

**U.S. District Court &
U.S. Probation & Pretrial Services Office
for the Western District of Michigan's**



**Employment Dispute
Resolution Plan**



**As Amended & Approved by the
Sixth Circuit Judicial Council
December 4, 2012**

**U.S. District Court &
U.S. Probation & Pretrial Services Office
for the Western District of Michigan's**

Employment Dispute Resolution (EDR) Plan

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Attachment I - Procedures for the Review by the Judicial Council of the Sixth Circuit Final Decisions or Summary Dismissals of Complaints Filed Pursuant to the Employment Dispute Resolution Plan

**U.S. District Court &
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Employment Dispute Resolution (EDR) Plan

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Employment Dispute Resolution Plan (" EDR Plan" or Plan) for the United States District Court and United States Probation & Pretrial Services Office for the Western District of Michigan. It is based upon the Federal Judiciary Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States in order to provide rights and protections to employees of the United States Courts which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

The Plan supersedes all previous versions of the EDR Plan and Appendix I ("Discrimination Complaint Procedures") of the court's current Equal Employment Opportunity Plan for the U.S. District Court for the Western District of Michigan ("Model EEO Plan"), except for Section VI of Appendix I ("Annual Report"). Claims arising under Chapters II through VIII of this Plan, or under Sections I through VII of our Model EEO Plan, shall be treated in accordance with the procedures set forth in Chapter X of this Plan. The duties of the court's EEO Coordinator were assumed by the Employment Dispute Resolution (EDR) Coordinator in the October 2002 version of this Plan. For the designation and duties of the EDR Coordinator, see Section 6 of Chapter X of this Plan.

This Plan was implemented in the same manner as the Model EEO Plan. All subsequent modifications of this Plan by the court are required to be approved by the Sixth Circuit Judicial Council. A copy of this Plan and any subsequent modifications shall be filed with the Administrative Office and shall be posted on both the internal and external websites of the court. The court will annually submit a report on the implementation of its plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

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

The EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial officer misconduct or disability under 28 U.S.C. §§ 351, et seq. and otherwise is intended to be the exclusive remedy of the employee relating to the rights enumerated under the Plan.

§ 2 Scope of Coverage

This EDR Plan applies to all Article III judges and other judicial officers of this court, as well as to all employees of this court, including judges' chambers staffs, clerk of court and his or her staff, and the chief probation officer and his or her staff.

§ 3 Definitions

For purposes of this EDR Plan—

- A. The term “claim” means the filing of a request for counseling as set forth in Chapter X, which may be further pursued by the filing of a request for mediation and a request for hearing.
- B. 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 interns or externs providing gratuitous service, applicants for magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, volunteer counselors or mediators, or other individuals who are not employees of an “employing office” as that term is defined below.
- C. The term “employing office” includes all offices of this court, including the offices of the clerk of court, chief probation officer, and any such offices that might be created in the future. The Court is the employing office of a judicial officer’s chambers staff.
- D. The term “judicial officer” means a judge appointed under Article III of the Constitution or a United States magistrate judge.
- E. The term “court” refers to the district court and probation and pretrial services office in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 **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. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. All of the above constitute “wrongful conduct.” The rights and protections of Sections I through VII of the court’s EEO Plan shall also apply to employees.

§ 2 **Definition** - The term “disability” means--

- A. a physical or mental impairment that substantially limits one or more of the major life activities of an employee;
- B. a record of such an impairment, or
- C. being regarded as having such an impairment.
See 42 U.S.C. § 12102 (2).

§ 3 **Special provision for probation and pretrial services officers** - The age discrimination provision of Section I of this Chapter shall not apply to the initial hiring or mandatory separation of probation

and pretrial services officers and officer assistants. *See* Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17. Additionally, probation and pretrial services officers must meet all fitness for duty standards, and any requirement to comply with such standards does not, in and of itself, constitute discrimination on the basis of disability.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

- § 1 General** - Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. §§ 6381 et. seq., applies to court and probation and pretrial services employees in the manner prescribed in Volume 12, Chapter 9, Section 920.20.35 of the *Guide to Judiciary Policy*.

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 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).
See 29 U.S.C. § 2101.

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

- § 1 General** - An employing office shall not discriminate against an eligible employee or deny an eligible employee re-employment rights or benefits under the Uniformed Services Employment and Re-employment Rights Act, 38 U.S.C. §§ 4301 et seq.

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

- § 1 **General** - Each employing office shall provide to its employees a place of employment which is reasonably free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. The judiciary has no direct authority to secure facilities for its own use, and occupies property acquired and maintained by the General Services Administration (GSA) and the United States Postal Service (USPS). Since the GSA and USPS are subject to the Occupational Safety and Health Act (OSHA), and must comply with additional safety and health regulations applicable to federal agencies, complaints which seek a remedy that is exclusively within the jurisdiction of the GSA or the USPS to provide are not recognizable under this Plan; such requests should be filed directly with GSA or the USPS, as appropriate.
- § 2 **Court program requirements** - The court shall establish and maintain a safety committee in each federal court building within the Western District of Michigan consisting of representatives from each court unit and a GSA or an USPS representative, as appropriate. The safety committee will address the protections set forth in Section 1 of this Chapter. The employing office and safety committee will rely on its employees to self-evaluate their work and surrounding areas and notify of any safety and health issues. Employee complaints concerning workplace safety and health within the control of the judiciary will be addressed through the procedures described in Chapter X.

CHAPTER VII - POLYGRAPH TESTS

- § 1 **General** - Unless required for access to classified information, or otherwise required by law, no employee may be required to take a polygraph test.

CHAPTER VIII – WHISTLEBLOWER PROTECTION

- § 1 **General** – Any employee who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take an adverse employment action with respect to an employee (excluding applicants for employment) because of any disclosure of information to –

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

by 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.

§ 2 Definition – For purposes of this Chapter, an “adverse employment action” means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee’s job status, compensation, terms, or responsibilities, or the employee’s working conditions.

CHAPTER IX– REPORTS OF WRONGFUL CONDUCT

A report of wrongful conduct is not the same as initiating or filing a claim under this Plan; thus, employees who wish to file an EDR claim relating to any alleged wrongful conduct as defined in Chapter II, §1 must follow the procedures set forth in Chapter X of this Plan.

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

The EDR Coordinator shall promptly inform the chief judge and unit executive of any report. The chief judge and/or unit executive shall ensure that the allegations in the report are appropriately investigated, either by the human resources manager or other person.

All individuals involved in the investigation shall protect the confidentiality of the allegations of wrongful conduct to the extent possible. Information and records about the allegations shall be shared on a need-to-know basis.

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

CHAPTER X - DISPUTE RESOLUTION PROCEDURES

§ 1 General procedure for consideration of alleged violations - An employee who claims a denial of the rights granted under Chapters II through VIII of this Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of --

- A. counseling and mediation;
- B. hearing before the chief judge of the court (or a designated judicial officer); and
- C. review of the hearing decision under procedures established by the Sixth Circuit Judicial Council.

§ 2 Alleged Violation by Employee - Before invoking a request for counseling 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 a situation, the employee may bring his or her concerns to an EDR Coordinator on an informal basis. An employee alleging that

any of the rights granted under the Court's EEO Plan or this EDR Plan have been violated, and who seeks relief under this Plan, must file a request for counseling with their court's EDR Coordinator in accordance with Section 8 of this Chapter.

§ 3 Alleged Violation by Judge - Any employee alleging that a judge violated any rights granted under the Court's EEO Plan or this EDR Plan may file an EDR claim in accordance with this Plan. In such an instance, however, all the claims procedures of this Chapter shall be performed by the circuit council, either by members of the council directly or by persons designated to act on its behalf, which may include the chief judge of the circuit. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the circuit judicial council or its designee, which may include the chief judge of the circuit, will craft a procedure for determining any common issues of fact and processing both complaints, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, the EDR Plan. In so doing, the council or its designee, who may include the chief judge of the circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

§ 4 Confidentiality - The court or employing office shall protect the confidentiality of 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.

§ 5 General provisions and protections

- A. Prohibition against retaliation** - Claimants under this Plan have the right to be free from retaliation because of filing a claim pursuant to this Plan. Likewise, any person who participates in the filing or processing of a claim, such as 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 has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court or probation 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.
- C. Case preparation** - To the extent feasible, every individual invoking 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.
- D. Extensions of time** - The chief judge of the court, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause.
- E. Dismissal of claim** - On his or her own initiative or at the request of any party, the chief judge 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 Court'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.

- F. Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the court's Employment Dispute Resolution Coordinator ("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 an official personnel action.
- G. Withdrawal of Claim** - Upon request of the claimant to withdraw the claim and after notice to the alleged violator, the chief judge or presiding officer may dismiss the claim with or without prejudice.

§ 6 Designation and duties of employment dispute resolution coordinator - Each court shall designate a person to serve as the EDR Coordinator. Magistrate Judges Brenneman and Carmody shall serve as EDR Coordinators for the U.S. District Court and U.S. Probation & Pretrial Services Office for the Western District of Michigan. In the event of disqualification of both EDR Coordinators, the chief judge may designate an alternate EDR Coordinator. The duties of the EDR Coordinator shall include the following:

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

§ 7 General disqualification provision -A party may seek disqualification of a judicial officer, employee or other person involved in a dispute by written request to the chief judge. Such request shall merely state that the named person(s) are involved in the dispute and ask the chief judge to name another EDR Coordinator or judicial officer. No facts or allegations regarding the dispute should be contained in the employee's disqualification request. If the chief judge is named as being involved in a dispute, the employee may make the written request directly with an EDR Coordinator who will submit it to the next most senior judge of the district court that is not unavailable or disqualified to serve.

§ 8 Counseling

- A. Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through VIII of this Plan have been violated must first request counseling.
- B. Form and manner of requests** - Requests for counseling:
1. are to be submitted to an EDR Coordinator;
 2. must be made in writing and contain all the violations asserted by the claimant; and
 3. must be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation.
- C. Procedures**
1. **Who may serve as counselor** - The counseling shall be conducted by the EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 7 of this Chapter, or is otherwise unavailable. In such instances, the chief judge of the court shall designate another qualified individual to perform the counseling function. If the dispute involves an alleged violation of this Plan by a judicial officer, the person who conducts the counseling shall be a judicial officer designated by the chief judge. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and the chief judge of the court.
 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** - Unless waived by the employee, the court or employing office shall protect the confidentiality of 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.
 4. **Form of settlement** - The EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

- 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 EDR Coordinator. The employee is required to attend at least one counseling session. Thereafter, he or she may proceed to mediation.
- E. 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 of this Chapter.

§ 9 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 EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented. The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive and the chief judge of the court. 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 chief judge or 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 EDR Coordinator, may serve as a mediator under this Plan. The mediator need not be a judiciary employee. 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.
 - 3. Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and 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.
 - 5. Form of settlement** - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

- C. Duration of mediation period** - The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, he or she may proceed to file a request for hearing.
- D. Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the EDR Coordinator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 10 of this Chapter.

§ 10 Complaint 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 with the EDR Coordinator. 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 that were not presented in §9(A) 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.
- B. Hearing procedures**
- 1. Presiding judicial officer** - If the chief judge or presiding judicial officer does not dismiss the complaint, the chief judge or presiding judicial 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 Section:
 - a. the hearing shall commence 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 alleged to have violated rights protected by this Plan;
 - c. at the hearing, the complainant shall have the right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office shall have the right to present evidence on its behalf 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 his or her decision, the chief judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this Plan and by decisions of the judicial coil of the sixth circuit under Section 11 of this Chapter;
- f. remedies may be provided in accordance with Section 12 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 presiding judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing; and
- h. all parties and any aggrieved individual, shall have the right to written notice of any action taken as a result of a hearing.

§ 11 Review of decision - A party or individual aggrieved by a final decision of the chief judge or presiding judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the Sixth Circuit Judicial Council. (Please refer to Attachment I for the Procedures for the Review by the Judicial Council of the Sixth Circuit of Final Decisions or Summary Dismissals of Complaints Filed Pursuant to the EDR Plan.) Any review will be conducted by a judicial officer(s), based on the record created by the hearing officer and shall be affirmed if supported by substantial evidence.

§ 12 Remedies

- A.** Where judicial officers acting pursuant to section 10 or 11 of this Plan find that a substantive right protected by this Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by this Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B.** Remedies which may be provided to successful complainants under this Plan include, but are not limited to:
 - 1. placement of an employee in a position previously denied;
 - 2. placement in a comparable alternative position;
 - 3. reinstatement to a position from which previously removed;

4. prospective promotion to a position;
5. priority consideration for a future promotion or position;
6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
7. records modification and/or expungement;
8. "equitable" relief, such as temporary stays of adverse actions;
9. granting of family and medical leave; and
10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours, or other appropriate means.

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; and
3. punitive damages.

§ 13 Record of final decisions - Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Sixth Circuit Judicial Council. (Please refer to § 10 of Attachment I for the Sixth Circuit's policy on public disclosure of decisions.)

As approved by the Sixth Circuit Judicial Council, this plan is effective June 1, 1999, as revised in October, 2002, as revised on October 3, 2012, and as most recently revised on December 4, 2012.

**PROCEDURES FOR THE REVIEW BY
THE JUDICIAL COUNCIL OF THE SIXTH CIRCUIT
FINAL DECISIONS OR SUMMARY DISMISSALS OF
COMPLAINTS FILED PURSUANT TO THE EMPLOYMENT DISPUTE
RESOLUTION PLAN**

PROCEDURES FOR PUBLIC DISCLOSURE OF DECISIONS

§ 1. Who May Seek Review

(a) Generally. Any party or individual aggrieved by a final decision or summary dismissal of a complaint issued by a chief judge or designated judicial officer pursuant to an Employee Dispute Resolution (EDR) Plan adopted by a court within this circuit may file a petition for review of the decision pursuant to the following procedures.

(b) Definitions. A party is the individual who filed the complaint or the employing office that would be responsible for redressing, correcting or abating the violations alleged in the complaint. An aggrieved individual is an employee of the court employing office against which the complaint was filed who is adversely affected in grade, salary or conditions of employment by reason of the decision sought to be reviewed. For purposes of these procedures, the party or individual seeking review shall be designated as the “petitioner” and the part or individual seeking to uphold the decision shall be designated as the “respondent.”

§ 2. Petition for Review

(a) Time. A petition for review must be received in the office of the circuit executive within 10 days of the date of the order that is the subject of the petition.

(b) Form; Number of Copies. A petition should be in the form of a letter, addressed to the circuit executive, beginning “I hereby petition the judicial council for review of [name of chief judge or designated judicial officer]’s order...” A petition should be typewritten if possible. If not typewritten, it must be clearly legible. Only an original is required. The petition must be signed.

(c) Where to file. Petition letters should be sent to the Office of the Circuit Executive, 503 Potter Stewart United States Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202.

§ 3. Action by Circuit Executive upon Receipt of a Petition for Review

(a) Receipt of timely petition in proper form. Upon receipt of a petition for review filed within the time allowed and in proper form under these rules, the circuit executive will acknowledge receipt of the petition. The circuit executive will promptly send a copy of the petition for review to all other parties to the complaint and to the EDR coordinator for the court employing office.

(b) Receipt of untimely petition. The circuit executive will refuse to accept a petition that is received after the deadline set forth in section 2(a).

(c) Receipt of timely petition not in proper 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 circuit executive will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within 10 days of the date of the circuit executive's letter. If the deficiencies are corrected and received within the time allowed, the circuit executive will proceed in accordance with paragraph (a) of this rule. If the deficiencies are not corrected within the time allowed, the circuit executive will reject the petition.

§ 4. Record of Proceedings

(a) Composition of the Record. The record of proceedings for purposes of the petition for review shall consist of the original papers filed in connection with the complaint. The record shall include the complaint, any written response thereto, documents or exhibits produced by the complainant or the head of the employing office against which the complaint has been filed, the transcript of any hearings held by the chief judge or presiding judicial officer and a copy of the written decision of the chief judge or presiding judicial officer.

(b) Transmission of the Record. The EDR Coordinator shall transmit the record of proceedings to the circuit executive within 10 days of receipt of the copy of the petition for review. The EDR Coordinator shall number the documents comprising the record and transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness.

(c) Notice of the Filing of the Record. The circuit executive shall notify the parties upon the filing of the record of proceedings with the Judicial Council.

§ 5. Written Arguments of the Parties

(a) Memoranda. The petitioner and respondent shall file written memoranda setting forth their respective contentions with regard to the issues presented and the reasons therefore, with citations to parts of the record relied upon. The memorandum of the petitioner shall contain a brief statement of the relief sought.

(b) Response. The petitioner and the respondent may file a response to the opening memorandum filed by the opposing party.

(c) Time. The petitioner and respondent shall file and serve their memoranda within 21 days of the date upon which the record of proceedings was filed with the Judicial Council. Response memoranda shall be filed within 14 days of the date of filing of the opening memorandum filed by the opposing party.

(d) Copies. Each party shall file an original and three copies of their memorandum. Each party also shall serve a copy on the opposing party.

(e) Form. Memoranda shall be typewritten on plain paper 8 ½ by 11 inches in size. Text shall be doubled spaced.

(f) Length. Opening memoranda shall not exceed 20 pages in length. Reply memoranda shall not exceed 5 pages in length.

§ 6. Reviewing Panel

(a) Reviewing Panel. A petition for review of a final decision or summary dismissal of a complaint issued by a chief judge or designated judicial officer pursuant to an Employee Dispute Resolution (EDR) Plan shall be considered by a Reviewing Panel consisting of three members of the Sixth Circuit Judicial Council.

(b) Composition of the Reviewing Panel. The Reviewing Panel shall consist of three members of the Sixth Circuit Judicial Council selected by random draw by the circuit executive from the members of the council who are eligible to serve. No judge may serve on a Reviewing Panel to consider a petition for review arising from that judge's court.

§ 7. Reviewing Procedures

(a) Review on the Record. The Reviewing Panel shall consider the petition for review, the written memoranda of arguments filed by the petitioner and the respondent, and the record of proceedings. In its discretion, the Reviewing Panel may allow the parties to submit oral argument in addition to written argument, but it will not reopen the record to receive additional testimony or other evidence.

(b) Remedies. The Reviewing Panel may affirm, reverse, vacate or modify the decision which is the subject of the petition for review. The decision which is the subject of the petition for review shall be affirmed if supported by substantial evidence.

(c) Notice of Action of Reviewing Panel. The decision of the Reviewing Panel shall be by written order and accompanied by a memorandum which shall state the reasons for the decision. A copy of the order and memorandum shall be provided by the circuit executive to the parties and to the EDR Coordinator for the employing office that was the subject of the complaint.

§ 8. Finality

Decisions of a Reviewing Panel shall be final and shall not be subject to further review by the Judicial Council.

§ 9. Confidentiality

(a) General. The records and papers relating to a petition for review shall be treated as confidential and shall not be disclosed by any judge or employee unless the Reviewing Panel concludes that such disclosure is justified by special circumstances.

(b) Decision of the Reviewing Panel. The memorandum stating the reasons for the decision of the reviewing panel shall not identify the petitioner or the court employing office that was the subject of the complaint.

§ 10. Public Disclosure of Decisions

(a) General Rule. A final decision or summary dismissal of a complaint issued by a chief judge or designated judicial officer pursuant to an Employee Dispute Resolution (EDR) Plan or a final decision issued by a Reviewing Panel pursuant to these procedures shall be by written order and accompanied by a memorandum which shall state the reasons for the decision. The memorandum stating the reasons for the decision of the chief judge or designated judicial officer or reviewing panel shall not identify the petitioner or the court employing office that was the subject of the complaint.

(b) Filing; availability. The memorandum which states the reasons for the decision of the chief judge, designated judicial officer or reviewing panel shall be filed with the EDR coordinator for the court in which the complaint arose. The EDR coordinator shall maintain such memoranda of decisions in a file that is accessible to the public for inspection during normal office hours.