

U.S. DISTRICT COURT, DISTRICT OF MINNESOTA



**EMPLOYMENT DISPUTE
RESOLUTION PLAN**

Approved by the Bench on January 17, 2013

Effective on January 29, 2013

CHAPTER I – GENERAL PROVISIONS

§ 1 Preamble

This is the Employment Dispute Resolution Plan (“Plan”) for the United States District Court – District of Minnesota and is based on the Federal Judiciary Model Employment Dispute Resolution Plan. A copy of the court’s annual report on its implementation will be sent to the Administrative Office for inclusion in the Director’s Annual Report to the Judicial Conference. A copy of this Plan will be posted on the Court’s internal and external website.

This Plan supersedes all previous versions of the Plan. Claims arising under Chapters II through VIII of this Plan, or under Sections I through VI of the Equal Employment Opportunity Plan (“EEO Plan”) for the District of Minnesota must be treated in accordance with the procedures set forth in Chapter X of this Plan.

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

This Plan is not intended to duplicate the statutory protections provided for the resolution of complaints of judicial officer misconduct or disability under 28 U.S.C. §§ 371, et seq. and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under the Plan.

§ 2 Scope of Coverage

This Plan applies to:

- A.** All Article III judges and other judicial officers of the United States District Court, District of Minnesota;
- B.** All judges’ chambers staff; and
- C.** All employees of the United States District Court, District of Minnesota, which includes employees of the Clerk’s Office and the U.S. Probation and Pretrial Services Office.

§ 3 Definitions

Under this Plan:

- A.** The term “claim” or “EDR claim” means the filing of a request for counseling as set forth in Chapter X, which may be further pursued by the filing of a request for

mediation and a complaint.

- B.** The term “claimant” refers to the individual invoking the procedures under this Plan.
- C.** The term “complaint” refers to the document that must be submitted by a claimant after attending at least one mediation session in accordance with Chapter X, § 10 of this Plan.
- D.** The term “court” refers to the U.S. District Court for the District of Minnesota in which is located the employing office that would be responsible for redressing, correcting or abating the violation alleged in the complaint.
- E.** The term “court unit executive” refers to the Clerk of Court, Chief Probation and Pretrial Services Officer, or the chief judge, depending upon the employing office, term defined below, at issue.
- F.** The term “EDR coordinator” refers to the individual designated by the court to coordinate the employment dispute resolution process in accordance with this Plan.
- G.** The term “employee” includes all individuals listed in § 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term “employee” does not include interns or externs providing gratuitous service, applicants for bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators not employed by federal public defenders, volunteer counselors or mediators, or others who are not employees of an “employing office” as that term is defined below.
- H.** The term “employing office” includes all offices of the district court, clerk of the district court, chief probation and pretrial services officer, and any other such offices that might be created in the future. The district court is the employing office of a judicial officer’s chambers staff.
- I.** The term “judicial officer” means a judge appointed under Article III of the Constitution or a United States magistrate judge.

CHAPTER II – EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 General.

Discrimination against employees based on race, color, religion, sex (including pregnancy, sexual harassment, and sexual orientation), national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. Harassment against an employee based upon any of these protected categories or

retaliation for engaging in any protected activity is prohibited. All of the above constitute “wrongful conduct.” The rights and protections of Sections I through VII of the EEO Plan also applies 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 impairment.
See 42 U.S.C. § 12102(2).

§ 3 Special Provision for Probation and Pretrial Services Officers.

The age discrimination provision of § 1 of this Chapter does not apply to the initial hiring or mandatory separation of probation and pretrial service 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 officers must meet all fitness for duty standards, and noncompliance with such standards does not, in and of itself, constitute discrimination on the basis of disability.

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, § 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 § 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 does not apply to an employing office closing or mass lay off which may result from the absence of appropriated funds.

§ 2 Definitions.

- A.** The term “employing office closing” means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the

single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

B. The term “mass layoff” means a reduction in force which

1. is not the result of an employing office closing; and
2. results in an employment loss at the single site of employment during any 30-day period for
 - a. at least
 - i. 33 percent of the employees (excluding any part-time employees); and
 - ii. at least 50 employees (excluding any part-time employees); or
 - b. at least 500 employees (excluding any part-time employees).
See 29 U.S.C. § 2101.

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

An employing office must 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

Each employing office must provide to its employees a place of employment 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”) are not cognizable under this Plan; such requests should be filed directly with GSA or USPS as appropriate. The court must implement a program to achieve the protections set forth in this Chapter.

CHAPTER VII – 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 VIII – WHISTLEBLOWER PROTECTION

§ 1 General.

Any employee who has authority to take, direct others to take, recommend, or approve any personnel action must not, with respect to such authority, take or threaten to take an adverse employment action with respect to any employee (excluding applicants for

employment) because of any disclosure of information to –

- A.** the appropriate federal law enforcement authority, or
- B.** a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts,

by that 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 – REPORTS OF WRONGFUL CONDUCT

§ 1 Reporting Wrongful Conduct.

A report of wrongful conduct, as defined in Chapter II, §1, is not the same as initiating or filing a claim under this Plan and may not entitle the injured employee to corrective action. Employees injured by wrongful conduct may report the conduct through the wrongful conduct process and may also file an EDR claim to seek corrective action. Employees who wish to file an EDR claim relating to any alleged wrongful conduct must follow the procedures set forth in Chapter X of this Plan.

Judges and employees are encouraged to report wrongful conduct to the court’s EDR coordinator, the chief judge, unit executive, human resources manager, or their supervisor as soon as possible, before it becomes severe or pervasive. Retaliation against any employee making a report of wrongful conduct is prohibited. The person receiving such a report has the responsibility to notify the EDR coordinator as soon as possible.

§ 2 Investigating Allegations of Wrongful Conduct.

The EDR coordinator must promptly inform the chief judge and applicable court unit executive of any report. The chief judge and/or unit executive must 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 must protect the confidentiality of the allegations of wrongful conduct to the extent possible. However, information and records about the allegations must be shared with the chief judge and the applicable court unit executive of the employing office and may be shared with others on a need-to-know basis.

§ 3 Disciplinary Action.

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

CHAPTER X – 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 must seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of:

- A.* counseling and mediation;
- B.* a hearing before the chief judge of the court or other presiding judicial officer; and
- C.* review of the hearing decision under procedures established by the judicial council of this circuit.

§ 2 Alleged Violation by Employee.

Before invoking a request for counseling, an employee is encouraged to bring his or her concern 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 EEO Plan or this Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with the EDR coordinator in accordance with § 8 of this Chapter.

§ 3 Alleged Violation by Judge.

- A. Filing EDR Claim against a Judicial Officer.* Any employee alleging that a judicial officer violated any rights granted under the EEO Plan or this Plan may file an EDR claim in accordance with this Plan.
- B. Procedure.*

1. In the event an EDR claim is filed against a judicial officer, all the claims procedures of this Chapter must 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.
2. If a judicial officer 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.
3. 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 must protect the confidentiality of allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan must be shared with the chief judge and the applicable court unit executive of the employing office and may be shared with others on a need-to-know basis. Records relating to violations under this Plan must be kept confidential on the same basis.

§ 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 claim, such as the 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. The claimant must notify the EDR coordinator in writing of the identity of any representative and the representative's address and daytime phone number.
- C. Case Preparation.** To the extent feasible, every individual invoking the dispute resolution procedures of the Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance

of his or her court duties.

D. Discretion of Chief Judge and Presiding Judicial Officer.

1. *Designation of another judge.* The chief judge may designate another judge to perform his or her responsibilities under this Plan by notifying the claimant, the claimant's representative, if any, the employing office, the employing office's representative, if any, and the EDR coordinator in writing of the designation.
2. *Extensions of time.* The chief judge or presiding judicial officer may extend any of the deadlines set forth in this Chapter for good cause.
3. *Consolidation and amendment of claims.* The chief judge or presiding judicial officer may consolidate claims or allow a claim to be amended in the interests of judicial economy and efficiency.

E. Dismissal of Claims.

1. *Timing of and standard for dismissal.* On his or her own initiative or at the request of any party, the chief judge or presiding judicial officer, may at any time during these dispute resolution procedures, dismiss a claim, in whole or in part, on the grounds that it does not invoke violations of the rights or protections granted under the EEO Plan or 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.
2. *Requests for dismissal.*
 - a. A request for dismissal must be submitted in writing and briefly explain the grounds upon which the claim should be dismissed.
 - b. Requests for dismissal must be submitted to the chief judge or other presiding judicial officer.
3. *Notice of dismissal.* The chief judge or presiding judicial officer must issue a written dismissal of any claim, stating the grounds for dismissal. Notice of the dismissal must be provided to the claimant, representative of the claimant, if any, the applicable court unit executive of the employing office, representative of the employing office, if any, and the EDR coordinator.

F. Submission of Documents to EDR Coordinator.

1. *Documents that must be submitted to the EDR coordinator.* The following documents must be submitted, in writing to the EDR coordinator:
 - a. Requests for counseling;

- b. Requests for mediation; and
- c. Complaints.

2. *Timeliness.*

- a. To be timely, a document must be received by the EDR coordinator by 5:00 p.m. on the last day the document must be submitted to be timely. If the last day is a Saturday, Sunday, or other day the court is closed, the time for submitting the document is extended to the first day that is not a Saturday, Sunday, or other day the Court is closed.
- b. Documents may be submitted to the EDR coordinator via email, but the original signed documents must be delivered to the EDR coordinator shortly thereafter.
- c. If an EDR coordinator is not available to receive a document, the document must be emailed to the EDR coordinator, but the original signed document must be delivered to the EDR coordinator shortly thereafter.

G. *Records.* At the conclusion of any proceeding under this Plan, all papers, files and reports must be filed with the EDR coordinator. Papers, files, or reports relating to a dispute must not 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 chief judge or his or her designee must designate an individual or individuals to serve as EDR coordinator and notify court staff of the designation on an annual basis and whenever the designation changes.

An EDR coordinator must:

- A.** Provide information to the court and employees regarding the rights and protections afforded under this Plan;
- B.** Coordinate and organize the procedures and establish and maintain official files of the court pertaining to complaints and other matters initiated and processed under the court's employment dispute resolution plan;
- C.** Coordinate the counseling of individuals in the initial stages of the complaint process, in accordance with § 8 of this Chapter; and
- D.** Collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process.

§ 7 Disqualification of Plan Officials.

The following procedures apply to disqualify a person acting under this Plan.

A. Submitting a Disqualification Request.

1. A claimant, applicable court unit executive of the employing office, or individual alleged to have violated this Plan, may submit a request to disqualify an official acting under this Plan in writing to the EDR coordinator, except that if the disqualification request is to disqualify the EDR coordinator, the request must be submitted to the chief judge.
2. The disqualification request must include a brief description of why the disqualification request must be granted. The EDR coordinator must provide a copy of the disqualification request to the chief judge, the applicable court unit executive of the employing office, and the official who is the subject of the disqualification request.
3. Any party may request to disqualify an official under this Plan at any time. Requests to disqualify an official under this Plan must be reviewed by the chief judge or if the chief judge is disqualified, by the next senior judge available to consider the request.

B. Plan Officials

1. *Chief Judge.*
 - a. Any request to disqualify the chief judge must be performed by the next available senior judicial officer.
 - b. In the event the chief judge is disqualified under this Plan and the claimant is not complaining against the chief judge, the next available senior judicial officer must perform all responsibilities under this Plan on the chief judge's behalf.
2. *EDR coordinator.*
 - a. An EDR coordinator cannot be disqualified from receiving:
 - i. Requests to disqualify an official under the Plan, except that disqualification requests to disqualify the EDR coordinator must be submitted to the chief judge;
 - ii. Requests for counseling;
 - iii. Requests for mediation; or
 - iv. Complaints.
 - b. An EDR coordinator may be disqualified from serving as a counselor. In the

event a claimant submits a request to disqualify the EDR coordinator from serving as a counselor, the chief judge must designate a qualified person to serve as the counselor.

3. *Mediator.* In the event a mediator is disqualified under this section, the chief judge must appoint a different qualified mediator.
4. *Presiding judicial officer.*
 - a. A judicial officer who has been involved in any decision affecting the claimant with respect to the claim(s) at issue must not serve as the presiding judicial officer in a hearing on a complaint involving such claim(s). In such cases, the judicial officer must recuse subsequent to a designation to serve as the presiding judicial officer or a claimant, applicable court unit executive of the employing office, or individual alleged to have violated this Plan may seek disqualification of the judicial officer as set forth in this section.
 - b. In the event a presiding judicial officer is disqualified under this section, the chief judge must appoint a different judicial officer to serve as presiding judicial officer.
 - c. If the presiding judicial officer is the chief judge, the disqualification procedures in Chapter X, § 7.B.1. apply.

§ 8 Counseling.

A. *Initiating a Proceeding; Formal Request for Counseling.* An employee who believes that his or her rights under Chapters II through VIII of this Plan have been violated must first request counseling.

B. *Form and Manner of Request.*

1. Requests for counseling must be:
 - a. Submitted to the EDR coordinator;
 - b. Made in writing and contain all the violations asserted by the claimant; and
 - c. Made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation.
2. The EDR coordinator must promptly provide a copy of the request for counseling to the chief judge and the applicable court unit executive of the employing office.

C. *Procedures.*

1. *Who may serve as counselor.* Counseling must be conducted by the court's EDR coordinator, unless the EDR coordinator is disqualified from serving as a counselor under § 7 of this Chapter, or is otherwise unavailable.
2. *Purposes of counseling.* At counseling, the EDR coordinator must discuss the claimant's concerns and elicit information regarding the matter which the claimant believes constitutes a violation; advise the claimant of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; evaluate the matter; and assist the claimant in achieving an early resolution of the matter, if possible.
3. *Confidentiality.* The court or employing office must protect the confidentiality of allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan must be shared with the chief judge and the applicable court unit executive of the employing office and may be shared with others on a need-to-know basis. Records relating to violations under this Plan must be kept confidential on the same basis.
4. *Form of settlement.* The counselor must 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 counseling period must be 30 days (or a shorter period if counseling is concluded at an earlier date), beginning on the date that the EDR coordinator receives the request for counseling.

E. End of the Counseling Period and Notice. The EDR coordinator must notify the claimant in writing of the end of the counseling period.

1. The notice must inform the claimant of the right and obligation, should the claimant choose to pursue his or her claim, to file with the EDR coordinator a request for mediation in accordance with § 9 of this Chapter. The notice must indicate the date that the employee received the notice and the date by which a request for mediation must be submitted to be considered timely.
2. If the claimant has a representative, the EDR coordinator must also provide a copy of the notice of the end of the counseling period to the representative.
3. The EDR coordinator must also provide a copy of the notice of the end of the counseling period to the applicable court unit executive of the employing office and the employing office's representative, if any.

§ 9 Mediation.

A. Request for Mediation.

1. Within 15 days after the claimant receives the notice of the end of the counseling period, the claimant may file a request for mediation with the EDR coordinator.
2. A request for mediation must be made in writing and must state the claim(s) presented. Only claims that are presented in the request for mediation may be presented in the complaint. *See* Ch. X, § 10.A.
3. The EDR coordinator must promptly provide a copy of the request for mediation to the chief judge and applicable court unit executive.
4. Failure to pursue mediation will preclude further processing of the employee's claim under any other provision of this Chapter.

B. Mediation Procedures.

1. *Designation of mediator.* As soon as possible after receiving the request for mediation, the chief judge must 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 must meet separately and/or jointly with the employee and his or her representative, if any, and the applicable court unit executive of 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 must 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 must 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 must 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 must attend one mediation session before filing a complaint.

D. End 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 must provide the claimant written notice of the end of the mediation period.

1. The notice must inform the claimant of his or her right to file a complaint under § 10 of this Chapter. The notice must also indicate the date that the employee received the notice and the date by which a complaint must be submitted to be considered timely.
2. If the claimant has a representative, the EDR coordinator must also serve a copy of the notice of the end of the mediation period to the representative.
3. The EDR coordinator must also serve a copy of the notice of the end of the mediation period to the applicable court unit executive of the employing office and the employing office's representative, if any.

§ 10 Complaint, Review, and Hearing.

A. *Complaint.* After attending at least one mediation session and no later than 15 days after receiving notice of the end of the mediation period, a claimant may file a complaint.

1. *Complaint requirements.* A complaint must:
 - a. Be in writing and be signed;
 - b. Identify the claimant, including title and office, and list the names of all parties and individuals involved in the actions at issue.
 - c. Provide a short and plain statement of the claimant's claim(s) and the relief or remedy sought. The claim(s) must not exceed those identified in the request for mediation.
 - d. Identify the respondent to the complaint. The respondent is the employing office which would be responsible for redressing, correcting, or abating the alleged violation(s). The complaint must not identify an individual as the respondent.
2. *Submitting a complaint.* Complaints must be submitted to the EDR coordinator. The EDR coordinator must provide a copy of the complaint to the chief judge and the applicable court unit executive of the employing office.

B. *Designation of the Presiding Judicial Officer.* Within 5 business days of receiving the complaint, the chief judge must notify the claimant in writing who is designated as the presiding judicial officer.

C. *Review of the Complaint.*

1. The complaint and any other documents must be reviewed by the chief judge or presiding judicial officer.
2. A complaint may be dismissed in accordance with Chapter X, § 5.E. of this Plan.

D. *Hearing Procedures.*

1. *In General.* If the chief judge or presiding judicial officer does not dismiss the complaint, the chief judge or presiding judicial officer, must hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
2. *Hearing Procedure.* The chief judge or presiding judicial officer may provide for such discovery and investigation as is necessary. In general, the presiding judicial officer must determine the time, place, and manner of conducting the hearing in accordance with the following procedures.
 - a. The hearing must commence within 60 days of the filing of the complaint.
 - b. The claimant, the claimant's representative, the employing office, the employing office's representative, and any individual alleged to have violated rights under this Plan must receive written notice of the hearing.
 - c. At the hearing, the claimant has the right to representation, present evidence on his or her behalf, and cross-examine adverse witnesses; the employing office has the right to present evidence on its behalf and cross-examine adverse witnesses.
 - d. A verbatim record of the hearing must be kept and must be the sole official record of the proceeding.

E. *Decision.*

1. In reaching his or her decision, the chief judge or other presiding judicial officer must 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's judicial council, under this section.
2. Remedies may be provided in accordance with § 12 of this Chapter where a presiding judicial officer finds that the claimant has established by a preponderance of the evidence that a right protected by this Plan has been violated.
3. The final decision of the chief judge or other presiding judicial officer must be

issued in writing not later than 30 days after the conclusion of the hearing or decision that a hearing will not take place; and

4. All parties, including any individual found to have violated the rights under this Plan, must receive written notice of any action taken as a result of a hearing.

§ 11 Review of Decision.

A party or individual aggrieved by a final decision of the chief judge or presiding 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 Eighth Circuit. Any review will be conducted by a judicial officer(s), based on the record created by the presiding judicial officer, and must be affirmed if supported by substantial evidence.

§ 12 Remedies.

- A.** Where judicial officers acting pursuant to § 10 or § 11 of this Plan find that a right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively ensuring compliance with the rights protected by this Plan, or both. A remedy must be tailored as closely as possible to the specific violation involved.
- B.** Remedies, which may be provided to successful claimants 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; or
 10. Accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.
- C.** Remedies that are not legally available include:

1. Payment of attorney's fees (except as authorized under the Back Pay Act);
2. Compensatory damages; and
3. Punitive damages.

§ 13 Record of Final Decision.

Final decisions under this Plan must be made available to the public in accordance with procedures established by the judicial council of the circuit.