

EMPLOYMENT DISPUTE RESOLUTION PLAN

AS AMENDED THROUGH JANUARY 2013

FIRST CIRCUIT COURT OF APPEALS

CHAPTER 1 — GENERAL PROVISIONS

A. PREAMBLE

This Employment Dispute Resolution ("EDR") Plan was approved by the First Circuit Court of Appeals and by the Judicial Council of the First Circuit in order to provide court employees with a means of resolving certain issues which arise in the course of their employment. This Plan is intended to provide court employees the substantive rights and protections of the Model EDR Plan adopted by the Judicial Conference of the United States in March 2010 and amended September 2012. The Judicial Conference adopted its Model EDR Plan in response to the Congressional Accountability Act of 1995, in which legislative branch employees were provided with certain rights. The rights conferred by the Judicial Conference to employees of the judiciary are comparable to those available to legislative branch employees or to any of the rights available under various federal statutes which relate to employment matters addressed by this Plan.¹ However, certain workplace and employment issues cannot be resolved by the courts under this Plan, since the court does not have the authority to do so.

This Plan addresses the following workplace and employment issues:

- Equal Employment Opportunity and Anti-Discrimination Rights
- Sexual Harassment
- Family and Medical Leave Rights
- Employment and Reemployment Rights of Members of the Uniformed Services
- Occupational Safety and Health Protections
- Polygraph Tests
- Whistleblower Protection
- Employee Dispute Resolution Procedures for Claims of the Denial of the Rights Afforded Under this Plan

Chapter 1 of this Plan sets forth general provisions, provides definitions of terms used throughout the Plan and provides information relating to coverage. Chapters 2 - 7 summarize the rights that are protected under the Plan. Chapter 8 sets forth the dispute resolution procedures that should be invoked by any individual who feels his or her rights were violated.

Each court shall adopt and implement a plan based on the First Circuit Model Plan. Any modification of this Plan by a court must first be approved by the First Circuit Judicial Council. Courts and employing offices shall post their plans on their respective internal and external web sites. 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.

¹Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act of 1990; Age Discrimination in Employment Act of 1967; Family and Medical Leave Act of 1993; Occupational Health and Safety Act of 1970; Employee Polygraph Protection Act of 1988; Rehabilitation Act of 1973; Chapter 43 of Title 38 (relating to veterans' employment and reemployment).

Some courts have provided additional rights and protections to employees through general grievance or adverse action procedures. This Plan does not affect the operation of such plans. However, an employee may bring a particular complaint only once. Therefore, if the employee's court has a grievance or adverse action procedure in addition to this Plan, the employee should carefully evaluate under which procedure he or she wishes to proceed. If the employee is unsure, he or she is encouraged to discuss the issue with his or her EDR coordinator. Anyone not covered by this Plan who has a concern regarding a workplace and/or employment issue may contact the Office of the Circuit Executive for guidance.

Complaints alleging that a judicial officer engaged in conduct prejudicial to the efficient and expeditious administration of the business of the courts or is unable to discharge all of the duties of office by reason of mental or physical disability are to be brought exclusively pursuant to 28 U.S.C. § 351 et seq. To bring such a complaint, a copy of the Rules for Judicial-Conduct and Judicial-Disability Proceedings may be obtained from the Circuit Executive's Office.

B. DEFINITIONS

For purposes of this Plan:

1. The term "claim" means the filing of a request for counseling and/or mediation as set forth in Chapter 8, which may be further pursued by the filing of a request for hearing.
2. EMPLOYEE OR STAFF. The term "employee" and the term "staff" includes all applicants for employment, current employees and former employees, except the following individuals, who are *specifically excluded and are not covered* under this Plan:
 - (a) Temporary employees and applicants for temporary positions;
 - (b) Applicants for law clerk and intern and extern positions;
 - (c) Interns and externs;
 - (d) Applicants for the position of secretary to a judicial officer;
 - (e) Applicants for Magistrate Judge positions;
 - (f) Applicants for Bankruptcy Judge positions;
 - (g) Private attorneys who represent or apply to represent indigent defendants under the Criminal Justice Act;
 - (h) Criminal defense investigators who are retained on a contract basis and are not full- or part-time employees of the Federal Public Defender's Office;
 - (i) Volunteer counselors or mediators; and

- (j) Other individuals who are not employees of an "employing office" as defined in Paragraph 4 below.

3. UNIT EXECUTIVE.

The Term "unit executive" includes:

- (a) The circuit executive;
- (b) The clerk of the court of appeals;
- (c) The senior staff attorney;
- (d) The circuit librarian;
- (e) The Federal Public Defender;
- (f) The clerk of the Bankruptcy Appellate Panel;
- (g) Settlement Counsel; and
- (h) The chief executive officer of any unit of the court that may be created in the future.

4. EMPLOYING OFFICE.

The term "employing office" includes all offices of:

The United States Court of Appeals for the First Circuit including:

- (a) circuit judges' chambers;
- (b) office of the circuit executive;
- (c) office of the Federal Public Defender;
- (d) office of the clerk of court;
- (e) office of the senior staff attorney;
- (f) circuit libraries;
- (g) office of the Court of Appeals Management Program (CAMP); and
- (h) office of the Bankruptcy Appellate Panel (BAP).

The court in which the judicial officer sits is the employing office of the judicial officer and his or her chambers staff.

5. JUDICIAL OFFICER OR JUDGE. The terms "judicial officer" and "judge" mean a judge appointed under Article III of the Constitution, a United States Bankruptcy Judge, or a United States Magistrate Judge.
6. COURT. The term "court" applies to the offices of the United States Court of Appeals for the First Circuit, including the Federal Public Defender's Office.
7. DAY. For purposes of determining periods of time in the procedural sections of this Plan, the word "day" pertains to a calendar day, not a business day. If the deadline falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following Monday or court business day respectively.

C. SCOPE OF COVERAGE

1. WHO IS COVERED.

This Plan applies to:

- (a) All judges of the United States Courts for the First Circuit Court of Appeals;
- (b) Judges' chambers staff, excluding interns or externs;
- (c) The unit executive and staff of the following support offices;
 - (1) Office of the Circuit Executive;
 - (2) Office of the Clerk of the Court of Appeals for the First Circuit;
 - (3) Civil Appeals Management Program (CAMP);
 - (4) Bankruptcy Appellate Panel (BAP);
 - (5) Office of the Senior Staff Attorney;
 - (6) Office of the Circuit Librarian, including satellite branches;
 - (7) Federal Public Defenders' Offices within the First Circuit;
 - (8) Any other court support office not named here; and
 - (9) Any additional court support office created after the adoption of this Plan.

CHAPTER 2 — EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

A. 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, subject to the specific exemptions set forth in Parts B and C of this Chapter. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. The rights and protections of Sections I through VII of the First Circuit Court of Appeals' Equal Employment Opportunity Plan shall also apply to employees.

B. DISABILITY

1. The term "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an employee, a record of such impairment, or being regarded as having such impairment. See 42 U.S.C. § 12102(2).
2. The provisions of Part A of this Chapter do not preclude consideration of a person's physical or mental impairments if they would significantly affect that individual's ability to perform important aspects of the job in question. Before a person is rejected from or removed from a job because of physical or mental impairments, reasonable accommodations shall be considered in making the decision.
3. Because probation officers are placed in high risk situations where a physical or mental disability could place them and others in extreme jeopardy, probation officers are excluded from this Part.

C. AGE

1. The provisions of Part A of this Chapter relating to age do not preclude (subject to the protections afforded in Part B of this Chapter) consideration of a particular individual's physical or mental impairment or limitation that significantly affects that person's ability to perform important aspects of a job even though that impairment or limitation may be the result of the aging process.
2. The provisions of Part A of this Chapter relating to age are subject to special provisions of law and regulations approved by the Judicial Conference with respect to the maximum age at initial hiring of probation and pretrial services and to mandatory retirement ages for such persons.

D. RELIGION

Reasonable accommodation shall be made for an individual's religious observances and practices unless it would impair the operations or dignity of the court or impose undue hardship on other court personnel.

E. SEXUAL HARASSMENT

Employees of the court shall not engage in sexual harassment of co-workers, subordinates or supervisors. Sexual harassment proscribed by this paragraph includes, but is not necessarily limited to, the following:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature when it is unwelcome and: (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

CHAPTER 3 — FAMILY AND MEDICAL LEAVE RIGHTS

An employing office shall comply with the Family and Medical Leave Act of 1993, which entitles federal court employees to receive up to 12 administrative workweeks of unpaid leave per year. For more information, see Volume 12, Chapter 9, § 920.20.35 of the *Guide to Judiciary Policy*.

CHAPTER 4 — EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED 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 5 — OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

[Not to be effective until such time as the Administrative Office of the United States Courts provides a set of guidelines governing occupational safety and health protections.]

Each employing office shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service ("USPS") to provide, or complaints which relate to matters under the control of a private landlord, are not cognizable under this Plan; such requests should be filed directly with GSA, the USPS, or the private landlord, as appropriate.

CHAPTER 6 — 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 7 — WHISTLEBLOWER PROTECTION

A. 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 any employee (excluding applicants for employment) because of any disclosure of information to—

1. the appropriate federal law enforcement authority, or
2. 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.

B. 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 8 — DISPUTE RESOLUTION PROCEDURES

A. ALLEGED VIOLATION BY JUDGE

Any employee alleging that a judge violated any rights granted under the First Circuit EEO Plan or this EDR Plan may file an EDR claim in accordance with this Plan. In such instance, all claims will be referred to the Chief Judge of the First Circuit Court of Appeals who will administer the claim pursuant to the Judicial Conduct and Disability Act, 28 U.S.C. § 351 et seq.,

and the Rules for Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference, pursuant to 28 U.S.C. §§ 331 and 358. See 28 U.S.C. §§ 351-362. At the conclusion of the Judicial Conduct proceeding, the Chief Circuit Judge has the discretion to refer the matter back to the EDR claims procedures. If the claim is against the Chief Circuit Judge, the most-senior active circuit judge not disqualified shall administer the claim pursuant to the Act.

The court or employing office shall protect the confidentiality of allegations filed against a judge to the same extent as claims filed under 28 U.S.C. § 351 and the Rules for Judicial-Conduct and Judicial-Disability Proceedings promulgated by the Judicial Conference, pursuant to 28 U.S.C. §§ 331 and 358. See 28 U.S.C. §§ 351-362.

B. ALLEGED VIOLATIONS BY OTHERS

Before invoking a request for counseling or mediation, 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 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 First Circuit EEO Plan or this EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling and/or mediation with his or her court's EDR Coordinator in accordance with Part F of this Chapter.

An employee who claims a denial of the rights granted under Chapters 2 through 7 of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of:

- (a) an informal resolution process consisting of counseling and/or mediation;
- (b) hearing before the chief judge of the relevant court (or a judicial officer designated by the chief judge of the relevant court); and
- (c) review of the hearing decision under procedures established by the First Circuit Judicial Council.

The court or employing office shall protect the confidentiality of the 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.

C. GENERAL PROVISIONS AND PROTECTIONS

1. **PROHIBITION AGAINST RETALIATION** — The court, any judge, unit executive, or their assistants, shall not retaliate against, coerce or interfere with a complainant or anyone participating in the filing and processing of a complaint.
2. **RIGHT TO REPRESENTATION** — Every individual invoking the dispute resolution procedures of this Plan or who may be affected uniquely and adversely by the resolution of a complaint under this Plan (such as, for example, a person whose promotion is claimed to

have constituted a discriminatory practice) has the right (at his or her own expense) to be represented by a person of his or her choice if such person is available and consents to be a representative. The individual alleged to have violated rights under the Plan is also entitled to representation, at his or her own expense. The head of the employing office involved in proceedings under this Plan is likewise entitled to representation in the processing and resolution of such a matter. 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.

3. **CASE PREPARATION** — To the extent feasible, every individual who is involved in the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her court duties, as determined by the court employee's appointing officer. If the appointing officer is involved in the dispute, then the determination shall be made by the chief judge of the relevant court.
4. **NOTICE** — If counseling is pursued, all communications shall be kept confidential. However, this confidentiality provision does not prevent disciplinary action against the individual alleged to have violated rights under this Plan. If mediation is pursued, and until final resolution of the complaint, every individual alleged to be involved in a violation of the provisions of this Plan has the right to have reasonable notice of the charges and an opportunity to respond to the allegations. The EDR Coordinator or Alternate EDR Coordinator shall inform the complainant at the initial meeting how this notice provision and the potential for discipline may eventually affect the confidentiality of the complaint.
5. **EXTENSIONS OF TIME** — The chief judge of the relevant court, or his or her delegee, may extend any of the deadlines set forth in this Chapter for good cause.
6. **DISMISSAL OF CLAIM** — On his or her own initiative or at the request of any party, the chief judge of the relevant court 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 the First Circuit's EEO Plan or this EDR Plan, is untimely, is unduly repetitive of a previous claim, adverse action, or grievance, is frivolous, or fails to state a claim upon which relief may be granted.
7. **RECORDS** — At the conclusion of proceedings under this Plan, all papers, files and reports will be filed with the court's EDR Coordinator. No papers, files, or reports relating to a dispute shall be filed in an employee's personnel folder, except as necessary to implement an official personnel action.

D. DESIGNATION AND DUTIES OF EMPLOYMENT DISPUTE RESOLUTION COORDINATOR

1. **DESIGNATION OF EDR COORDINATORS** — There shall be two EDR Coordinators (the EDR Coordinator and the Alternate EDR Coordinator). The EDR Coordinator and the Alternate EDR Coordinator shall be individuals of the opposite sex so that employees may

be provided a comfortable forum for discussion of possibly sensitive issues during the counseling process. The EDR Coordinator and Alternate EDR Coordinator shall be selected from different units of the court, to ensure that an employee can choose an EDR Coordinator who will be independent of the court unit in which the complaint arose, while being known by the court and understanding the functioning of the court.

2. DUTIES OF EDR COORDINATOR — The duties of the court's EDR Coordinator and Alternate EDR Coordinator shall include the following:
 - (a) INFORMATION. The EDR Coordinator shall provide information to the court and employees regarding the rights and protections afforded under this Plan;
 - (b) ADMINISTRATION. The EDR Coordinator shall coordinate and organize the procedures and establish and maintain official files of the court pertaining to complaints and other matters initiated and processed under this Plan.
 - (c) COUNSELING. The EDR Coordinator shall coordinate the counseling of individuals in the initial stage of the complaint process, in accordance with this Plan;
 - (d) STATISTICS. The EDR Coordinator shall collect, analyze and consolidate statistical data and other information pertaining to the court's EDR Plan. The EDR Coordinator will draft for the court's approval an Annual Report to the Administrative Office.

E. GENERAL DISQUALIFICATION PROVISION

The chief judge of the relevant court may, from time to time, either by a continuing delegation or by a delegation for purposes of a particular matter, designate another judicial officer of the court to perform the duties assigned in this Chapter to the chief judge of the relevant court. A party may seek disqualification of a judicial officer, employee or other person involved in the dispute by written request to the chief judge of the relevant court. Such written request shall specify why the individual should be disqualified.

F. INFORMAL RESOLUTION: COUNSELING AND MEDIATION

The dispute resolution process is initiated by an attempt at informal resolution. Employees have the option of pursuing a counseling process, a mediation process, or both. An employee who believes that his or her rights under this Plan have been violated may first request counseling for him or herself. If an employee does not wish to request counseling, he or she may initiate an informal proceeding by filing a request for mediation. See Paragraph 2 below. Some form of informal resolution shall be pursued before an employee can bring a formal complaint under Part G of this Chapter.

1. COUNSELING. Requests for counseling shall: be submitted to the court's EDR

Coordinator or Alternate EDR Coordinator; be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation; contain all the violations asserted by the claimant; and be in writing and signed. The procedures are as follows:

- (a) **WHO MAY SERVE AS COUNSELOR.** The counseling shall be conducted by one of the court's EDR Coordinators who is not disqualified from serving as counselor under Part E of this Chapter, and is not otherwise unavailable. If there is a disqualification or unavailability, the chief judge of the relevant court shall designate another qualified individual to perform the counseling function. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and chief judge of the relevant court.
- (b) **PURPOSES OF COUNSELING.** The purposes of 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.
- (c) **CONFIDENTIALITY.** All contacts made, information obtained or exchanged and representations made by the complainant, the head of the office in which they are employed, any witness(es) and all other information obtained during the consultation process shall be treated in the same manner as other sensitive personnel issues which are normally confidential and for official use only. However, this confidentiality provision shall not prevent disciplinary action against the individual alleged to have violated rights under the Plan, where such action is deemed appropriate.
- (d) **FORM OF SETTLEMENT.** The EDR Coordinator (or Alternate EDR Coordinator) shall reduce to writing any settlement achieved during the counseling process. Any settlement shall be signed by the employee, his or her representative, if any, and all other individuals who are necessary to implement the settlement, but need not be signed by all employees who may claim to be adversely affected thereby. Any settlement which involves the expenditure of funds must be approved by the chief judge of the court in which the complaint arises, or his or her designee.
- (e) **DURATION OF COUNSELING PERIOD.** The period of counseling shall not exceed 30 days, beginning on the date that the request for counseling is received by the EDR Coordinator.
- (f) **CONCLUSION OF THE COUNSELING PERIOD AND NOTICE.** The EDR Coordinator shall notify the employee in writing of the end of the counseling period. Notice shall also be given to the unit executive. As part of the notice, the EDR

Coordinator shall inform the employee that he or she may file a request for mediation or may file a formal complaint under Part G of this Chapter.

2. **MEDIATION.** Requests for mediation shall be submitted to the EDR Coordinator (or Alternate EDR Coordinator). If an employee is initiating a proceeding with mediation, the request for mediation shall be mailed or hand delivered within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation. Alternatively, the employee may mail or hand deliver to the EDR Coordinator (or Alternate EDR Coordinator) a request for mediation within 15 days after the notice of the conclusion of the counseling period is mailed. The request shall be made in writing and shall state the claim(s) presented. The procedures are as follows:
 - (a) **WHO MAY SERVE AS MEDIATOR.** As soon as possible after receiving the request for mediation, the chief judge of the relevant court or EDR Coordinator shall designate a mediator and provide written notice of such designation. Any person, except the court's EDR Coordinator, may serve as a mediator under this Plan. The EDR Coordinator has discretion to appoint as mediator: the First Circuit Court of Appeals Settlement Counsel, another qualified employee of the court, or someone from outside the court with the skills to assist in resolving disputes. If the complaint alleges that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the chief judge of the court in which the complaint arises.
 - (b) **PURPOSE OF MEDIATION.** The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, the individual(s) alleged to have violated the complaining employee's rights and the unit executive of the employing office. Such meetings may be held separately and/or jointly with the people involved to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.
 - (c) **CONFIDENTIALITY.** No person or party involved in the mediation process shall 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, or as necessary to discipline the individual alleged to have violated rights under the Plan, where appropriate.
 - (d) **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, the individual who is authorized to enter into settlement on the employing office's behalf, and all other individuals who are necessary to implement the settlement; but need not be signed by all employees who may claim to be adversely affected thereby. The original settlement agreement shall be filed with the EDR Coordinator, who will promptly transmit copies to the parties and their representatives. Any settlement which involves the expenditure of funds must be approved by the chief

judge of the court in which the complaint arises, or his or her designee.

- (e) **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, she or he may proceed to file a complaint. The mediation period may be extended by mutual agreement of the mediator and the parties.
- (f) **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 (or Alternate EDR Coordinator) shall provide the employee, the employee's representative, if any, the individual who is the subject of the complaint 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 Part G of this Chapter.

G. COMPLAINT, REVIEW AND HEARING

1. **COMPLAINT.** No later than 15 days after the notice of the end of the period of informal resolution is mailed, an employee may mail or hand deliver a complaint to the EDR Coordinator, who will retain the original and transmit copies to the chief judge of the court in which the complaint arises or designated judicial officer, the respondent, and the individual who is the subject of the complaint. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought. Claims not presented during counseling or mediation 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.
2. **RESPONSE.** Upon mailing of a copy of the complaint, both the respondent, as defined in Paragraph 1, above, and the individual alleged to have violated rights protected under this Plan shall have 15 days to respond to the allegations contained therein, in writing, to the chief judge of the relevant court.
3. **REVIEW OF PLEADINGS**
 - (a) **REVIEWING OFFICIAL.** The complaint and any other documents shall be reviewed by the chief judge of the relevant court, or by another judicial officer of the court designated by the chief judge. In the event the chief judge is disqualified under Part E, or is unavailable to serve, the next most senior judge of the relevant court in regular active service who is available and qualified to serve shall assume the responsibilities

of the chief judge under this Chapter. In the case of a complaint alleging that an Article III judge has violated a right protected by this Plan, that judge may elect to have a hearing conducted by a judge of another court, as designated by the First Circuit Judicial Council. 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.

(b) **REVIEW PROCEDURES.** After notice to the complainant and an opportunity to respond, the chief judge of the relevant court or designated judicial officer may dismiss in writing any complaint that is found to be frivolous; to be unduly repetitive of a previous complaint; to fail to state a claim upon which relief may be granted; or to make a claim or claims that were not advanced in counseling or mediation.

(c) **HEARING PROCEDURES**

(1) **HEARING OFFICER.** If the chief judge of the relevant court or designated judicial officer does not dismiss the complaint under the preceding paragraph, the chief judge or designated judicial officer, acting as the hearing 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 Part:

(i) **TIMING FOR HEARING.** The hearing shall be commenced no later than 60 days after the mailing or hand delivery of the complaint.

(ii) **NOTICE REQUIREMENTS.** All parties, including but not limited to, the complainant, the unit executive of the office against which the complaint has been filed and any individual alleged to have violated rights protected by this Plan must be sent reasonable written notice of the hearing. Where the complaint is filed against a judge or other judicial officer by chambers staff, the Chief Circuit Judge of the court will receive notice. See Chapter 8, Part A.

(iii) **PROCEEDINGS.** At the hearing, the complainant, the employing office and the individual alleged to have violated rights under this Plan will have the right to representation. The complainant and the individual alleged to have violated rights under the Plan are responsible for all expenses associated with their representation by counsel. At the hearing, the complainant, the employing office and the individual alleged to have violated rights under the Plan will also have the right to present evidence and witnesses on his/her

behalf; and the right to cross-examine adverse witnesses.

- (iv) **RECORD.** A verbatim record of the hearing must be kept and shall be the sole official record of the proceeding.
- (v) **DECISION.** In reaching his or her decision, the chief judge of the relevant court or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to this Plan and by decisions of the First Circuit Judicial Council under Part H of this Chapter.
- (vi) **REMEDIES.** Remedies may be provided in accordance with Part I of this Chapter where the hearing officer finds that the complaint has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated.
- (vii) **TIMING FOR DECISION.** The final decision of the chief judge of the relevant court or designated judicial officer must be issued in writing no later than 30 days after the conclusion of the hearing.
- (viii) **NOTICE OF ACTION.** All parties, including the individual alleged to have violated rights protected by this Plan, must be sent written notice of any action taken as a result of the hearing.
- (ix) **MALICIOUS FILING.** A finding by the hearing officer that a complaint has been filed maliciously will constitute grounds for adverse action.

H. NOTICE OF PROCEDURES FOR REVIEW

The complainant, the individual alleged to have violated rights under this Plan, or the employing office may petition for review of the decision under procedures established by the First Circuit Judicial Council. The petition for review must be filed within fifteen (15) days of the issuance of the final decision. The EDR Coordinator shall inform all persons served with notice of the final decision of the chief judge of the relevant court or designated judicial officer of the procedures to seek review by the Judicial Council. A 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.

I. REMEDIES

1. **ORDER FOR REMEDY.** Where judicial officers acting pursuant to Part G or H of this Chapter 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.

2. **AVAILABLE REMEDIES.** Remedies which may be provided to successful complainants under this Plan, excluding judges' secretaries, assistants and law clerks as to complaints against judges (see Paragraph 3, below), include, but are not limited to:
 - (a) placement of an employee in a position previously denied;
 - (b) placement in a comparable alternative position;
 - (c) reinstatement to a position from which previously removed;
 - (d) prospective promotion to a position;
 - (e) priority consideration for a future promotion or position;
 - (f) back pay and associated benefits, including attorneys' fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
 - (g) records modification and/or expungement;
 - (h) "equitable" relief, such as temporary stays of adverse actions;
 - (i) granting of family and medical leave; and
 - (j) reasonable accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.
3. **JUDGES' SECRETARIES, ASSISTANTS, AND LAW CLERKS AS TO COMPLAINTS AGAINST JUDGES.** Remedies available to judges' secretaries, assistants, and law clerks include those listed in Paragraph 2, above, except that a judge will not be required to continue any employer/employee relationship as a form of remediation.
4. **REMEDIES NOT AVAILABLE.** Remedies which are not legally available to any complainant include:
 - (a) payment of attorneys' fees, except as available under the Back Pay Act, see Paragraph 2(f) above;
 - (b) compensatory damages; and
 - (c) punitive damages.

5. ENFORCEABILITY OF REMEDIES

- (a) Pursuant to 28 U.S.C. § 332(d)(1), decisions reached and remedies ordered by the First Circuit Judicial Council will be binding on all judicial officers and employees within the First Circuit.
- (b) A remedy ordered by a hearing officer under Part I of this Chapter or by the First Circuit Judicial Council under Part H of this Chapter cannot be appealed through a court's adverse action appeal procedure.

CHAPTER 9 — RECORD OF FINAL DECISIONS

Final written decisions under this Plan shall not name the complainant or individual respondents and shall be captioned as follows:

In the matter of a Complaint Arising Under the Employee Dispute Resolution Plan of the [insert court title]

Case No. [year-number]

The [enter court office name] as the Designated Employee Office

Final decisions made under this Plan will be available to the public free of charge upon written request addressed to the EDR Coordinator. The EDR Coordinator will remove the individual names that appeared in such a decision before the decision is released to the public.

CHAPTER 10 — NOTICE

Copies of this Plan shall be given to all employees upon implementation. After that date, copies will be given to each new employee, when hired, and upon request, to members of the public.