

Consolidated Model
Equal Employment Opportunity
and
Employment Dispute Resolution
Plan

September 1998

United States Bankruptcy Court for the
Western District of Pennsylvania

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PREAMBLE

A. Purpose

This Plan shall be known as the Model Consolidated Equal Employment Opportunity and Employee Dispute Resolution Plan of the United States Bankruptcy Court for the Western District of Pennsylvania (“Consolidated Model Plan”). This Consolidated Model Plan was approved by the Judicial Council of the Third Circuit to provide court employees the rights and protections of the Model Equal Employment Opportunity Plan (“Model EEO Plan”) adopted by the Judicial Conference of the United States in March 1980 (and revised in September 1986) and the additional rights and procedures of the Model Employment Dispute Resolution Plan (“Judicial Conference Model EDR Plan”) adopted by the Judicial Conference of the United States in March 1997. The Consolidated Model Plan’s protections and procedures are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

This Consolidated Model Plan is to be implemented in the same manner as the Model EEO Plan. Each court in the Third Circuit shall adopt and implement a plan based on this Consolidated Model Plan. Any modification of this Consolidated Model Plan by a court must first be approved by the Third Circuit Judicial Council. A copy of each approved 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 Circuit Executive’s Office and to the Administrative Office.

B. Coverage

This Consolidated Model Plan addresses the following workplace and employment issues:

- (1) equal employment opportunity and anti-discrimination rights;
- (2) sexual harassment;
- (3) personnel practices, including recruitment, hiring, promotion and advancement;
- (4) family and medical leave rights;
- (5) worker adjustment and retraining notification rights;
- (6) employment and reemployment rights of members of the uniformed services;
- (7) occupational safety and health protections;
- (8) polygraph tests; and
- (9) employee dispute resolution procedures for claims of the denial of the rights afforded under this Consolidated Model Plan.

Court personnel may be afforded certain additional rights and protections regarding general grievance and adverse action procedures which are detailed in policies as adopted by individual courts. Any general employment dispute procedures regarding adverse action and personnel grievances that do not invoke the protections of this Consolidated Model Plan are not modified and remain in effect as they are currently detailed in policies as adopted by individual courts. The courts may amend these policies from time to time.

Individuals covered under the scope of this Consolidated Model Plan may seek timely redress of discrimination complaints through these procedures. These procedures, however, are not intended to be a replacement for the working relationship which must exist between supervisors and employees, nor are they intended to interfere with the administrative processes of the courts. Employees should always bring their concerns to their direct supervisor and then through the chain of command, if necessary, to attempt informal resolution.

This Consolidated Model Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial misconduct or disability under 28 U.S.C. § 372(c). It is intended to be the exclusive remedy of the employee relating to rights enumerated under this Consolidated Model Plan.

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

**CHAPTER 1.
PURPOSE AND SCOPE OF THE PLAN**

1.1 Scope of Coverage.

1.1.1 Who is covered. This Consolidated Model Plan applies to:

- (a) All judges and other judicial officers of the United States courts of appeals, district courts and bankruptcy courts;
- (b) all judges' chambers staff; and
- (c) the unit executive and staff of the following court support offices:
 - (1) Office of the Circuit Executive;
 - (2) Office of the Clerk of the Court of Appeals for the Third Circuit, including the Appellate Mediation Program Office;
 - (3) Office of the Senior Staff Attorney;
 - (4) Office of the Circuit Librarian, including satellite branches;
 - (5) Federal Public Defenders Offices within the Third Circuit;
 - (6) Offices of the Clerks of the District Courts within the Third Circuit;
 - (7) Probation and Pre-Trial Services Offices;
 - (8) Offices of the Clerks of the Bankruptcy Courts within the Third Circuit;
 - (9) any other court support office not named here; and
 - (10) any additional court support offices created after adoption of this Consolidated Model Plan.

1.2 Definitions for purposes of this Consolidated Model Plan:

1.2.1 Definition of “employee” and “staff.” The term “employee” and the term “staff” include all applicants for employment and former employees, except the following individuals, who are *specifically excluded and are not covered* under this Consolidated Model Plan:

- (a) externs and interns;
- (b) applicants for bankruptcy judge positions;

1.2.1 Definition of “employee” and “staff.” (*continued*)

- (c) applicants for magistrate judge positions;
- (d) applicants for federal public defender positions;
- (e) private attorneys who apply to represent indigent defendants under the Criminal Justice Act;
- (f) criminal defense investigators not employed by federal public defenders;
- (g) volunteer counselors or mediators; and
- (h) other individuals who are not employees of an "employing office" as that term is defined in section 1.2.3 below.

1.2.2 Definition of “unit executive.” The term “unit executive” includes:

- (a) the circuit executive;
- (b) the clerk of the court of appeals;
- (c) the clerks of all district and bankruptcy courts;
- (d) chief probation officers;
- (e) chief pretrial services officers;
- (f) the senior staff attorney;
- (g) the circuit librarian; and
- (h) the chief executive officer of any unit of the court that may be created in the future.

1.2.3 Definition of “employing office.” The term “employing office” includes all offices of the United States Court of Appeals for the Third Circuit and the district and bankruptcy courts of the Third Circuit, including:

- (a) circuit, district, bankruptcy and magistrate judges’ chambers;
- (b) office of the circuit executive;
- (c) offices of federal public defenders;
- (d) offices of clerks of court;
- (e) probation offices;
- (f) pretrial services offices;
- (g) office of the senior staff attorney;
- (h) circuit libraries;
- (I) mediation program offices;
- (j) offices of preargument or settlement attorneys;
- (k) offices of bankruptcy administrators; and
- (l) any such offices that might be created in the future.

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

1.2.4 Definition of “judicial officer” and “judge.” The terms “judicial officer” and “judge” mean a judge appointed pursuant to Article III of the United States Constitution, a United States bankruptcy judge appointed by the United States Court of Appeals for the Third Circuit, a United States magistrate judge, or a judge of any court created by an Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

1.2.5 Definition of “court.” The term “court” refers to the appropriate court (appeals, district or bankruptcy) in which the employing office is located and which would be responsible for redressing, correcting or abating the violation alleged in the complaint. In the case of disputes involving federal public defenders, the term “court” refers to the Third Circuit Court of Appeals.

1.2.6 Definition of “disability.” A disability is:

- (a) a physical or mental impairment that substantially limits one or more of the major life activities of an employee;
- (b) a record of such an impairment; or
- (c) being regarded as having such an impairment.

See 42 U.S.C. § 12102(2).

1.2.7 Definition of “sexual harassment.” Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when it is unwelcome and:

- (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;
- (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) 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.

See 42 U.S.C. § 2000e et seq.

1.2.8 Definition of “day.” For purposes of determining periods of time in the procedural sections of this Consolidated Model Plan, the word “day” pertains to a calendar day, not a business day.

1.3 Determination of Proper Forum

1.3.1 Transfer to Proper Forum. If an employee covered under the scope of this Consolidated Model Plan seeks redress of an employment dispute in the improper forum (either by bringing a general grievance or adverse action claim to the EDR Coordinator or by bringing an EDR/EEO claim as a general grievance or adverse action claim), the Chief Judge of the court in which the dispute occurs may elect to transfer the complaint to the proper forum for resolution at any time. In the event the chief judge is disqualified under Section 9.4 of this Consolidated Model Plan, or is unavailable to serve, the provisions of Section 9.4 of this Consolidated Model Plan will apply.

1.3.2 Exclusivity of forum. In seeking relief, employees must select between:

- (a) this Consolidated Model Plan; and
- (b) the general grievance/adverse action appeal procedures, where they are available.

If a complaint has already been processed under one of these procedures, it may not be the subject of a complaint under the other. A complaint will be resolved in one forum only.

CHAPTER 2.

EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

2.1 General

Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), or disability is prohibited.

2.2 Special provision for probation and pretrial services officers

The age discrimination provision of Section 2.1 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.

2.3 Promotion of Equal Employment Opportunity

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, color, religion, sex, national origin, age (at least 40 years of age at the time of the alleged discrimination), or disability. Each court will promote equal employment opportunity through a program encompassing all facets of personnel

2.3 Promotion of Equal Employment Opportunity *(continued)*

management including recruitment, hiring, promotion and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the federal courts as such standards have been approved by the Judicial Conference of the United States.

2.3.1 Unit Executives. It is incumbent upon each court unit executive to advance not only the letter of this plan but also its spirit so that a discrimination-free work place is provided to all employees and applicants.

2.3.2 Equal Employment Opportunity Reporting. The court's EDR Coordinator is responsible for collecting, analyzing, consolidating and reporting the EEO statistical data and statements prepared by each court unit, as outlined further in Chapter 11 of this Consolidated Model Plan.

CHAPTER 3. PERSONNEL PRACTICES

3.1 Recruitment

Each court unit executive will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will also use reasonable available means to publicize the existence of vacancies to the relevant labor market.

3.2 Objectives

3.2.1 Law Clerks. Each judge acknowledges that a judicial clerkship is a significant educational and professional experience which should be available to qualified persons regardless of their race, sex, color, national origin, religion, age or disability, to the extent possible. Recognizing that reliance on applications received and on recommendations from faculty members as the sole means of hiring law clerks may not produce significant numbers of law clerks from groups generally recognized as minorities, efforts should be made by either the individual judge or the Circuit Executive, on behalf of all the judges, to make the availability of law clerkship positions known to qualified members of such groups so as to encourage applications from such individuals. It is the position of the Third Circuit Judicial Council that the prime criteria for law clerk selection are grades, law review experience, and other indicia of superior academic achievement and intellectual ability and that judges are under no obligation to depart from these criteria.

3.2 Objectives *(continued)*

3.2.2 Court Unit Executives. It is the objective of court unit executives' offices that the total work force reflect the relevant qualified labor pool.

3.3 Hiring

Each court unit executive shall take steps in hiring in light of the goal that their employees will be fairly representative of the diverse groups comprising the qualified relevant labor pool. Individual hiring decisions will be made upon an evaluation of an applicant's qualifications and ability to perform the duties of the position satisfactorily.

3.4 Promotion

Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

3.5 Advancement

To the extent possible, each court unit will seek to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside job-related training, when appropriate.

3.6 Temporary Appointments

In some cases, appointments of limited duration to meet critical temporary emergency needs must be made, and compliance with the recruitment requirements of this plan may not be feasible. In making temporary appointments the following guidelines should be followed:

3.6.1 Indefinite duration. Temporary appointments of indefinite duration should be treated as if they were permanent appointments.

3.6.2 Limited duration. Temporary appointments of limited duration, where there is a reasonable anticipation that the appointee will eventually receive a permanent appointment, should be treated as if they were permanent appointments.

3.6.3 Effort to comply. Every effort should be made to anticipate the need for temporary positions to allow sufficient time for compliance with the recruitment requirements of this plan.

3.6 Temporary Appointments (*continued*)

3.6.4 Emergency needs. Full compliance with the recruitment requirements of this plan need not be followed in filling temporary positions of limited duration to meet unanticipated emergency needs.

3.6.5 Conversion to permanent status. Temporary employees should not be converted to permanent status without full compliance with the recruitment procedures of this plan.

CHAPTER 4. FAMILY AND MEDICAL LEAVE RIGHTS

4.1 General

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

CHAPTER 5. WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

5.1 General

No “employing office closing” or “mass layoff” (as defined in Section 5.2 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.

5.2 Definitions in Worker Adjustment and Retraining Notification Rights

5.2.1 Definition of “employing office closing.” 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.

5.2.2 Definition of “mass layoff.” The term “mass layoff” means a reduction in force which:

- (a) is not the result of an employing office closing; and
- (b) results in an employment loss at the single site of employment during any 30-day period for:

5.2 Definitions in Worker Adjustment and Retraining Notification Rights *(continued)*

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

See 29 U.S.C. § 2101.

CHAPTER 6. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

6.1 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 et seq.

CHAPTER 7. OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

7.1 General

Each employing office shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Complaints which seek a remedy that is exclusively within the jurisdiction of the General Services Administration (“GSA”) or the United States Postal Service (“USPS”) to provide are not cognizable under this Consolidated Model Plan. Such requests should be filed directly with GSA or the USPS as appropriate.

7.2 Court program requirements

The court will implement a program to achieve the protections set forth in Section 7.1 of this Plan and will select a court unit executive to be formally charged with the responsibility of implementing a safety program. The safety program shall be guided by materials furnished by the Administrative Office of the United States Courts as revised from time to time.

CHAPTER 8. POLYGRAPH TESTS

8.1 General

No court employee may be required to take a polygraph test.

CHAPTER 9. DISPUTE RESOLUTION PROCEDURES

9.1 General procedure for consideration of alleged violations

An employee covered under this Consolidated Model Plan who claims a denial of the rights granted hereunder shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of:

- (a) counseling;
- (b) mediation;
- (c) hearing before the chief judge (or his or her designee) of the court in which the alleged violation arises; and
- (d) review of the hearing decision under procedures established by the judicial council of the circuit, as outlined in Section 9.8 of this Consolidated Model Plan.

9.2 General provisions and protections

9.2.1 Prohibition against retaliation. Complainants under this Consolidated Model 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.

9.2.2 Prohibition against naming individual respondents. No individual shall be named as a respondent in the complaint. Instead, the respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint.

9.2.3 Right to representation. The right to be represented by a person of his or her choice, if such person is available and consents to be a representative, is available to an individual who:

- (a) invokes the dispute resolution procedures of this Consolidated Model Plan;
- (b) is alleged to have violated rights which are protected under this Consolidated Model Plan; or
- (c) is the unit executive in charge of the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint.

9.2.3 Right to representation. *(continued)*

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 court employee-representative's appointing officer. If the appointing officer is involved in the dispute, then the determination shall be made by the chief judge.

9.2.4 Case preparation. To the extent feasible, an individual who is involved in the dispute resolution procedures of this Consolidated Model 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.

9.2.5 Notice. Although only the employing office is named as a respondent pursuant to the procedures under this Consolidated Model Plan, every individual alleged to be involved in a violation of the provisions of this Consolidated Model Plan has the right to have reasonable notice of the charges and an opportunity to respond to the allegations, except as otherwise provided for in the confidentiality provisions of the counseling stage as outlined in Section 9.5.3(c).

9.2.6 Extensions of time. The chief judge of the court, or other presiding judicial officer, may extend any of the deadlines set forth in this Consolidated Model Plan for good cause.

9.2.7 Records. At the conclusion of any formal or informal dispute resolution proceedings under this Consolidated Model Plan, all papers, files, and reports will be filed with the court's primary EDR Coordinator. No papers, files or reports relating to a dispute or complaint will be filed in any employee's personnel folder, except as necessary to implement a personnel action.

9.3 Designation and Duties of the Employment Dispute Resolution Coordinator

Each court shall designate two EDR Coordinators, each from a different unit of the court, under this Consolidated Model Plan. For purposes of counseling only, (see 9.3.3 below) an employee may request an EDR Coordinator who is employed in a different court unit from the employee. The counseling duties of one EDR Coordinator will be performed by the other EDR Coordinator if the EDR Coordinator is disqualified from performing duties under Section 9.4, or is otherwise unavailable. If the only qualified EDR Coordinator is from the same court unit as the employee who requests counseling, and the employee

9.3 Designation and Duties of the Employment Dispute Resolution Coordinator *(continued)*

would rather be counseled by an EDR Coordinator from another court unit in the same court family, reasonable efforts will be made to comply with that request. The Consolidated Model Plan provides for two EDR Coordinators 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. The role of the “outside” EDR Coordinator is limited to the counseling function because it is in the counseling function that a need for independence arises.

The duties of the court’s EDR Coordinators will include the following:

9.3.1 Information. The primary EDR Coordinator will provide information to the court and employees regarding the rights and protections afforded under this Consolidated Model Plan;

9.3.2 Administration. The primary EDR Coordinator will 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 Consolidated Model Plan.

9.3.3 Counseling. One of the court’s two EDR Coordinators will coordinate the counseling of individuals in the initial stages of the complaint process, in accordance with Section 9.5 of this Consolidated Model Plan.

9.3.4 Statistics. As outlined in Chapter 11, the primary EDR Coordinator will collect, analyze and consolidate statistical data and other information pertaining to the implementation, under this Consolidated Model Plan, of the court's employment dispute resolution process and the court’s equal employment opportunity objectives.

9.4 General disqualification provision

A party may seek the disqualification of a judicial officer, employee or other individual who has had prior involvement in a dispute, to the extent that the person could not be unbiased about the complaint, by making a written request to the chief judge of the court in which the complaint arises. Such written request shall contain facts regarding why the individual should be disqualified. If the chief judge determines that the individual should

9.4 General disqualification provision (continued)

be disqualified, then the chief judge will designate another individual to handle the matter. If the chief judge is named as being involved in a dispute, the active judge next in

precedence, who is not unavailable or disqualified to serve, will decide the disqualification request.

9.5 Counseling

9.5.1 Initiating a proceeding with a formal request for counseling. An employee who believes that his or her rights under this Consolidated Model Plan have been violated must first request counseling.

9.5.2 Form and manner of requests. Requests for counseling:

- (a) are to be submitted to one of the court's EDR Coordinators;
- (b) must be made in writing;
- (c) 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
- (d) must be signed.

9.5.3 Procedures

(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 Section 9.4, and not otherwise unavailable. If one EDR Coordinator is unavailable, the court's second EDR Coordinator will perform the counseling function. If the dispute involves an alleged violation of this Consolidated Model Plan by a judicial officer, the person who conducts the counseling shall be a judicial officer designated by the chief judge.

(b) **Purposes of counseling.** The purposes of counseling shall be:

- (1) to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation;
- (2) to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process;
- (3) to evaluate the matter; and
- (4) to assist the employee in achieving an early resolution of the matter, if possible.

9.5.3 Procedures (*continued*)

(c) **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 EDR Coordinator to contact the employing

office to attempt a resolution of the disputed matter. A written record of all such contacts must be maintained by the EDR Coordinator who is performing the counseling function and who received the written waiver of confidentiality.

- (d) **Form of settlement.** The EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

9.5.4 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 EDR Coordinator.

9.5.5 Conclusion of the counseling period and notice. The EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator a request for mediation in accordance with Section 9.6 of this Consolidated Model Plan.

9.6 Mediation

9.6.1 Request for mediation. Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EDR Coordinator a request for mediation. The request must be made in writing and must make a short and plain statement of the claim(s) presented, the underlying facts and the relief or remedy sought. The request must be signed. Only claims raised in mediation may be raised in a subsequent complaint filed under Section 9.7. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter.

9.6.2 Procedures.

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

- (b) **Who may serve as mediator.** Any person with the skills to assist in resolving disputes, except a person who is one of the court's EDR Coordinators, may serve as a mediator under this Consolidated Model Plan. If the complaint alleges that a judicial officer has violated the rights protected by this Consolidated Model Plan, the mediator shall be a judicial officer designated by the chief judge.
- (c) **Purpose of mediation.** The mediator shall meet 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.
- (d) **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 prepare for the proceeding or 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. In addition, in the event the employee files a complaint pursuant to Section 9.7, the hearing officer shall have access to the request for mediation as set forth in Section 9.6.1.
- (e) **Form of settlement.** The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

9.6.3 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 before he or she may proceed to file a complaint.

9.6.4 Conclusion of mediation period and notice. If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 9.7.

9.7 Complaint, response, review and hearing

9.7.1 Complaint. Not later than 15 days after receiving notice of the end of the mediation period, an employee may file a complaint with the EDR Coordinator, who will transmit the original to the chief judge of the court in which the complaint arises. 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 previously raised in mediation cannot be raised in the complaint. The complaint must be signed.

9.7.2 Response. Upon receipt of a copy of the complaint, both the respondent, as defined in 9.2.2, and the individual alleged to have violated rights protected under this Consolidated Model Plan shall have 15 days to respond to the allegations contained therein, in writing, to the chief judge.

9.7.3 Review of pleadings.

(a) **Reviewing official.** The complaint and any other documents shall be reviewed by the chief judge of the court. In the event the chief judge is disqualified under Section 9.4, the reviewing official shall be the active judge next in precedence who is not disqualified to serve. If the chief judge is unavailable, the reviewing official shall be a judicial officer designated by the chief judge (or by the appropriate reviewing official if the chief judge is disqualified). In the case of a complaint alleging that an Article III judge has violated rights protected by the Consolidated Model Plan, the judge may elect to have a hearing conducted by a judge of another court, as designated by the Third Circuit Judicial Council EDR/EEO Appeal Committee.

(b) **Review procedures.** After notice to the complainant and an opportunity to respond, the chief judge may dismiss in writing any complaint that is found:

9.7.3 Review of pleadings (continued)

- (1) to be frivolous;
- (2) to be unduly repetitive of a previous complaint;
- (3) to fail to state a claim upon which relief may be granted; or
- (4) to make a claim or claims that were not advanced in mediation.

9.7.4 Hearing procedures.

- (a) **Hearing officer.** If the presiding judicial officer does not dismiss the complaint under the preceding subsection, the presiding 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.

- (b) **Specific provisions.** The presiding judicial officer may provide for such discovery and investigation as necessary. In general, the presiding judicial officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:
 - (1) **Timing for Hearing.** The hearing shall be commenced no later than 60 days after the filing of the complaint.
 - (2) **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 Consolidated Model Plan must receive reasonable written notice of the hearing. Where the complaint is filed against a judge or other judicial officer by chambers staff, the chief judge of the court will receive notice.
 - (3) **Proceedings.** At the hearing, the complainant, the unit executive of the office against which the complaint has been filed and the individual alleged to have violated rights protected by this Consolidated Model Plan will have the rights to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses.
 - (4) **Record.** A verbatim record of the hearing must be kept and shall be the sole official record of the proceeding.
 - (5) **Basis for Decision.** In reaching his or her decision, the presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters 2.0 through 7.0 of this

9.7.4 Hearing procedures *(continued)*

Consolidated Model Plan and by decisions of the Third Circuit Judicial Council under Section 9.8.

- (6) **Remedies.** Remedies may be provided in accordance with Section 9.9 where the hearing officer finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Consolidated Model Plan has been violated.

- (7) **Timing for Decision.** The final decision of the presiding judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing.
- (8) **Notice of Action.** All parties, including the individual alleged to have violated rights protected by this Consolidated Model Plan, must receive written notice of any action taken as a result of the hearing. The presiding judicial officer will provide a list of the parties who should receive such notice and a written notice of any action taken to the EDR Coordinator for distribution.
- (9) **Malicious Filing.** A finding by the hearing officer that a complaint has been filed maliciously will constitute grounds for adverse action.

9.8 Review of decision

The complainant, the unit executive of the office against which the complaint has been filed and the individual alleged to have violated rights protected by this Consolidated Model Plan aggrieved by a final decision of the presiding judicial officer or by a summary dismissal of the complaint, may petition the Third Circuit Judicial Council for review thereof, under procedures established by the Third Circuit Judicial Council. Any review will be conducted by a judicial officer, based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence. Decisions of the EDR/EEO Appeal Committee on behalf of the Third Circuit Judicial Council are final and conclusive and shall not be judicially reviewable on appeal or otherwise.

9.8.1 Judicial Council Review Procedures.

- (a) **Timing for petition to review.** A petition for review must be received by the hearing officer who issued the decision within 15 days of the date of the letter from the EDR Coordinator to the complainant transmitting the decision as issued under Section 9.7.3(b)(7).
- (b) **Form and content of petition to review.** The petition should be addressed to the hearing officer with a copy to the EDR Coordinator, beginning “I hereby petition the Judicial Council for review of the hearing officer's decision on my complaint filed under the Consolidated Equal Employment Opportunity and Employee Dispute Resolution Plan.” The

9.8.1 Judicial Council Review Procedures (*continued*)

petition should set forth a brief statement of the reasons why the petitioner believes that the hearing officer should not have dismissed the complaint or concluded the proceeding. It should not repeat the complaint; the complaint will be available to members of the Circuit Council considering the petition. The petition must be signed.

- (c) **EDR/EEO Appeal Committee.** The EDR/EEO Appeal Committee of the Third Circuit Judicial Council, on behalf of the Third Circuit Judicial

Council, will review decisions of the hearing officer, when properly petitioned, pursuant to the provisions of Section 9.8.1, by a party or individual aggrieved by a final decision of the hearing officer or by a summary dismissal of the complaint. Any member of this Committee may be disqualified as provided for in Section 9.4, in which case the Chief Judge of the Court of Appeals will designate a replacement.

- (d) **Distribution of material for review.** The hearing officer will promptly send to each member of the EDR/EEO Appeal Committee of the Judicial Council, except for any member disqualified under Section 9.4, copies of:
 - (1) the complaint and any statement of facts;
 - (2) any response filed;
 - (3) any record of information received by the hearing officer in connection with the hearing officer's consideration of the complaint;
 - (4) the hearing officer's order disposing of the complaint;
 - (5) any memorandum in support of the hearing officer's decision;
 - (6) the petition for review;
 - (7) the record of the proceeding made pursuant to section 9.7.4(b)(4); and
 - (8) any other documents that appear to be relevant and material to the petition.
- (e) **Timing for decisions.** Within 30 days of receipt by the hearing officer of a proper petition for review of a decision or a summary dismissal of a complaint, the EEO/EDR Appeal Committee will review the decision or the basis for the summary dismissal and issue a written decision.
- (f) **Finality.** Decisions of the EDR/EEO Appeal Committee on behalf of the Third Circuit Judicial Council are final and conclusive and shall not be judicially reviewable on appeal or otherwise.
- (g) **Procedures when petition for review is in improper form.** Upon receipt of a petition filed within the time allowed but not in proper form under these rules (including a document that is ambiguous about whether a petition for review is intended), the chief judge will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give

9.8.1 Judicial Council Review Procedures *(continued)*

the petitioner the opportunity to correct the deficiencies within ten days. If the deficiencies are not corrected within the time allowed, the petition will be returned unfiled and the proceedings will be deemed to be concluded.

9.9 Remedies

9.9.1 Order for remedy. When judicial officers, acting pursuant to section 9.7 or 9.8 of this Consolidated Model Plan, find that a substantive right protected by this Consolidated Model Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively ensuring compliance with the rights protected by this Consolidated Model Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.

9.9.2 Available remedies. Remedies which may be provided to successful complainants under this Consolidated Model Plan 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, consistent with Section 3.4;
- (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;
- (j) accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours; and
- (k) appropriate action against a judicial officer or other individual found to have violated rights protected under this Consolidated Model Plan.

9.9.3 Unavailable remedies. Remedies which are not legally available include:

- (a) payment of attorneys' fees (except as authorized under the Back Pay Act);
- (b) compensatory damages; and
- (c) punitive damages.

9.9.4 Enforceability of Remedies.

- (a) Pursuant to 28 U.S.C. § 332(d)(1), decisions reached and remedies ordered by the Third Circuit Judicial Council through its EEO/EDR Appeal Committee will be binding on all judicial officers and employees within the Bankruptcy Court.
- (b) A remedy ordered by a hearing officer under Section 9.7 or by the EDR/EEO Appeal Committee under Section 9.8 cannot be appealed through a court's

adverse action appeal procedures.

CHAPTER 10. RECORD OF FINAL DECISIONS

10.1 Written Decisions

Final written decisions under this Consolidated Model Plan shall be captioned as follows:

In the Matter of a Complaint Arising Under
The Consolidated Equal Employment Opportunity and
Employee Dispute Resolution Plan
of the U.S. Bankruptcy Court

v.

Case No. (Year-Number)

Name of Employing Office

Final decisions made under this Consolidated Model 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 11. REPORTS

11.1 EEO Evaluations

Each court unit will prepare a brief report for the EDR Coordinator describing its efforts to provide equal employment opportunities in the areas of recruitment, hiring, promotions and advancement.

11.1.1 Miscellaneous. This evaluation should include information on factors inhibiting achievement of EEO objectives such as no vacancies, minimal numbers of qualified applicants in the relevant labor market, and on all persons in the unit having received

11.1 EEO Evaluations *(continued)*

all relevant training. This report will also include a breakdown according to the race, sex, national origin, and disability of the court's personnel involved on forms to be provided by the Administrative Office of the United States Courts. In compiling data for this report, each court unit shall recognize that all employees are privileged to decline disclosing the information required for its preparation. Under such circumstances, the response shall, if not otherwise known, be recorded as "unknown." The report will cover personnel actions occurring in the year ending

September 30 and will be submitted to the EDR Coordinator by the date requested each year.

11.2 EEO Statistics

The EDR Coordinator is responsible for collecting, analyzing and consolidating the statistical data and statements prepared by each court unit pursuant to the provisions of Section 11.1. The EDR Coordinator will then prepare an annual report for each fiscal year ending September 30 based on the statistical data and statements received from each court unit. The report will include completed tables, (forms to be provided by the Administrative Office of the United States Courts), consolidating the information provided by each court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, identify areas where improvements are needed and explain factors inhibiting achievement of equal employment opportunity objectives, where indicated. Based upon this evaluation and report, the coordinator shall recommend any changes required to fully implement the goals of the Consolidated Model Plan.

This report will be submitted by the circuit to the Administrative Office of the United States Courts by November 30th of each year.

11.3 EDR Evaluations

The EDR Coordinator will collect information on the court's EDR process pursuant to Section 9.3.4 and report that information to the Third Circuit Judicial Council and the Administrative Office annually. Where indicated, the EDR Coordinator shall recommend appropriate changes in management practices and/or in the procedures of this plan to fully implement the goals of this plan.

