

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.

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SIGN. *[Signature]*
RICHARD T. MARTIN
CLERK
GENERAL ORDER
97-4

IN RE:

MODEL EMPLOYMENT DISPUTE
RESOLUTION PLAN

ORDER

IT IS ORDERED that the Model Employment Dispute Resolution Plan, attached hereto, is hereby ADOPTED for use by this court.

Baton Rouge, Louisiana, June 17, 1997.

[Signature]
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

[Signature]
FRANK J. POLOZOLA
UNITED STATES DISTRICT JUDGE

MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Federal Judiciary Model Employment Dispute Resolution Plan ("Model EDR Plan"). It was 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.

The Plan supersedes Appendix I ("Discrimination and Complaint Procedures") of the current Judiciary Model Equal Employment Opportunity Plan ("Model EEO Plan"), except for Section VI of Appendix I ("Annual Report") imposing requirements on the courts. Claims arising under Chapters II through VII of this Plan, or under Sections I through VII of the Judiciary's Model EEO Plan, shall be treated in accordance with the procedures set forth in Chapter VIII of this Plan. The duties of the court's EEO Coordinator will be assumed by the Employment Dispute Resolution Coordinator (established in Section 3 of Chapter VIII of this Plan), except that the dispute resolution duties assigned to the EEO Coordinator under the Model EEO Plan will be replaced by the dispute resolution procedures set forth in Chapter VIII of this Plan.

This Plan is to be implemented in the same manner as the Model EEO Plan. Upon approval of this Plan by the Judicial Conference, each court shall adopt and implement a plan based thereon. Any modification of this Plan by a court must first be approved in its circuit by the judicial council. A copy of each plan and any subsequent modifications shall be filed with the Administrative Office. Each 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 courts pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections afforded under the Model EDR 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.

The Model EDR 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. § 372(c) and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **General** - Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. The rights and protections of Sections I through VII of the Judiciary's Model Equal Employment Opportunity Plan shall also apply to employees.

§ 2 **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).

§ 3 **Special provision for probation and pretrial services officers** - The age discrimination provision of Section I of this Chapter shall not apply to the initial hiring of probation and pretrial services officers. *See Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17.*

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

§ 1 **General** - Title II of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611, applies to court employees in the manner prescribed in Volume I-C, Chapter X, Subchapter 1630.1, Section R, of the *Guide to Judiciary Policies and Procedures*.

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. Complaints which seek a remedy that is exclusively within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service ("USPS") to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.
- § 2 **Court program requirements** - The court shall implement a program to achieve the protections set forth in Section 1 of this Chapter.

CHAPTER VII - POLYGRAPH TESTS

- § 1 **General** - No employee may be required to take a polygraph test.

CHAPTER VIII - 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 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 court (or a designated judicial officer) in which the alleged violation arises; and
 - C. review of the hearing decision under procedures established by the judicial council of the circuit.
- § 2 **General provisions and protections**
- A. **Prohibition against retaliation** - Complainants under this Plan have the right to be free from retaliation, coercion, or interference because of filing a complaint pursuant to this Plan. Likewise, any person who participates in the filing or processing of a complaint, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.

§ 5 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
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 the court's EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 4 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. If the dispute involves an alleged violation of this Plan by a judicial officer, the person who conducts the counseling shall be a judicial officer designated by 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** - All counseling shall be kept confidential unless the employee agrees in writing to waive confidentiality of the counseling process for the purpose of allowing the designated counselor to contact the employing office or to attempt a resolution of the disputed matter. A written record of all such contacts must be kept by the counselor and made available for review by the affected person(s).
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.

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.
- 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.
- 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 7 of this Chapter.

§ 7 Complaint, review and hearing

- A. **Complaint** - Not later than 15 days after receiving notice of the end of the mediation period, an employee may file a complaint under procedures established by the court. 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. 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. Review of pleadings

1. **Reviewing official** - The complaint and any other documents shall be reviewed by the chief judge of the court, or by another judicial officer of the court designated by the chief judge. In the event the chief judge is disqualified under Section 4 of this Chapter, or is unavailable to serve under this subsection, the reviewing official shall be designated in accordance with procedures established by the court. In the case of a complaint alleging that an Article III judge has violated rights protected by the Plan, that judge may elect to have a hearing conducted by a judge of another court, as designated by the judicial council of the circuit. Any designation of a judicial officer from another court to hear and decide the case shall be arranged by agreement of the chief judges of the affected courts.

- g. the final decision of the chief judge or designated 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 any action taken as a result of a hearing.

§ 8 Review of decision - A party or individual aggrieved by a final decision of the chief judge or designated judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the judicial council of the circuit. Any review will be conducted by a judicial officer(s), based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence.

§ 9 Remedies

- A. Where judicial officers acting pursuant to section 7 or 8 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 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 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 previously removed;
 - 4. prospective promotion to a position;
 - 5. priority consideration for a future promotion or position;
 - 6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
 - 7. records modification and/or expungement;
 - 8. "equitable" relief, such as temporary stays of adverse actions;
 - 9. granting of family and medical leave; and

Model Employment Dispute Resolution Plan Implementation Timetable

Spring 1997	Issuance of approved Model EDR Plan to the courts
Summer/Fall 1997	Appropriate training, resource material, etc., made available to courts on administration of local EDR plans Assistance made available to courts on development of local EDR plans
No Later Than December 1997	Courts wishing to adopt the Model EDR Plan without modification do so by this time and so indicate to the judicial council. Those courts making modifications to the Model EDR Plan submit their modified plans to the judicial council for approval. Prior to actual implementation, individual courts' EDR plans must make provision for certain procedures which the Model EDR Plan specifically identifies as areas of local court discretion.
No Later Than December 1998	Judicial councils adopt appellate review procedures and act to approve any court plans that are modifications of the Model EDR Plan
No Later Than January 1999	All plans go into effect; any complaints filed after this date are filed under the new system

Issues That Need to Be Addressed by Courts and Judicial Councils As They Develop Their Employment Dispute Resolution Plans

By individual courts:

Specific responsibilities identified in the Model EDR Plan:

- Implement a health and safety program (Chapter VI.2 of the Model EDR Plan)
Please note: Chapter VI ("Occupational Safety and Health Protections") of the Model EDR Plan notes that each court shall implement a program to achieve protections that will ensure a workplace free from recognized health and safety hazards. Guidance for courts on establishment of such programs will be provided in the near future.
- Appoint EDR coordinator(s) (Chapter VIII.3)
EDR Coordinator's duties include providing information to the court and employees regarding the plan (Chapter VIII.3.A)
- Make available procedures through which a party may seek the disqualification of a judicial officer, employee, or other person involved in a dispute (Chapter VIII.4)
- Establish procedures for filing a complaint (Chapter VIII.7.A)
- Establish procedures for designating a hearing officer in cases where the judge is unavailable or is disqualified from serving as the hearing officer (Chapter VIII.7.B.1)

Other issues courts may wish to consider:

- Any desired modifications of the Model EDR Plan
- Conforming revisions to the court's current EEO Plan
- Determination as to who will conduct mediation; provide training if necessary to ensure possession of mediation skills
- Any training about the plan for managers and/or employees
- Any desired relationship between the EDR plan and local adverse action or grievance plans

By judicial councils:

Specific responsibilities identified in the Model EDR Plan:

- Establish procedures by which complainants may petition for review of the decision of a hearing officer (Chapter VIII.8)
- Establish procedures regarding making final decisions available to the public (Chapter VIII.10)

Other issues councils may wish to consider:

- What types of modifications by individual courts will be approved (or, perhaps deal with on a case-by-case basis)
- Any necessary revisions to existing circuit Model EEO plans (e.g., provision for complaints filed against judges to be processed under § 372(c))