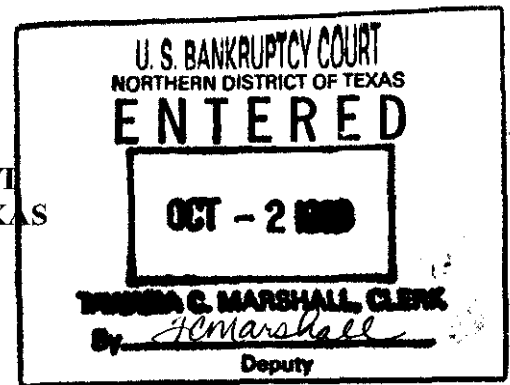


UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS



General Order No. 98-5

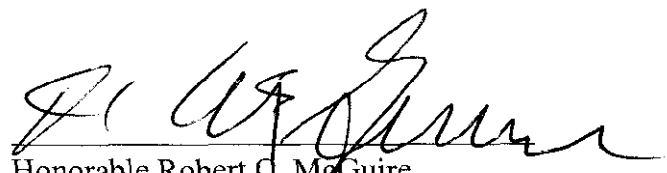
**Order Implementing Modified Equal Employment Opportunity
and Employment Dispute Resolution Plan**

On September 9, 1998, the Judicial Conference of the Fifth Circuit approved the modified Equal Employment Opportunity and Employment Dispute Resolution Plan for the Northern District of Texas Bankruptcy Court as submitted on July 6, 1998.

It is now **ORDERED** that effective January 1, 1999, the Equal Employment Opportunity Plan for the Northern District of Texas Bankruptcy Court as submitted July 6, 1998, shall supercede the Fifth Circuit Model Equal Employment Opportunity and Employment Dispute Resolution Plan adopted by this court on March 13, 1998.

SO ORDERED.

Signed this 2 day of October, 1998.


Honorable Robert C. McGuire
Chief United States Bankruptcy Judge
Northern District of Texas

THE JUDICIAL COUNCIL OF THE FIFTH CIRCUIT

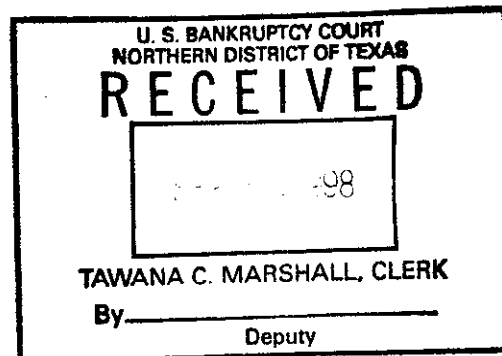
600 CAMP STREET, ROOM 300
NEW ORLEANS, LOUISIANA 70130

GREGORY A. NUSSEL
SECRETARY TO THE COUNCIL

PHONE: [504] 589-2730
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September 9, 1998

Honorable Robert C. McGuire
Chief U.S. Bankruptcy Judge
Northern District of Texas
12A24 U.S. Courthouse
1100 Commerce Street
Dallas, Texas 75242-1496



Re: Modified Equal Employment Opportunity Plan;
Northern District of Texas Bankruptcy Court

Dear Chief Judge McGuire:

The Judicial Council of the Fifth Circuit has approved the modified Equal Employment Opportunity and Employment Dispute Resolution Plan for the Northern District of Texas Bankruptcy Court as submitted. Accordingly, you may now proceed with implementation of this plan effective January 1, 1999 for all Northern Texas Bankruptcy Court employees.

By copy of this letter, I am notifying Dr. Trudi Michelle Morrison, Chief of the Employees Relations Office at the AO, of the Council's action. A copy of your court's modified plan will be provided to Dr. Morrison under separate cover.

With best regards.

Sincerely,

Kyle M. Boudreau
Kyle M. Boudreau
Assistant Circuit Executive

cc: Dr. Trudi Michelle Morrison
Ms. Tawana Marshall, Clerk

**United States Bankruptcy Court
Northern District of Texas**

**Equal Employment Opportunity
And Employment Dispute Resolution Plan**
Submitted July 6, 1998

Adopted: October 2, 1998

INTRODUCTION

This Plan shall be known as the Equal Employment Opportunity and Employment Dispute Resolution Plan ("EEO/EDR Plan").

The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex (to include sexual harassment), color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or disability. Each court will promote equal employment opportunity through a program encompassing all facets of human resource management, including recruitment, hiring, promotion and advancement. This program does not modify or reduce the qualification standards for employment established in the federal court system. This program is not intended to change the "at will" status of court employees, nor does it create property rights for employees.

In addition to the rights guaranteed by the EEO Plan, the Judicial Conference has directed that this Plan also provide to all court employees the rights and protections comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

Each court of the Fifth Circuit shall implement its EEO/EDR plan by either adopting the model Plan or submitting a modified plan to the Judicial Council for approval. A copy of each plan and any subsequent modifications shall be filed with the Circuit Executive and with the Administrative Office. Each court shall submit an annual 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 individual courts pertaining to adverse action or general grievance proceedings not invoking the rights and protections afforded under this EEO/EDR Plan are not affected. Further, local policies relating to rights enumerated under the Plan that are consistent with the rights and procedures established herein are not affected.

The EEO/EDR Plan is not intended to duplicate the protections provided for the resolution of complaints of judicial misconduct or disability under 23 U.S.C. § 372(c), but is intended to be the exclusive remedy of employees relating to rights enumerated under the Plan.

CLARIFICATIONS

This Plan applies to all employees in the United States Bankruptcy Court for the Northern District of Texas, including judges and judges' staffs. The term "employee" includes all

individuals currently employed by the Judiciary, as well as applicants for employment and former employees. The term "employee" does not include externs, applicants for bankruptcy judge positions, volunteer counselors or mediators, or other individuals who are not employees of an "employing office".

The term "employing office" is to be interpreted as the clerk's office. The court is the employing office of a judge's chambers staff.

The term "court" refers to the unit containing the employing office responsible for redressing, correcting, or abating the violation alleged in the complaint.

EMPLOYEE RIGHTS AND PROTECTIONS

A. Title VII of the Civil Rights Acts of 1964

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

The term "disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an employee, a record of such an impairment, or being regarded as having such an impairment. *See 42 U.S.C. § 12102(2).*

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Court Practices

The Clerk will assure that all permanent position *vacancies* are publicly announced to attract an applicant base representing the general ethnicity and gender of the labor market. A *position vacancy* is defined as a permanent excepted or temporary indefinite appointment that is not staffed by an incumbent employee. If an incumbent employee receives additional responsibilities through job redesign, the position will not be considered vacant and need not be publicly announced. The Clerk need not advertise vacancies if business exigencies dictate that the position be staffed immediately through direct appointment, or via promotion of an incumbent court employee. Temporary positions for a brief duration need not be advertised publicly.

All appointing officers and court management within the District should ensure employment and personnel decisions are based on job-related factors. They should make reasonable efforts to see that the skills, abilities and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits and within the limits of the available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training. This does not, however, create a property right for the employee in his or her job.

Each court unit will: (a) seek qualified applicants reflecting the make-up of all such persons in the relevant labor market and publicize vacancies; (b) make hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform satisfactorily the duties of the position; (c) promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level (based on availability of positions); (d) seek, insofar as reasonably practicable, to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details and outside training.

B. The Family Medical Leave Act of 1993

Title II of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611. The Act provides unpaid family and medical leave to all federal employees covered by the annual and sick leave program. An employee shall be entitled upon request to a total of 12 administrative workweeks of unpaid leave during any 12 month period for certain reasons. Detailed information can be located in Volume I-C, Chapter X, Subchapter 1630.1, Section R, of the Guide to Judiciary Policies and Procedures.

C. The Worker Adjustment and Retraining Notification Act

No "employing office closing" or "mass layoff" 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 caused by non-appropriation of funds. The term "employee office closing" means the permanent or temporary shutdown of a single site of employment for 50 or more full-time employees during any 30 day period. The term "mass layoff" means a reduction in force which is not the result of an employing office closing; and it results in an employment loss at the single site of employment during any 30-day period. A mass layoff is an action that results in the employment loss of at least 33% and at least 50 full-time employees, or at least 500 full-time employees. *See 29 U.S.C. § 2101.*

D. The Uniformed Services Employment and Reemployment Rights Act

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

E. Occupational Safety and Health Act of 1970

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. Judges and court unit heads shall insure that hazards in court space are brought to the attention of the respective landlord (General Services Administration, U.S. Postal Service, or private lessor) for correction.

F. Employee Polygraph Protection Act of 1988

No employee may be required to take a polygraph test.

GENERAL OVERVIEW

An employee who claims a denial of the rights granted under this Plan shall seek resolution of such claims through the Employee Dispute Resolution Plan (EDR). The procedural process consists of:

- A. counseling and mediation;
- B. hearing before the chief judge of the court (or a designated judge) in which the alleged violation arises; and
- C. review of the hearing decision under procedures established by the Judicial Council.

Right to representation -Every individual invoking the dispute resolution procedures of this Plan may 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 serve as a representative if it will not unduly interfere with assigned duties or constitute a conflict of interest, as determined by the representative's appointing officer. Similarly, every respondent to a complaint is entitled to representation in the same manner as complainants.

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 the case, so long as it does not unduly interfere with the performance of official duties.

Extensions of time -The chief judge of the court, or designee, may extend any of the deadlines set forth in this chapter for good cause.

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.

Prohibition against retaliation -Complainants under this Plan shall be free from retaliation, coercion, or interference because of filing a complaint pursuant to this Plan. Likewise, any person who participates in the filing or processing of a complaint, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, also is entitled to freedom from retaliation.

EMPLOYMENT DISPUTE RESOLUTION COORDINATOR

Each court shall designate a person to serve as the EDR Coordinator. Courts may designate more than one EDR Coordinator. The duties of such person shall be to provide information to the court and employees regarding the rights and protections afforded under this Plan; to coordinate and organize the procedures and establish and maintain official files of the court

pertaining to complaints and other matters initiated and processed under the court's EDR plan; to coordinate the counseling of individuals in the initial stages of the complaint process, and to collect, analyze and consolidate statistical data and other information pertaining to the court's EDR process.

General disqualification provision -Each court and Judicial Council shall make available procedures through which a party may seek the disqualification of a judge, employee, or other person involved in a dispute under this chapter.

EDR- COUNSELING

An employee who believes that his or her rights under this Plan have been violated must first request counseling. Requests for counseling are to be submitted to the court's EDR Coordinator in writing within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation. Claims of sexual harassment must be submitted within 6 months of the violation or 6 months from the time the employee becomes aware of the alleged violation.

The counseling shall be conducted by the court's EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor, or is otherwise unavailable. In such instances, the chief judge of the court shall designate another qualified individual to perform the counseling function. If the dispute involves an alleged violation of this Plan by a judge, the person who conducts the counseling shall be a judge designated by the chief judge.

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.

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.

All counseling shall be kept confidential unless the employee agrees in writing to waive confidentiality of the counseling process for the purpose of allowing the designated counselor to contact the employing office or to attempt a resolution of the disputed matter. A written record of all such contacts must be kept by the counselor and made available for review by the affected person(s).

The EDR Coordinator shall put into 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 authorized to enter into settlement on the employing office's behalf.

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 a claim, to file with the EDR Coordinator a request for mediation.

EDR-MEDIATION

Within 15 days after receiving the notice concluding the counseling period, the employee may file a request for mediation with the EDR Coordinator. The request must be in writing, stating the claim(s) presented. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this chapter.

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

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

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.

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.

Any party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of all such contacts must be kept and made available for review by the affected person(s). In addition, in the event the employee files a complaint, the hearing officer shall have access to the record of any claims raised in mediation.

The mediator shall put into 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 authorized to enter into settlement on the employing office's behalf.

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 the right to file a complaint.

TO FILE A COMPLAINT

Not later than 15 days after receiving the notice concluding the mediation period, an employee may file a complaint under procedures established by the court. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought.

The respondent shall be the employing office responsible for redressing, correcting or abating the violations alleged in the complaint. No individual shall be named as a respondent in the complaint.

The complaint and any other documents shall be reviewed by the chief judge of the court, or by another judge designated by the chief judge. In the event the chief judge is disqualified, or is unavailable to serve under this subsection, the reviewing official shall be designated in accordance with procedures established by the court. Any designation of a judge from another court to hear and decide the case shall be arranged by agreement of the chief judges of the affected courts. In the case of recusal of a judge for any other reason, a replacement judge will be named by the chief judge of the circuit.

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

SEXUAL HARASSMENT COMPLAINTS PROCEDURES AGAINST A JUDICIAL OFFICER

A complaint against any court employee, other than a judge, shall be filed and processed in accordance with the procedures stated above. A complaint against a judge may be filed as a judicial misconduct complaint pursuant to 28 U.S.C. 372(c), or may be filed in accordance with the internal procedure shown below, or both, at the discretion of the complainant.

Alternative procedures if the claim is against a judicial officer: If the subject of the complaint is a bankruptcy judge, the complaint shall be filed with the chief district court judge. Upon receipt of the complaint, the chief district court judge will make any investigation into the matter deemed necessary; consult with involved parties and seek an informal resolution of the problem; and prepare a report to the parties identifying the issues, describing the chief judge's findings and recommendation, and explaining what resolutions, if any, will be undertaken.

THE HEARING

If the chief judge or designee does not dismiss the complaint for any reasons stated on page 9, the chief judge or designee acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.

The presiding judge may provide for necessary discovery and investigation. 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 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 also

shall 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 also have the rights to representation, 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 a decision, the chief judge or designee shall be guided by judicial and administrative decision under the laws of this Plan and by decisions of the Judicial Council.
- F. Remedies may be provided in accordance with 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 designee must be issued in writing not 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.

REVIEW OF DECISION

A party or individual aggrieved by a final decision of the chief judge or designee, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the Judicial Council of the circuit. Any review will be conducted by a judge or judges, based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence.

REMEDIES

Where judges acting pursuant to 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.

Remedies provided to successful complainants under this Plan may 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 attorneys' 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 action;
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

Remedies not legally available include:

1. Payment of attorneys' fees (except as authorized under the Back Pay Act);
2. Compensatory damages; and
3. Punitive damages.

Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Judicial Council of the circuit.

EVALUATION AND ANNUAL REPORT

The bankruptcy court unit will prepare a brief annual report describing its efforts to provide equal employment opportunity in the following:

- A. **Recruitment.** The bankruptcy court unit will describe efforts made to bring a fair cross-section of the available pool into its applicant pool, including listing all employment sources and the methods used to publicize vacancies.
- B. **Hiring.** The bankruptcy court unit will identify recruitment efforts resulting in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment offered.
- C. **Promotions.** *The bankruptcy court unit will describe promotional opportunities, analyzing the distribution thereof, and describing those promoted to supervisory positions.*
- D. **Advancement.** The bankruptcy court unit will describe the efforts made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details and outside training.

In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives such as a lack of vacancies and minimal numbers of qualified applicants in the relevant labor market. This report also will include a breakdown according to the race, sex, color, national origin, and disability of the court's personnel on forms to be provided by the Administrative Office. The report will cover personnel actions occurring in the year ending September 30 and will be submitted by November 1 of each year.

The bankruptcy court unit will also develop annual objectives reflecting those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan explaining how those objectives are to be achieved.

The annual report will include information on complaints, for the year ending September 30, reflecting: (a) the number filed; (b) the types according to race, sex, color, national origin, religion, age, or disability; (c) the number resolved, identifying the stage at which each was resolved. The annual report will not identify the names of the involved parties. The report will be available to the public upon request.