

**Employment Dispute Resolution Plan
of the
United States District Court
for the District of Colorado**



Adopted by the Court

April 3, 2019

**United States Courts for the Tenth Circuit
Office of the Circuit Executive
1823 Stout Street
Denver, Colorado 80257
(303) 844-2067**

David Tighe
Circuit Executive
(303) 335-2829

Leslee Fathallah
Deputy Circuit Executive
(303) 335-2641

April 4, 2019

Jeffrey P. Colwell
Clerk of Court
U.S. District Court for the District of Colorado
Alfred A. Arraj U.S. Courthouse
901 19th Street
Denver, CO 80294

Re: Approval of Employment Dispute Resolution Plan

Dear Mr. Colwell:

The Office of the Circuit Executive, on behalf of the Judicial Council, has reviewed and approved the amendments to the Employment Dispute Resolution Plan of the United States District Court for the District of Colorado. A copy of the Council's order is attached.

Please let me know if you have any questions.

Sincerely,



Leslee Fathallah
Deputy Circuit Executive

cc: Honorable Phillip A. Brimmer, Chief Judge
Mr. Kenneth Gardner, Clerk of Court, U.S. Bankruptcy Court for the District of Colorado
Ms. Lavetra Morgan, Chief Probation Officer

**MINUTES OF THE JUDICIAL COUNCIL
OF THE TENTH CIRCUIT**

April 4, 2019

The Employment Dispute Resolution Plan of the United States District Court for the District of Colorado is approved as amended and submitted on April 4, 2019.

This approval is entered pursuant to the Judicial Council's February 27, 2019, delegation of specific authority to the Circuit Executive's Office.

The Judicial Council

By:



Leslee Fathallah
Deputy Circuit Executive

for David Tighe
Circuit Executive and Secretary to the
Judicial Council of the Tenth Circuit

Table of Contents

Chapter I – General Provisions	1
§ 1 Preamble.....	1
§ 2 Scope of Coverage.....	2
§ 3 Definitions.....	2
§ 4 Proper Forum	3
Chapter II - Equal Employment Opportunity and Anti-Discrimination Rights	3
§ 1 General.....	3
§ 2 Special provision for probation officers.....	4
Chapter III - Family and Medical Leave Rights	4
§ 1 General.....	4
Chapter IV - Worker Adjustment and Retraining Notification Rights	4
§ 1 General.....	4
§ 2 Definitions.....	4
Chapter V - Employment and Reemployment Rights of Members of the Uniformed Services	5
§ 1 General.....	5
Chapter VI - Occupational Safety and Health Protections	5
§ 1 General.....	5
§ 2 Court program requirements	5
Chapter VII - Polygraph Tests	5
§ 1 General.....	5
Chapter VIII - Whistleblower Protection	5
§ 1 General.....	5
§ 2 Definition	6
Chapter IX - Reports of Wrongful Conduct	6
Chapter X - Dispute Resolution Procedures	7
§ 1 General procedure for consideration of alleged violations.....	7
§ 2 Alleged Violation by Employee	7
§ 3 Alleged Violation by a Judge	7
§ 4 Confidentiality.....	8
§ 5 General provisions and protections	8
A. Prohibition against retaliation.....	8
B. Right to representation.....	8

C.	Case preparation	8
D.	Extensions of time.....	8
E.	Dismissal of claim	8
F.	Notice.....	8
G.	Settlement.....	9
H.	Records -	9
§ 6	Designation and duties of EDR Coordinator.....	9
§ 7	Designation of Presiding Judge; Impartiality; Disqualification.....	10
§ 8	Counseling	10
A.	Initiating a proceeding; formal request for counseling.....	10
B.	Form and manner of requests -	10
C.	Procedures	11
1.	Who may serve as counselor	11
2.	Purposes of counseling	11
3.	Confidentiality	11
4.	Form of settlement.....	11
D.	Duration of counseling period	11
E.	Conclusion of the counseling period and notice.....	12
§ 9	Mediation	12
A.	Initiation	12
B.	Procedures	12
1.	Designation of Mediator.....	12
2.	Who may serve as Mediator.....	12
3.	Purpose of mediation.....	12
4.	Confidentiality	12
5.	Form of settlement.....	13
C.	Duration of mediation period.....	13
D.	Conclusion of mediation period and notice	13
§ 10	Complaint and Hearing	13
A.	Complaint.....	13
B.	Hearing procedures	13
1.	Presiding Judge.....	13
2.	Specific provisions.....	14
§ 11	Review of Decision	15
§ 12	Remedies.....	15
§ 13	Record of final decisions.....	16

**EMPLOYMENT DISPUTE RESOLUTION PLAN
of the
UNITED STATES DISTRICT COURT
for the DISTRICT OF COLORADO**

Chapter I – General Provisions

§ 1 Preamble

This Plan shall be known as the Employment Dispute Resolution Plan of the United States District Court for the District of Colorado. ("EDR Plan"). This EDR Plan was approved by the United States District Court for the District of Colorado to provide its employees the rights and protections of the Model Employment Dispute Resolution Plan adopted by the Judicial Conference of the United States in March 2010 as modified in September 2012 and September 2018. This EDR Plan may be modified only by approval of the Judicial Council of the Tenth Circuit. The EDR Plan's rights and protections are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

This EDR Plan supersedes any and all previous versions of the District Court's Employment Dispute Resolution Plan. This Court and each employing office listed in Section 2 of this Chapter:

- 1) shall prominently post this EDR Plan on their respective internal and external websites; and
- 2) shall post notices stating where employees can locate a copy of the EDR Plan and identifying the name and contact information of the Court's EDR Coordinators.

Employees of this Court are afforded certain additional rights and protections regarding adverse action or general grievance proceedings which are set forth in the Court's personnel manuals. These rights and protections are not modified and remain in effect as they are currently detailed in the personnel manuals, which may be amended from time to time.

The EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judge misconduct or disability under 28 U.S.C. §§ 351-364, but, otherwise, it is intended to be the exclusive remedy of the employee relating to the rights enumerated under the EDR Plan.

Individuals covered under the scope of this EDR 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 in the administrative processes of the Court.

§ 2 Scope of Coverage

This EDR Plan applies to all Article III Judges and Magistrate Judges of the United States District Court for the District of Colorado; all chambers staff of the judges covered by this Plan, and all employees of the District Court, including the unit executives and staff of the Clerk's Office, and the Probation Office. It also applies to all interns and externs.

§ 3 Definitions

For the purpose 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 pursued further by the filing of a request for mediation and complaint.
- 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 applicants for bankruptcy judge or magistrate judge positions; private attorneys who apply to represent indigent defendants under the Criminal Justice Act; volunteer or court-appointed counselors or mediators; volunteer or court appointed special masters, translators, medical or psychological evaluators or other experts; workers who perform contract work as court interpreters, court reporters or consultants; private attorneys appointed to represent 1) pro se litigants through the Civil Pro Bono Panel or 2) appointed as guardians ad litem for minors or litigants lacking capacity to represent themselves; 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 the United States District Court for the District of Colorado, including the Clerk's Office and the United States Probation Office for the District Court. The District Court is the employing office for all chambers staff of judges covered by this EDR Plan.
- D.** The term "judge" means a district court judge of the United States District Court for the District of Colorado appointed under Article III of the U.S. Constitution, a United States magistrate judge for the District of Colorado; a judge sitting by official designation; or a recalled district court judge or

magistrate judge. The term “Chief Judge” means the Chief Judge of the United States District Court for the District of Colorado. The term “Presiding Judge” means the Chief Judge or any other district court judge as designated by the Chief Judge.

- E. The term “Court” refers to the United States District Court for the District of Colorado.
- F. The term “EDR Coordinator” means the person(s) designated by the Chief Judge under Chapter X, § 6 to serve as the employment dispute resolution coordinator, and any alternate designee(s), unless otherwise noted.

§ 4 Proper Forum

If an employee seeks redress of an employment dispute under both the EDR Plan and under the general grievance procedures set forth in the Court’s personnel manuals with respect to the same or substantially the same adverse action or wrongful conduct, as defined in Chapter II, § 1, the Chief Judge will craft a procedure for processing both claims, including determining any common issues of fact, that is consistent with the substantive and procedural rights relating to both such claims. In doing so, the Chief Judge may determine that all or part of the grievance claim must be abated until action is taken on the EDR claim, or that only one forum is the appropriate forum for the claims.

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), sexual orientation, and disability is prohibited. The term “disability” means (1) a physical or mental impairment that substantially limits one or more of the major life activities of an employee, (2) a record of such an impairment, or (3) being regarded as having such an impairment. See 42 U.S.C. § 12102(1). 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 Equal Employment Opportunity Plan for the District of Colorado (the EEO Plan), shall also apply to employees (except that the duties of the EEO Coordinator under the EEO Plan are assumed by the EDR Coordinator, as set forth in Chapter X, § 6 of this EDR Plan). The EEO Plan is a separate document that is available at www.cod.uscourts.gov and on the court unit’s intranet site.

§ 2 **Special provision for probation officers** - The age discrimination provision of Section I of this Chapter shall not apply to the initial hiring or mandatory separation of probation officers and officer assistants. See Report of the Proceedings of the Judicial Conference of the United States (March 1991), pp. 16-17. Additionally, probation officers must meet all fitness for duty standards, and compliance 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. §§ 6381-6387, applies to court 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 which 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). See 29 U.S.C. § 2101.

Chapter V - Employment and 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 reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. §§ 4301-4335.

Chapter VI - Occupational Safety and Health Protections

§ 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. Claims that seek a remedy that is exclusively within the jurisdiction of the General Services Administration (“GSA”) or the United States Postal Service (“USPS”) to provide are not cognizable under this EDR Plan; such requests should be filed directly with GSA or the USPS as appropriate.

§ 2 **Court program requirements** - The Court shall implement a program to achieve the protections set forth in Section 1 of this Chapter.

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 any employee (excluding applicants for employment) because of any disclosure of information to –

- A. the appropriate federal law enforcement authority, or
- B. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, by 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 EDR 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 any racial or sexual harassment or other wrongful conduct as defined in Chapter II, § 1, to one of the Court’s EDR Coordinators, the Chief Judge, a unit executive, human resources manager, or their supervisor as soon as possible, in order to avoid the wrongful conduct becoming severe or pervasive. Retaliation against any employee making a report of wrongful conduct is prohibited.

The person receiving such report of wrongful conduct shall promptly (a) create a written summary of the report and (b) provide a copy of the report to the Chief Judge, one of the EDR Coordinators, and the appropriate unit executive. The Chief Judge or his/her designee shall ensure that the allegations in the report are appropriately and impartially investigated, either by the EDR Coordinator, the human resources manager, or other person who is not supervised by the alleged violator and who is otherwise impartial.

All individuals involved in the investigation shall protect the confidentiality of the allegations and all matters pertaining to the complaint 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 EDR Plan, may be subject to disciplinary action. Whenever it is determined that wrongful conduct has occurred in violation of this EDR Plan, the Court will undertake immediate and corrective and remedial action designed to stop the conduct, correct its effects on the employee, and ensure that the wrongful-conduct does not recur.

Chapter X - Dispute Resolution Procedures

- § 1 General procedure for consideration of alleged violations** - An employee who claims a denial of the rights granted under the EEO Plan or Chapters II through VIII of this EDR Plan shall seek resolution of such claims through the procedures of this Chapter. Generally, the process consists of:
- A. counseling and mediation;
 - B. a hearing;
 - C. review of the hearing decision under procedures established by the Judicial Council of the Tenth Circuit.
- § 2 Alleged Violation by Employee** - An employee alleging that any of the rights granted under the EEO Plan or this EDR Plan have been violated, and who seeks relief under this EDR Plan, must timely file a request for counseling with one of the Court's EDR Coordinators in accordance with Section 8 of this Chapter. Before invoking a request for counseling, an employee is encouraged (to the extent feasible) to bring his or her concerns to his or her supervisor or unit executive, unless the supervisor or the unit executive is the alleged violator. In such a situation, the employee is encouraged to bring his or her concerns to an EDR Coordinator or the human resources manager.
- § 3 Alleged Violation by a Judge** - Any employee alleging that a judge violated any rights granted under the EEO Plan or this EDR Plan may file an EDR claim in accordance with this EDR Plan. In such an instance, however, all the claims procedures of this Chapter shall be performed by the Judicial Council of the Tenth Circuit, either by members of the Council directly or by persons designated to act on its behalf, which may include the Chief Circuit Judge. 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 Judicial Council or its designee 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 Judicial Council or its designee 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, as well as the Chief Judge, EDR Coordinator, Mediator, Presiding Judge, and the employing office, shall protect the confidentiality of allegations and claims filed under this Plan to the extent possible. However, information about allegations filed under this EDR Plan may be shared on a need-to-know basis. Records relating to violations under this EDR Plan shall be kept confidential on the same basis.

§ 5 General provisions and protections

- A. Prohibition against retaliation** - Claimants under this EDR 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 EDR Coordinator, Mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.
- B. Right to representation** - Every individual involved in the dispute resolution procedures of this EDR Plan has the right to be represented by a person of their choice at their own expense 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 unit executive or appointing officer, or if that person is involved in the dispute, then by the Chief Judge.
- C. Case preparation** - To the extent feasible, every individual invoking the dispute resolution procedures of this EDR 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 Presiding Judge may extend any of the deadlines set forth in this Chapter for good cause. If any deadline required by this EDR Plan falls on a Saturday, Sunday or court holiday, the deadline shall be extended to the next following court business day.
- E. Dismissal of claim** - After notice and opportunity to respond, the Presiding Judge, on his or her own initiative or at the request of any party, may at any time in the proceedings, dismiss a claim or complaint on the grounds that it does not invoke violations of the rights or protections granted under the EEO Plan or this EDR Plan; is untimely; is unduly repetitive of a previous claim, adverse action, or grievance; is frivolous; fails to state a claim upon which relief may be granted; or asserts a claim that was not presented in the request for counseling or request for mediation under this EDR Plan.
- F. Notice** - Any notice or communication required by this EDR Plan to be

sent by the Chief Judge, EDR Coordinator or Presiding Judge will be deemed to have been delivered if it is sent by (1) certified mail or (2) email, so long as the sender uses a Return Receipt to confirm delivery option, and receives a Delivery Confirmation Notice in response.

- G. Settlement** - The EDR Coordinator, Mediator, Chief Judge or Presiding Judge, as appropriate, shall reduce to writing any settlement achieved during the employment dispute resolution process and shall secure the signature of the employee, his or her representative, if any, the member of the employing office who is authorized to enter into settlement on the employing office's behalf, and all other relevant individuals who are necessary to implement the settlement. The original settlement agreement shall be filed with the court's primary EDR Coordinator.

Any disputes concerning the enforcement, interpretation, or application of a settlement agreement achieved under this EDR Plan shall be submitted to the EDR Coordinator, and shall be resolved consistent with the rules and general procedures in this EDR Plan. Such action to enforce a settlement agreement shall be limited solely to matters concerning compliance with the settlement agreement.

- H. Records** - At the conclusion of formal and informal proceedings under this EDR Plan, all papers, files and reports (except those maintained by the Mediator) will be filed with the Court's primary 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.

§ 6 Designation and duties of EDR Coordinator - The Chief Judge shall designate an EDR Coordinator and one or more Alternate Coordinators under this EDR Plan, and shall notify the Circuit Executive of any and all such designations. The EDR Coordinator and Alternate Coordinators shall include individuals of the opposite sex so that employees have a comfortable forum for the discussion of possibly sensitive issues during the counseling process. The duties of such persons shall include the following:

- A.** to provide information to the Court and its employees regarding the rights and protections afforded under this EDR Plan;
- B.** to coordinate and organize the procedures and establish and maintain official files pertaining to claims and other matters initiated and processed under this EDR Plan;
- C.** to counsel individuals in the counseling stage of the claims process; designate a Mediator in the mediation stage; assist the Presiding Judge as

needed or requested during the complaint stage; inform the parties of the procedures for seeking review by the Judicial Council; and if a petition for review is filed, coordinate and assist with the submission of the complete record to the Judicial Council, as needed or requested, all in accordance with Sections 8, 9, 10 and 11 of this Chapter; and

- D. as to the primary EDR Coordinator, to collect, analyze, and consolidate statistical data and other information pertaining to the court's employment dispute resolution process, and to perform all of the duties assigned to the EEO Coordinator under the EEO Plan.

§ 7 Designation of Presiding Judge; Impartiality; Disqualification - If the Chief Judge is unavailable to perform any of the duties assigned to the Chief Judge under this EDR Plan, he or she may designate another district court judge who is available and impartial to assume any or all of those duties (the "Presiding Judge").

The Chief Judge, EDR Coordinator, Mediator, and Presiding Judge shall be impartial, meaning they shall not have participated substantively in any manner in the employment dispute or adverse employment action that is the subject of the EDR claim, or otherwise have an interest in the dispute which would conflict with their impartiality.

A party may seek disqualification of the Presiding Judge, EDR Coordinator, or Mediator by written request to the Chief Judge. Such written request shall contain facts regarding why the individual should be disqualified.

If the Chief Judge substantively participated in the alleged adverse employment action or is named as being involved in the EDR claim, the Chief Judge shall designate another district court judge who is available and impartial to assume all of the duties of the Chief Judge under this EDR Plan.

§ 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 EDR 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 and claims asserted by the claimant;

3. must be submitted to an EDR Coordinator within 180 days of the alleged violation or within 180 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 one of the Court's EDR Coordinators unless such person is disqualified from serving as counselor under Section 7 of this Chapter, or is otherwise unavailable. In such instances, the Chief Judge shall designate an Alternative EDR Coordinator or another qualified individual to perform the counseling function.
2. **Purposes of counseling** - The purpose 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 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** - Upon receipt, the EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive of the relevant employing office (or the judge, if the employee is a member of chambers staff) and to the Chief Judge. Unless waived by the employee, the Court and the employing office shall protect the confidentiality of allegations filed under this EDR Plan to the maximum 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. The written settlement should be signed by the employee, his or her representative, if any, and all other relevant individuals that, in the judgment of the EDR Coordinator, are necessary to implement the settlement.

- 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 counseling period may be extended for up to an additional 30 days by mutual agreement of the EDR Coordinator, the employee, and the employing office.

- E. Conclusion of the counseling period and notice** - The EDR Coordinator shall send written notice to the employee, the employee's representative, if any, and the employing office that the counseling period has concluded. 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 the notice of the conclusion of the counseling period is sent, 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 of the employing office and the Chief Judge. 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 EDR Coordinator shall designate a Mediator and provide written notice of such designation.
 - 2. Who may serve as Mediator** - Any person who has the skills and experience to assist in resolving disputes, except one of the Court's EDR Coordinators, may serve as Mediator.
 - 3. Purpose of mediation** - The Mediator shall consult separately and/or jointly with the employee and his or her representative, if any, the person who is the subject of the complaint, the employing office, and any other necessary party 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. Other than the Request for Mediation, records relating to mediation will not be filed with the EDR Coordinator under Section 5(H) of this Chapter.

- 5. Form of settlement** - The Mediator shall reduce to writing any settlement achieved during the mediation process. The written settlement should be signed by the employee, his or her representative, if any, and all other relevant individuals that, in the judgment of the Mediator, are necessary to implement the settlement.
- 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. The mediation period may be extended for up to an additional 30 days by mutual agreement of the Mediator, the employee, and the employing office.
- 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 send the employee, the employee's representative, if any, the person who is the subject of the complaint, and the employing office 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 the notice of the end of the mediation period is sent, the employee may file a complaint with the EDR Coordinator, who will transmit a copy to the Chief Judge and the unit executive of the employing office. 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 Section 9 (A) of this Chapter, may not be pursued. The respondent shall be the employing office that 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 Judge** - If the complaint has not been dismissed under Section § 5 (E) of this Chapter, the Presiding Judge shall hold a hearing on the merits of the complaint unless the Presiding Judge determines that no material factual dispute exists.

- 2. Specific provisions** - The Presiding Judge may provide for such pre-hearing discovery, investigation, conferences and pre-hearing and post-hearing memorandum or briefing as he or she determines 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 unit executive of the employing office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to any individual alleged to have violated rights protected by this EDR Plan;
 - c.** at the hearing, the complainant, the employing office, and any individual alleged to have violated rights under this EDR Plan will have the right to representation, at their own expense, to present evidence on their behalf, and to cross-examine adverse witnesses;
 - d.** all testimony shall be given under oath and a verbatim record of the hearing must be kept, at the expense of the employing office, and shall be the sole official record of the proceeding;
 - e.** in reaching his or her decision, the Presiding Judge shall be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this EDR Plan and by decisions of the Judicial Council of the Tenth Circuit under Section 11 of this Chapter;
 - f.** remedies may be provided in accordance with Section 12 of this Chapter where the Presiding Judge finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this EDR Plan has been violated;
 - g.** the final decision of the Presiding Judge must be issued in writing no later than 30 days after the

conclusion of the hearing;

- h.** all parties or 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 summary dismissal of a claim or complaint by the Presiding Judge, or by a final decision of the Presiding Judge, may petition for review of that decision under the procedures established by the Judicial Council of the Tenth Circuit. The petition for review must be filed within 30 days of the issuance of the summary dismissal or final decision. The EDR Coordinator shall inform all persons served with notice of a final decision or summary dismissal of the procedures for seeking review by the Judicial Council. Any review will be conducted by the Judicial Council based on the record created by the Presiding Judge, and shall be affirmed if the legal standards applied are consistent with judicial and administrative decisions under the laws related to the rights protected by the EDR Plan and decisions of the Judicial Council, the factual findings are supported by substantial evidence on the record as a whole, and any discretionary rulings are not an abuse of discretion.

§ 12 Remedies

- A.** Where the Presiding Judge or Judicial Council acting pursuant to Section 10 or 11 of this Chapter find that a substantive right protected by this EDR 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 EDR Plan, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B.** Remedies that may be provided to successful complainants under this EDR 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 employee 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, as determined by the Presiding Judge or, if so designated by the Presiding Judge to make these requisite findings, the unit executive of the applicable employing office;
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 that are not legally available include:

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

D. Finality - Decisions of the Judicial Council of the Tenth Circuit are final and may not be appealed.

§ 13 Record of final decisions - Final decisions under this EDR Plan shall be made available to the public, free of charge, by written request to the primary EDR Coordinator. They shall not name the complainant or any individuals, and shall be captioned as follows:

In the matter of a (Request for Counseling or Complaint) filed under the Employment Dispute Resolution Plan of the United States District Court for the District of Colorado

Case No. (year-numbered)

The (United States District Court for the District of Colorado) or (the United States Probation Office for the District of Colorado) as the Designated Employing Office.