district to appoint three (3) EDR Coordinators. The EDR Coordinators for the district will be the chief deputy clerk of the district court, the deputy chief probation officer, and the chief deputy clerk of the bankruptcy court. Employees have the option of contacting the EDR Coordinator of their choice. 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 9.8 of this Chapter; and
- D. To collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process.

**§9.7 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 Plan. The written request must include all individuals for which the disqualification is requested and the reasons for the request.

**§9.8 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

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 all of the EDR Coordinators are disqualified from serving as counselors under Section 9.7 of this Chapter, 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 of the office against which the report of wrongful conduct has been filed and the Chief District 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.

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 supplied to 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 at the end of the counseling period that the counseling period had 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 8.9 of this Chapter.

## §9.9 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 of the employing office against which the report of wrongful conduct has been filed and the Chief Judge of the district court. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.

B. Procedures

1. Who May Serve as Mediator

Any person with the skills to assist in resolving disputes, with the exception of the Court's EDR Coordinators, may serve as a mediator under this Plan. The Chief Judge has discretion to nominate a District Mediator, another employee of the Court, or someone from outside the Court as Mediator.



2. 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.

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 9.10 of this Chapter, the presiding judicial 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 person authorized to enter into the 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 employee and employing office 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 9.10 of this Chapter.

**§9.10 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 in Section 9.9(A) of this Chapter 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/her designee, who shall make recommendations to the Chief Judge regarding disposition of the complaint. In the event the Chief Judge is disqualified under Section 9.3 of this Plan, or is otherwise unavailable to serve, the next most senior Article III Judge, or such other judicial officer, who is available and qualified to serve, may 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.

3. Time Period for Objections to Recommendation

The complainant shall have ten (10) days after being served with a copy of the recommendations of the Chief Judge's designee to file with the EDR Coordinator a response setting forth written objections, if any, to the recommendations, identifying the portions of the recommendations to which objection is made, and the basis for such objection. A copy of such objections should also be submitted to the Chief Judge. Failure to timely file written objections to the recommendations made by the designee shall constitute a waiver of such objections.

D. Hearing Procedures

1. Presiding Judicial 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, unless good cause exists for a continuance;
- 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 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. If the hearing is conducted by the Chief Judge's designee, the designee shall make findings and recommendations to the Chief Judge within 30 days of the hearing, and shall serve a copy on the parties and their representatives. The parties may file any objections within 14 days of service of the findings and recommendations, and the Chief Judge shall make his decision after review of such objections. Failure to file timely objections to the findings and recommendations shall constitute a waiver of such objections;
- f. In reaching a decision, the Chief Judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII of this Plan and by decisions of the Fourth Circuit Judicial Council under Section 11, Chapter IX of this Plan;
- g. Remedies may be provided in accordance with Section 12, Chapter IX, of this Plan, 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;
- h. The final decision of the Chief Judge must be issued in writing not later than 30 days after the conclusion of the hearing or the receipt of a presiding judicial officer's findings and recommendations as the Chief Judge's designee; and
- i. 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.

#### **§9.11 Review of Decision**

A party or individual aggrieved by a final decision of the Chief Judge or the presiding judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the Fourth Circuit Judicial Council. Any review will be conducted by a judicial officer(s), based on the record created by the presiding judicial officer, and shall be affirmed if supported by substantial evidence. The EDR Coordinator shall inform all persons served with notice of a final decision of the Chief Judge or the presiding judicial officer of the procedures

to be followed for seeking review by the Judicial Council.

### **§9.12 Remedies**

- A. Where judicial officers acting pursuant to Sections 9.10 and 9.11 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 Consolidated 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, 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 which are *not* legally available include:
1. payment of attorneys' fees (except as otherwise provided under the Back Pay Act);
  2. compensatory damages; and
  3. punitive damages.

**§9.13 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.

**APPENDIX**

Request for Counseling. .... Form 1  
Request for Mediation..... Form 2  
Complaint of Discrimination. .... Form 3

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

**FORM 1**

Prior to completing this form, please refer to the Consolidated Equal Employment Opportunity and Employment Dispute Resolution 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?  
\_\_\_\_\_  
\_\_\_\_\_



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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:

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Signature

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Date

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Counselor's Signature

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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 NORTHERN DISTRICT OF WEST VIRGINIA**

**FORM 2**

Prior to completing this form, please refer to the Consolidated Equal Employment Opportunity and Employment Dispute Resolution 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 Consolidated Plan.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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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 NORTHERN DISTRICT OF WEST VIRGINIA**

**FORM 3**

Prior to completing this form, please refer to the Consolidated Equal Employment Opportunity and Employment Dispute Resolution 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 Northern District of West Virginia, all complaints must be against the Employing Office, *not an individual*):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

Chapter II - Equal Employment Opportunity and Anti-Discrimination Rights:

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

Chapter III - Family and Medical Leave Rights

Chapter IV - Employment and Reemployment Rights of Members of the Uniformed Services

Chapter V - Occupational Safety and Health Protections

Chapter VI - Polygraph Tests

Chapter VII - Whistleblower Protection

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 Consolidated 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