UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

EQUAL EMPLOYMENT OPPORTUNITY PLAN

AND

EMPLOYMENT DISPUTE RESOLUTION PLAN

PART A - EQUAL EMPLOYMENT OPPORTUNITY PLAN

PART B - EMPLOYMENT DISPUTE RESOLUTION PLAN

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PART B

EMPLOYMENT DISPUTE RESOLUTION PLAN
U.S. Bankruptcy Court for the Southern District of California

CHAPTER I - GENERAL PROVISIONS

§ 1 Preamble

This Plan shall be known as the Employment Dispute Resolution Plan ("EDR Plan"). It was adopted by the U.S. Bankruptcy Court for the Southern District of California in accordance with the Federal Judiciary Employment Dispute Resolution Model Plan (Model EDR Plan) adopted by the Judicial Conference of the United States on March 16, 2010 in order to provide rights and protections to employees of the U.S. Bankruptcy Court within the Southern District of California that 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 Chapter VII ("Annual Report") of the Equal Employment Opportunity Plan ("EEO Plan") imposing requirements on the court unit. Claims arising under Chapters II through VIII of this Plan, or under Chapters I through VI of the EEO Plan (Part A), shall be treated in accordance with the procedures set forth in Chapter ~~IX~~ X of this Plan. The duties of the court's EEO Coordinator will be assumed by the Employment Dispute Resolution (EDR) Coordinator (established in Section 6 of Chapter ~~IX~~ X of this Plan), except that the dispute resolution duties assigned to the EEO Coordinator under the EEO Plan will be replaced by the dispute resolution procedures set forth in Chapter ~~IX~~ X of this Plan.

This Plan is to be implemented in the same manner as the EEO Plan. This court has adopted and implemented this plan based upon the Model EDR Plan adopted by the Judicial Conference of the United States. Modifications from the Model EDR Plan have been approved by the Ninth Circuit Judicial Council. All future modifications to the EDR Plan must likewise be approved by the Ninth Circuit Judicial Council through the Office of the Circuit Executive. A copy of this Plan and any subsequent modifications shall be available to each covered employee and shall be posted on this court's internal and external websites. A copy of this Plan and any subsequent modifications shall be filed with the Office of the Circuit Executive and the Administrative Office. This court shall annually submit a report on the implementation of the Plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference. A copy of this annual report shall also be provided to the Ninth Circuit Judicial Council through the Office of the Circuit Executive.

Policies adopted by this court pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections afforded under this Plan are not affected by the Plan. Further, other 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 this Plan.

This 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. §§ 351-364, and otherwise is intended to be the exclusive remedy of the employee relating to rights enumerated under this Plan.

§ 2 Scope of coverage

This Plan applies to all judicial officers within this court, as well as to all employees of the U.S. Bankruptcy Court for the Southern District of California including judges' chambers staffs and court unit heads and their staffs.

§ 3 Definitions

For purposes of this Plan-

A. The term "claim" means the filing of a request for counseling as set for in Chapter ~~IX~~X, which may be further pursued by the filing of a request for a conference with the appointing officer, 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 applicants for positions that have a term of thirteen months or less, interns or externs providing gratuitous service, applicants for bankruptcy judge or magistrate judge positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, criminal defense investigators not employed by federal public defenders, volunteer counselors or mediators, or other individuals who are not employees of an "employing office" as that term is defined below.

C. The term "employing office" includes all offices of the U.S. Bankruptcy Court in the Southern District of California, including the office of the clerk of court and any such offices that might be created in the future. This court is the employing office of a judicial officer's chambers staff.

D. The term "judicial officer" means a United States bankruptcy judge.

E. The term "court" refers to the appropriate court (appeals, district or bankruptcy) in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint.

F. The term "appointing officer," for purposes of this Plan only, refers to the court unit

executive, if the complainant is an employee of the offices of the Clerk, Probation (including Probation Officers), or Pretrial Services. The appointing officer for an employee of a judge's chambers is the respective judge.

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), disability and sexual orientation 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 Chapters I through ~~VI~~ VII of the Equal Employment Opportunity Plan (Part A) 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 compliance with such standards does not, in and of itself, constitute discrimination on the basis of disability.

CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

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 that results from the absence of appropriated funds.

§ 2 **Definitions**

A. The term "employing office closing" means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

B. The term "mass layoff" means a reduction in force which:

1. is not the result of an employing office closing; and

2. results in an employment loss at the single site of employment during any 30-day period for

a. at least 33 percent of the employees (excluding any part-time employees); and

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

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

See 29 U.S.C. § 2101.

CHAPTER V - EMPLOYMENT AND RE-EMPLOYMENT RIGHTS OF MEMBERS OF TO THE UNIFORMED SERVICES

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 – 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 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

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 by the employee 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,

which the 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 ~~VIII~~ 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, Section 1 must follow the procedures set forth in Chapter ~~IX~~ 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 bankruptcy judge and bankruptcy unit executive of any report. The chief bankruptcy judge and/or bankruptcy 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 bankruptcy judge and/or bankruptcy unit executive to have engaged in "wrongful conduct," as defined in this Plan, may be subject to disciplinary action.

CHAPTER ~~IX~~ 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 ~~VII~~ VIII of this Plan, or who claims a violation of the prohibition against retaliation set forth in Section 5.A., shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of -

A. counseling, conference with appointing officer, and mediation;

B. hearing before the Chief Judge of the Bankruptcy Court (or a designated judicial officer) in which the alleged violation arises; and

C. review of the hearing decision under procedures established by the judicial council of the circuit.

§ 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 EDR Coordinator or EDR alternate are the neutral points of contact for the initial inquiry. An employee alleging that any of the rights granted under the EEO Plan or this 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 EEO Plan or this 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 judicial 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, this 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, employing office, and court employees (including the parties) 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** - Complainants under this Plan have the right to be free from retaliation, coercion, or interference 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 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. As soon as an employee has designated a representative, the employee will provide written notice of the name of their representative to the EDR Coordinator. If the employee's representative is a court employee, the employee bringing the EDR claim(s) must attach written authorization by the representative's appointing officer verifying that the duties of representation will not unduly interfere with his or her court duties or constitute a conflict of interest. No one other than the representative or those authorized by law or the EDR Plan itself may be involved in the EDR process. A representative who is an office employee shall be free from restraint, interference, coercion, discrimination, and reprisal, and shall have a reasonable amount of official time to accompany, represent, and advise the complainant or the person complained against at any stage in the complaint procedures. The employing office also has the right to representation.

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 bankruptcy judge, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause. The EDR Coordinator and the assigned mediator may likewise, after notification to the parties involved, extend the deadlines related to their functions for good cause.

E. **Dismissal of claim** - On his or her own initiative or at the request of any party, the chief bankruptcy 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 EEO Plan or this 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 fails to follow the procedures set forth in this Plan. The complaint will be stayed until the request for dismissal is decided.

F. **Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the 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 the EDR Coordinator - The court shall designate a person to serve as the EDR Coordinator. The court may designate more than one EDR Coordinator. The

duties of such person 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 claim 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 Disqualification Provision - Any person seeking disqualification or recusal of an EDR Coordinator, counselor, mediator, or reviewing official shall promptly submit a written statement to the chief bankruptcy judge explaining the reasons for the requested disqualification or recusal. In determining whether disqualification or recusal is warranted, the chief bankruptcy judge shall consider the factors, circumstances and considerations set forth in 28 U.S.C. § 455. If disqualification or recusal is warranted, the chief bankruptcy judge shall designate another individual to act as the EDR Coordinator, counselor, mediator, or reviewing official. In the event, the chief bankruptcy judge is unavailable to serve under this subsection or has disqualified or recused himself or herself pursuant to this provision, the chief bankruptcy judge will designate another judicial officer to serve as the reviewing official. Disqualification or recusal of the EDR coordinator, counselor, mediator or reviewing official of a court shall not be warranted merely because the court is named as a responding party. However, to avoid possible conflict of interests if the court unit executive, e.g., clerk of court, is the alleged violator of the Plan's provisions, the chief bankruptcy judge may designate another party to represent the employing office in mediation and/or at the formal hearing.

§ 8 Counseling

A. **Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through ~~VII~~ 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 the court's EDR Coordinator;

2. must be made in writing and contain all the violations asserted by the claimant (copy of approved form is included in Appendix 1); and

3. must be made within 30 days of the alleged violation or within 30 days of the time the employee first becomes aware of the alleged violation.

C. **Procedures**

1. **Who may serve as counselor** - The counseling shall be conducted by the court's 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 bankruptcy judge shall designate another qualified individual to perform the counseling function and the EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and the chief bankruptcy judge.

2. **Purposes of counseling** - The purposes of the counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.

3. **Confidentiality** - Unless all parties agree in writing to waive confidentiality, the court, employing office, and court employees (including the parties) 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.

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 a conference with the appointing officer in accordance

with Section 9 of this Chapter.

§ 9 Conference with Appointing Officer

A. **Initiation** - Within 10 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 a conference with the appointing officer. The request must be made in writing and must state the claim(s) presented (copy of approved form is included as Appendix 2). Failure to pursue a conference with the appointing officer will preclude further processing of the employee's claim under any other provisions of this Chapter.

B. **Procedures -**

1. **Purpose of conference with Appointing Officer** - The appointing officer shall meet with the employee and his or her representative, if any, and discuss alternatives for resolving the dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.

2. **Confidentiality** - No person or party involved in the conference shall disclose, in whole or in part, any information or records obtained through, or prepared specifically for the conference with the appointing officer, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of all such contacts must be kept and made available for review by their parties or representatives. In addition, in the event the employee files a complaint pursuant to Section 11 of the Chapter, the hearing officer shall have access to the record of any claims raised in this conference.

3. **Form of Settlement** - The appointing officer shall reduce to writing any settlement achieved during the conference and secure the signature of the employee.

C. **Duration of conference with Appointing Officer period** - The conference period shall be 30 days, or a shorter period if a settlement is achieved at an earlier date, beginning on the date the request for the conference is received. The employee is required to attend at least one conference with the appointing officer. Thereafter, after receiving notice of the end of the conference period, he or she may proceed to file a request for mediation.

D. **Conclusion of conference period and notice** - Prior to the conclusion of the conference period, the appointing officer will notify the EDR coordinator of the outcome of the conference. If no settlement has been achieved, the EDR

Coordinator shall notify the employee in writing of the end of the conference period.

§ 10 Mediation

A. Initiation - Within 15 days after receipt by the employee of the notice of the conclusion of the conference with the appointing officer 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 (copy of approved form is included as Appendix 3). The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive and the chief bankruptcy judge of the court. Failure to pursue mediation (unless waived by mutual agreement of both parties) 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 bankruptcy judge or EDR Coordinator shall designate a mediator and provide written notice to the parties of such designation.

2. **Who may serve as mediator** - Any person with the skills to assist in resolving disputes, except the court's EDR Coordinator, may serve as a mediator under this Plan.

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. A notice that settlement was reached will be provided to the EDR Coordinator for report purposes.

C. **Duration of mediation period** - The mediation period shall be 30 days unless waived (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 and 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 mediator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. A copy of this notice shall be sent to the EDR Coordinator who, in turn, shall inform the employee of his or her right to file a complaint under Section 11 of this Chapter.

§ 11 Complaint, review and hearing

A. **Complaint**- Not later than 15 days after receiving written notice of the end of the mediation period, the employee may file a complaint alleging a violation of the EDR Plan. The complaint shall be in the form approved by the court (see approved form in Appendix 4), and must be filed with the chief judge of the court of the employing office with a copy to the employing office and to the EDR Coordinator. Claims that were not presented in the request for mediation under Section 10 may not be pursued except in instances in which mediation has been waived. The respondent in all complaints 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 bankruptcy judge or designated judicial officer does not dismiss the complaint, the chief bankruptcy judge or designated judicial officer shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists. Generally, the scope of the hearing should be limited to a review of the documents and other written evidence submitted, rather than a full evidentiary hearing or trial with live witnesses, except where extraordinary circumstances are presented or the presiding judicial officer believes the allegation(s) contained in the complaint require appearances.

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 if appearances are required. However, the following specific

provisions shall apply to hearings in which appearances are required under this Section:

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

b. the complainant and the head of the office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to the individual alleged to have violated rights protected by this Plan;

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

d. the Federal Rules of Evidence need not be followed, but may be used as a guide;

e. the court shall provide a contract court reporter who will provide a verbatim record of the hearing which shall be the sole official record of the proceeding;

f. in reaching his or her decision, the chief bankruptcy judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through ~~VII~~ VIII of this Plan and by decisions of the judicial council under Section 12 of this Chapter;

g. remedies may be provided in accordance with Section 13 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;

h. the final decision of the chief bankruptcy judge or designated judicial officer must be issued in writing not later than 30 days after the conclusion of the hearing with or without appearances; and

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

§ 12 Review of decision - A party or individual aggrieved by a final decision of the chief

bankruptcy judge or presiding judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision. Such review must be requested in writing to the Judicial Council of the Ninth Circuit no later than 30 days following the date of the final decision of the chief bankruptcy judge or the presiding judicial officer or following the date of a summary dismissal of the complaint. Any review will be conducted by the members of the Executive Committee of the Ninth Circuit Judicial Council or their designees. The decision of the Executive Committee shall be based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence. (See Appendix 5 for "Procedures for Review of EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit").

§ 13 Remedies

A. Where judicial officers acting pursuant to Section 11 or 12 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 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;

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.

§ 14 **Record of final decisions** - The conclusion of the reviewing panel in any final decisions reached in accordance with the provisions of Section 12 of this Chapter shall be made available to the public from the Office of the Circuit Executive upon written request. Only in the event the panel determines that all or portions of the entire decision should be made public shall additional portions of the decision be made available to the public. The reviewing panel, in the interests of justice and of fairness to the parties, may determine not to make available to the public the conclusion of any final decision if public disclosure would compromise the integrity or legitimate confidentiality of the parties or the court, or to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, or for any other reason that the administration of justice may require.

§ 15 **Election of remedies** - If an employee or an employee representative files an appeal of an adverse action or a grievance in addition to a complaint under this Plan concerning the same or substantially the same subject matter, the employee must elect either (a) the EDR Plan or (b) the grievance/adverse action appeal procedures under which the complaint is to be processed. An employee may not utilize both (a) and (b). Similarly, if a complaint has already been processed under one of these procedures (i.e., the grievance/adverse action appeal procedure or the procedures in this Plan), it may not be the subject of a complaint under the other.

§ 16 **Determining Time Periods** - The word "days" in all filing and other time periods specified in this Plan shall mean calendar days, except that if the deadline date falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following Monday or court business day respectively.

§ 17 **Annual Report** - The EDR Coordinator will prepare an annual report for the fiscal year, indicating:

1. The number and type of alleged violations for which counseling was conducted.

2. The number and type of alleged violations for which mediation was conducted.

3. The number and type of complaints filed.

4. The number and type of hearings conducted.

5. The number and type of final decisions rendered reflecting the number for which some relief was granted.

6. With respect to all the data supplied in items 1 through 5 above, the allegations or complaints shall be reported according to the Chapter(s) of the EDR Plan involved and, with respect to allegations or complaints under Chapter II, according to the type(s) of discrimination alleged.