SEVENTH CIRCUIT EQUAL EMPLOYMENT OPPORTUNITY PLAN AND EMPLOYMENT DISPUTE RESOLUTION PLAN

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

The Federal Judiciary Model Equal Employment Opportunity Plan and the Model Employment Dispute Resolution Plans were adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States courts. Equal employment opportunity is provided to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or disability. A discrimination complaint may also be filed for sexual harassment and any allegation of restraint, coercion, or retaliation because a person has raised an allegation of discrimination or has served as a representative, a witness, or an EEO\EDR Coordinator in connection with a complaint. This Court will promote equal opportunity through a program encompassing all facets of personnel management, including, recruitment, hiring, promotion, and advancement.

This combined plan supersedes the EEO Plan in its entirety. The duties of the court's EEO Coordinator will be assumed by the Employment Dispute Resolution Coordinator (EEO\EDR Coordinator established in Section 3 of Chapter VIII of this Plan).

At the direction of the Judicial Conference, this combined plan was adopted and implemented on January 1, 1999, and all modifications of this plan were approved by the Seventh Circuit Judicial Council. A copy of this plan and any subsequent modifications will be filed with the Administrative Office. The 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.

Polices adopted by individual courts 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 the Plan that are not inconsistent with the rights and procedures established herein will not be affected by the Plan.

This EEO/EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judges' 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.

§ 2 Scope of coverage

This Plan applies to all judges of the United States district courts and bankruptcy courts, as well as to all employees of the district courts, bankruptcy courts, court executives and their staffs, circuit executives and their staffs, and community defenders and their staffs. This Plan does not apply to Judicial law clerks or judicial secretaries.

§ 3 Definitions

For purposes of this Plan--

A. The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include law clerks, judicial secretaries, contract employees, externs, interns, applicants for community defender, bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators not employed by federal public defenders, volunteer counselors or mediators, or other individuals who are not employees of an "employing office" as that term is defined below.

B. The term "employing office" includes all offices of the United States district courts, and bankruptcy courts, including the office of community defenders, clerk of court, chief probation and chief pretrial services officers, staff attorneys, and any offices that might be created in the future. The court is the employing office of a judge's chambers staff.

C. The term "court" refers to the appropriate district or bankruptcy court units in which is located the employing office which would be responsible for redressing, correcting or abating the violations alleged in the complaint. In the case of disputes involving community defenders, the term "court" refers to the appropriate disctrict court.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **General** - Discrimination against employees based on race, color, religion, sex, national origin, age (at least 40 years of age at the time of the alleged discrimination), disability and sexual harassment is prohibited.

Except as provided in §4 (A) of this Chapter, court executives must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and that all hiring decisions are based solely on job-related factors. Reasonable efforts should be made to see that the skills, abilities and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the Court permits, and within the limits of available resources, cross-training, reassignments, special assignments and outside job-related training.

Judges and designated court managers and supervisors must apply equal employment opportunity practices and policies in their work units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. As resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

§ 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.

For extended text 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.

§ 4 **Personnel Practices**

A. Recruitment - Each employing office will make reasonable efforts in the recruitment process to obtain a pool of qualified applicants which reflect the make-up of all such persons in the relevant labor market and will publicize all vacancies.

B. Hiring - Each employing office will make its hiring strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

C. Promotion - Each employing office will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

D. Advancement - Each employing office will seek, insofar as reasonably practicable, to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details and outside training.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

General - Title 11 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 IV - WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

§ 1 **General** - No "employing office closing" or "mass layoff" (as defined in Section 2 of this Chapter) may occur until the end of a 60-day period after the employing office serves written notice of such

prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff that results 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. (1) at least 33 percent of the employees (excluding any part-time employees); and

(2) at least 50 employees (excluding any part-time employees); or

b. at least 500 employees (excluding any part-time employees).

For extended text see 29 U.S.C. § 2101.

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

General - An employing office shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301-4333.

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

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 within the jurisdiction of the General Services Administration ("GSA") or the United States Postal Service ("USPS") to provide are not cognizable under this Plan, such requests should be filed directly with GSA or the USPS as appropriate.

CHAPTER VII - POLYGRAPH TESTS

General - No employee shall 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;

B. mediation; and

C. hearing before the chief judge of the court (or a designated judge) in which the alleged violation arises.

§ 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.

B. Right to representation - Every individual invoking the dispute resolution procedures of this Plan and every respondent have 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, except for probation officers, whose right to accept the responsibilies of representation will be determined by the chief probation officer.

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. The amount of time that would be reasonable is difficult to specify since the nature and complexity of the case, possible travel involved, number of witnesses, etc., will all influence preparation time. Employees and court unit officials are advised to be accommodating and flexible in making arrangements to use official time for case preparation. However, the needs of the court and the ability to cover employees' absences are relevant factors; employees and court unit officials should schedule preparation time to ensure that the vital work of the court is not disrupted.

D. Extension of time - The chief judge or designee, may extend any of the deadlines set forth in this Chapter for good cause. All extensions of time granted will be made in writing and become part of the record.

E. Records - At the conclusion of formal and informal proceedings under this Plan, all papers, files and reports will be filed with the court's Equal Employment Opportunity\Employment Dispute Resolution Coordinator ("EEO\EDR Coordinator"). No papers, files or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement official personnel action. Records will be maintained for two calendar years after the conclusion of the process at which time the files may be destroyed.

§ 3 **Designation and duties of Equal Employment Opportunity Dispute Resolution Coordinator** - The Court unit designates The Honorable Robin D. Pierce, United States Magistrate Judge, to serve as the EEO\EDR Coordinator. The duties of the EEO\EDR Coordinator include the following:

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 this court's equal employment opportunity and employment dispute resolution plan;

C. coordinate the counseling of individuals in the initial stages of the complaint process, in accordance with Section 5 of this Chapter;

D. collect, analyze, and consolidate statistical data and other information pertaining to the court's equal employment opportunity and employment dispute resolution processes; and

E. compile and submit an annual report on the implementation of the court's EEO\EDR Plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

§ 4 **General disqualification\recusal provision** - Whenever an individual invoking the dispute resolution procedures of this Plan files a timely and sufficient written statement that the judge, employee or other person involved in the dispute under this Chapter, before whom the matter is pending, has a personal bias or prejudice either against him or her in favor of any adverse party, the judge, employee or other person involved in a dispute shall proceed no further therein, but another person shall be assigned by the chief judge to hear such proceeding.

§ 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 EEO\EDR Coordinator;

2. must be made in writing;

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; and

4. job applicants who believe their rights under Chapters II - VII of this Plan have been violated must first request counseling within 90 days from the appointment date of the new employee selected for the position, except in the case of probation and pretrial services officer applicants, who must first request counseling within 90 days from the date of selection for appointment by the Chief Judge.

C. Procedures

1. Who may serve as counselor - The counseling shall be conducted by the court unit's EEO\EDR Coordinator, unless the EEO\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 judge, the person who conducts the counseling shall be a judge 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 EEO\EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

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

E. Conclusion of the counseling period and notice - The EEO\EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EEO\EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EEO\EDR Coordinator a request for mediation in accordance with Section 6 of this Chapter.

§ 6 Mediation

A. Initiation - Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EEO\EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.

B. Procedures–

1. Designation of mediator - As soon as possible after receiving the request for mediation, the EEO\EDR Coordinator shall designate a mediator and provide written notice of such designation.

2. Who may serve as mediator - Any person with the skills to assist in resolving disputes, except the court's EEO\EDR Coordinator, may serve as a mediator under this Plan. If the complaint alleges that a judge has violated the rights protected by this Plan, the mediator shall be a judge designated by the chief judge.

3. Purpose of Mediation - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the representative 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 shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of all such contacts must be kept and made available for review by the affected person(s). In addition, in the event the employee files a complaint pursuant to Section 7 of this Chapter, the hearing officer shall have access to the record of any claims raised in mediation.

5. Form of settlement - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the appointing officer 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, the EEO\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 judge 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. The chief judge will send a written notice to the chief circuit judge when a complaint is filed involving an Article III judge. 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.

2. Review procedures - After notice to the complainant and an opportunity to respond, the chief judge or designated judge may dismiss in writing any complaint that is found to be frivolous or unduly repetitive of a previous complaint, that fails to state a claim upon which relief may be granted, or that makes claims that were not advanced in mediation.

C. Hearing procedures

1. Hearing officer - If the chief judge or designated judge does not dismiss the complaint under the preceding subsection, the chief judge or designated judge, 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 judge may provide for such discovery and investigations as are necessary. In general, the presiding judge shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this section:

   a. the hearing shall be commenced no later than 60 days after the filing of the complaint;

   b. the complainant and the head of the office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to the individual(s) alleged to have violated the complainant's rights protected by this Plan whenever such individual is a judge or when the presiding Judge otherwise determines such notice to be appropriate;

   c. at the hearing, the complainant will have the rights to representation, to present evidence on his or her behalf and to cross-examine adverse witnesses; likewise, the head of the employing office will have the rights to representation, to present evidence and to cross-examine adverse witnesses;

   d. a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;

   e. in reaching a decision, the chief judge or designated judge shall be guided by judicial and administrative decisions;

   f. remedies may be provided in accordance with Section 8 of this Chapter where the hearing officer finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated;

   g. the final decision of the chief judge or designated judge must be issued in writing not later than 30 days after the conclusion of the hearing and any necessary orders shall be signed by the judicial officer issuing the final decision;

   h. all parties, or any aggrieved individual, shall have the right to written notice of any action taken as a result of a hearing; and

   i. confidentiality - any person or party involved in the review process shall not disclose, in whole or in part, any information or records obtained through or prepared specifically for, the review process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of such contacts must be kept and made available for review by the affected person(s).

D. All decisions of the chief judge or designated judge are final.

§ 8 Remedies

A. Where a judge acting pursuant to Section 7 of this Plan finds that a substantive right protected by this Plan has been violated, he or she 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 the Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.

B. Remedies which may be provided to successful complainants under this Plan include, but are not limited to:

1. placement of an employee in a position previously denied;
2. placement in a comparable alternative position;
3. reinstatement to a position from which the individual was previously removed;
4. prospective promotion to a position;
5. priority consideration for a future promotion or position;
6. back pay and associated benefits, including 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
10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.

C. Remedies which are *not* legally available include:

1. payment of attorney's fees (except as authorized under the Back Pay Act);
2. compensatory damages;
3. punitive damages; and
4. overtime pay.

§ 9 **Record of final decisions** - Final decisions will be made known to those parties involved in the complaint process. Final decisions under this Plan shall be made available to the public in accordance with the chief judge's discretion.

CHAPTER IX - ANNUAL REPORT

§ 1 Preparation of the Report on Complaints

The EEO\EDR Coordinator will prepare an annual report for the year ending September 30, consolidating the data and statements received for each employing office. The report will include tables to be provided by the Administrative Office of the United States Courts consolidating the information provided by each employing office. The report will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will identify factors inhibiting achievement of equal employment opportunity objectives. In addition, the annual report will indicate:

A. The number of complaints initiated;

B. The types of complaints initiated according to race, sex, color, national origin, religion, age or disability;

C. The number of complaints resolved informally;

D. The number of complaints resolved formally without a hearing; and

E. The number of complaints resolved formally with a hearing.

(The foregoing information will not identify the names of the parties involved.)

Upon approval of the Court, this report will be submitted by the chief judge to the Administrative Office of the United States Courts by November 30 of each year.

§ 2 Objectives

Each employing office will develop annually its own objectives which reflect any improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EEO\EDR Coordinator explaining how those objectives will be achieved.

§ 3 Availability of the Report on Complaints

A copy of the report will remain in the court and will be made available to the public upon request.

CHAPTER X - NOTICE

Copies of these procedures shall be given to all employees and, upon request, to members of the public.