

NOV 27 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

IN RE: EMPLOYMENT DISPUTE RESOLUTION PLAN
FOR THE WESTERN DISTRICT OF VIRGINIA

STANDING ORDER NO. 2012- 6

It is **ORDERED** that the attached Employment Dispute Resolution Plan for the Western District of Virginia, as revised on November 6, 2012, be and hereby is adopted for this Court and shall be adhered to by each unit of the Court in accordance with procedures set forth in said plan.

Entered this 27th day of NOVEMBER, 2012.

For the Court:
ENTER:

[Signature]

CHIEF UNITED STATES DISTRICT JUDGE



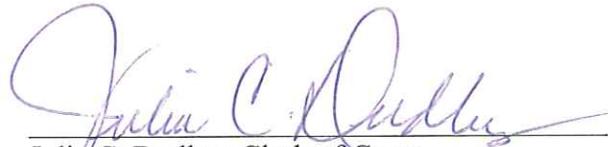
U.S. District Court
Western District of Virginia
Office of the Clerk
210 Franklin Road, SW, Suite 540
Roanoke, VA 24011

Julia C. Dudley
Clerk of Court

Voice: (540) 857-5100
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January 4, 2016

Pursuant to the Court's approved Employee Dispute Resolution Plan Chapter X, Section 6, I hereby appoint Fay Coleman as the EDR Coordinator and Lottie Lunsford as the alternate EDR Coordinator in cases of conflict.



Julia C. Dudley, Clerk of Court

Approved by:



Glen E. Conrad, Chief Judge

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
JUDICIAL COUNCIL



In the Matter of the Review of the *
Amendment to the Employment Dispute *
Resolution Plan of the United * No. 291
States District Court for the *
Western District of Virginia *

ORDER

The Plan of the United States District Court for the Western District of Virginia, as amended, which is attached to and made a part of this Order is hereby approved by the Judicial Council of the Fourth Circuit, and it is so ORDERED.

FOR THE COUNCIL:


Samuel W. Phillips, Secretary

Date: November 26, 2012



**EMPLOYMENT DISPUTE RESOLUTION PLAN
FOR THE
WESTERN DISTRICT OF VIRGINIA**

Revised November 6, 2012

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EMPLOYMENT DISPUTE RESOLUTION PLAN FOR THE WESTERN DISTRICT OF VIRGINIA



CHAPTER I - GENERAL PROVISIONS

§ 1 Scope of coverage

This Plan applies to all Article III Judges and Magistrate Judges in the Western District of Virginia as well as to all employees of the district court, including judges' chambers staff, and court unit heads and their staff.

§ 2 Definitions

For purposes of this Plan:

- A. The term "claim" means the filing of a request for counseling as set forth in Chapter X, which may be further pursued by the filing of a request for mediation and a request for hearing.
- B. The term "employee" includes all individuals listed in Section 1 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term "employee" does not include interns or externs who provide gratuitous service, applicants for 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 United States District Court, including the offices of the Clerk of Court, Chief Probation Officer, and any such offices that might be created in the future. The court is the employing office of a judicial officer’s chambers staff.
- D. The term “judicial officer” means a judge appointed under Article III of the Constitution or a United States Magistrate Judge.
- E. The term “court” refers to the district court in which is located the employing office which would be responsible for redressing, correcting or abating the violation alleged in the complaint.

CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS

§ 1 General - Discrimination against employees based on race, color, religion, sex (including pregnancy and sexual harassment) national origin, age (at least 40 years of age at the time of the alleged discrimination), and disability is prohibited. Harassment against an employee based upon any of these protected categories or retaliation for engaging in any protected activity is prohibited. All of the above constitute “wrongful conduct.” The rights and protections of the Court’s Equal Employment Opportunity Plan shall also apply to employees.

§ 2 Definition - The term “disability” means:

- A. a physical or mental impairment that substantially limits one or more of the major life activities of an employee,
- B. a record of such an impairment, or
- C. being regarded as having such an impairment.

See 42 U.S.C. § 12102(2).

- § 3 Special provision for probation and pretrial services officers** - The age discrimination provision of Section 1 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

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

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 RE-EMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

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

CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS

§ 1 **General** - Each employing office shall provide to its employees a place of employment which is 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") or a private landlord are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS or the private landlord 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 the authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or threaten to take an adverse employment action with respect to an employee (excluding applicants for employment) because of any disclosure of information to -

A. the appropriate federal law enforcement authority, or

B. a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts,

by the latter employee, which that employee reasonably and in good faith believes evidences a violation of any law, rule, or regulation, or other conduct that constitutes gross mismanagement, a gross waste of funds, or a substantial and specific danger to public health or safety, provided that such disclosure of information -

1. is not specifically prohibited by law,
2. does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide to Judiciary Policy*, Vol. 20, Ch. 8), and
3. does not reveal information that would endanger the security of any federal judicial officer.

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

CHAPTER IX - REPORTS OF WRONGFUL CONDUCT

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

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

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

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

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

CHAPTER X - DISPUTE RESOLUTION PROCEDURES

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

- A. counseling and mediation;
- B. hearing before the Chief Judge of the 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 employee is encouraged to discuss the matter with the EDR Coordinator. An employee alleging that any of the rights granted under the Court's 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 Court's EEO Plan or this Plan may file an EDR claim in accordance with this Plan. In such instance, however, all the claims procedures of this Chapter shall be performed by the Circuit Council, either by members of the Council directly or by persons designated to act on its behalf, which may include the Chief Judge of the circuit. If a judge becomes the subject of both an EDR claim and a judicial misconduct complaint under the Judicial Conduct and Disability Act, 28 U.S.C. §§ 351-364, the circuit Judicial Council or its designee, which may include the Chief Judge of the circuit, will craft a procedure for determination of any common issues of fact and processing the claim and complaint, subject to all requirements of the Act, the Rules for Judicial-Conduct and Judicial-Disability Proceedings, and, as practicable, the EDR Plan. In so doing, the Council or its designee, who may include the Chief Judge of the circuit, may determine that all or part of the EDR claim must be abated until action is taken on the judicial misconduct complaint.

§ 4 **Confidentiality** - The court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.

§ 5 **General provisions and protections**

- A. **Prohibition against retaliation** - Claimants under this Plan have the right to be free from retaliation, because of filing a claim pursuant to this Plan. Likewise, any person who participates in the filing or processing of a claim, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.
- B. **Right to representation** - Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest as determined by the representative's appointing officer.
- C. **Case preparation** - To the extent feasible, every individual invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case so long as it does not unduly interfere with the performance of his or her court duties.
- D. **Extensions of time** - The Chief Judge of the court, or other presiding judicial officer, may extend any of the deadlines set forth in this Chapter for good cause.
- E. **Dismissal of claim** - On his or her own initiative or at the request of any party, the Chief Judge or presiding judicial officer may at any time in the proceedings, dismiss a claim on the grounds that it does not invoke violations of the rights or protections granted under the court's EEO Plan or this Plan, is untimely, is unduly repetitive of a previous claim, adverse action, or grievance, is frivolous, or fails to state a claim upon which relief may be granted.
- F. **Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the court's Employment Dispute Resolution Coordinator ("EDR Coordinator"). No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder except as necessary to implement an official personnel action.

§ 6 Designation and duties of employment dispute resolution coordinator. The Court has designated two persons to serve as EDR Coordinators. Their names and contact information will be posted under the directory of Human Resources of the internal website and the Standing Orders section of the external website for the court. Their duties shall include the following:

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

§ 7 General disqualification provision - A party may seek disqualification of a judicial officer, employee or other person involved in a dispute by written request to the Chief Judge. Such written request shall contain facts regarding why the individual should be disqualified. If the Chief Judge is named as being involved in a dispute, the Chief Judge will ask the next most senior judge of the court in regular active service who is available and qualified to serve to decide the disqualification request.

§ 8 Counseling

- A. **Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through VIII of this Plan have been violated must first request counseling.
- B. **Form and manner of requests** - Requests for counseling:
 - 1. are to be submitted to the court's EDR Coordinator;
 - 2. must be made in writing and contain all the violations asserted by the claimant; and
 - 3. must be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation.

C. Procedures

1. **Who may serve as counselor** - The counseling shall be conducted by the 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 Judge of the court shall designate another qualified individual to perform the counseling function. The EDR Coordinator shall promptly provide a copy of the request for counseling to the unit executive and the Chief Judge of the court.
2. **Purposes of counseling** - The purposes of the counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures of the court applicable to the employment dispute resolution process; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.
3. **Confidentiality** - Unless waived by the employee, the court or employing office shall protect the confidentiality of allegations filed under this Plan to the extent possible. However, information about allegations filed under this Plan shall be shared on a need-to-know basis. Records relating to violations under this Plan shall be kept confidential on the same basis.
4. **Form of settlement** - The EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.

D. Duration of counseling period - The period for counseling shall be 30 days (or a shorter period if counseling is concluded at an earlier date), beginning on the date that the request for counseling is received by the EDR Coordinator.

E. Conclusion of the counseling period and notice - The EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator a request for mediation in accordance with Section 9 of this Chapter.

§ 9 **Mediation**

- A. Initiation** - Within 15 days after receipt by the employee of the notice of the conclusion of the counseling period, the employee may file with the EDR Coordinator a request for mediation. The request must be made in writing and must state the claim(s) presented. The EDR Coordinator shall promptly provide a copy of the request for mediation to the unit executive and the Chief Judge of the court. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of the Chapter.
- B. Procedures**
1. **Designation of mediator** - As soon as possible after receiving the request for mediation, the Chief Judge or EDR Coordinator shall designate a mediator and provide written notice of such designation.
 2. **Who may serve as mediator** - Any person with the skills to assist in resolving disputes, except the court's EDR Coordinator.
 3. **Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution.
 4. **Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties.
 5. **Form of settlement** - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.
- C. Duration of mediation period** - The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, he or she may proceed to file a request for hearing.
- D. Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request

for mediation, the EDR Coordinator shall provide the employee, the employee's representative, if any, and the employing office with written notice that the mediation period has concluded. The notice shall also inform the employee of his or her right to file a complaint under Section 10 of this Chapter.

§ 10 Complaint and hearing

- A. Complaint** - No later than 15 days after receiving notice of the end of 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. Claims that were not presented in Section 9(A) may not be pursued. The respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint.
- B. Hearing procedures**
1. **Presiding judicial officer** - If the Chief Judge or presiding judicial officer does not dismiss the complaint, the Chief Judge or presiding judicial officer shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
 2. **Specific provisions** - The presiding judicial officer may provide for such discovery and investigation as is necessary. In general, the presiding judicial officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:
 - a. the hearing shall 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 right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the right to present evidence on its behalf and to cross-examine adverse witnesses;

- d. a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;
- e. in reaching his or her decision, the Chief Judge or presiding judicial officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VIII of this Plan and by decisions of the Judicial Council of the appropriate circuit under Section 11 of this Chapter;
- f. remedies may be provided in accordance with Section 12 of this Chapter where the hearing officer finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated;
- g. the final decision of the Chief Judge or presiding judicial officer must be issued in writing no later than 30 days after the conclusion of the hearing; and
- 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 final decision of the Chief Judge or presiding judicial officer, or by a summary dismissal of the complaint, may petition for review of that decision under procedures established by the Judicial Council of the Circuit. Any review will be conducted by a judicial officer(s), based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence.

§ 12 Remedies

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

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

C. Remedies which *are not* legally available include:

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

§ 13 Record of final decisions - Final decisions under this Plan shall be made available to the public in accordance with procedures established by the Judicial Council of the Circuit.

§14 Petition for review of final decision

A. Notice of Procedures for Review

A party or individual aggrieved by a final decision of the Chief Judge, or by a summary dismissal of the complaint, may petition for review of that decision under the following procedures established by the Judicial Council of the Circuit. The EDR Coordinator shall inform all persons served with notice of the final decision of the Chief Judge of the procedures for seeking review by the Judicial Council.

B. Timing and Form of Petition for Review

A petition for review must be received by the EDR Coordinator within 30 days of the date of the letter to the parties transmitting the order. The petition should be in the form of a letter, addressed to the EDR Coordinator, beginning "I hereby petition the Judicial Council for review of the Chief Judge's order under the Employee Dispute Resolution Plan of the Western District of Virginia." There is no need to enclose a copy of the original complaint.

Only one copy of the petition is required. The letter should set forth a brief statement of the reasons why the petitioner believes that the Chief Judge or designated judicial officer's determinations were in error. The letter must be signed.

C. Receipt of Timely Petition in Proper Form

Upon receipt of a petition for review of the order of the Chief Judge within the time allowed and in proper form, the EDR Coordinator will acknowledge receipt of the petition and promptly send a copy of the petition and the following materials to the circuit executive:

1. the complaint and any statement of facts;
2. any response filed;
3. any record of information received by the Chief Judge in connection with consideration of the complaint;
4. any findings and recommendations made in the case by the Chief Judge's designee;
5. any objections to the designee's findings and recommendations;
6. the Chief Judge's order disposing of the complaint;
7. any memorandum in support of the order;
8. any other documents that appear to be relevant and material to the petition

Upon receipt of these materials, the circuit executive will acknowledge receipt of the petition for review and forward copies of all materials and a ballot to each

member of the Judicial Council, except for any member disqualified under Subsection F of this Section.

D. Receipt of Untimely Petition

The EDR Coordinator will dismiss a petition that is not received within 30 days of the date of the letter transmitting the Chief Judge's order.

E. Receipt of Timely Petition Not In Proper Form

Upon receipt of a petition filed within the time allowed but not in proper form (including a document that is ambiguous about whether a petition for review is intended), the EDR Coordinator will acknowledge receipt of the petition, call the petitioner's attention to the deficiencies, and give the petitioner the opportunity to correct the deficiencies within 15 days of the date of the letter. If the deficiencies are not corrected within the time allowed, the EDR Coordinator will dismiss the petition.

F. Consideration of Petition

Each member of the Judicial Council to whom a ballot was sent will return a signed ballot, or otherwise communicate the member's vote, to the circuit executive. The ballot form will provide opportunities to vote to (1) affirm the Chief Judge's disposition, or (2) place the petition on the agenda of a meeting of the Judicial Council. The form will also provide an opportunity for members to indicate that they have disqualified themselves from participating in consideration of the petition. Any judge who acted on the complaint, will not participate in the Council's consideration of the petition for review.

Review will be based on the record created before the Chief Judge, and the order shall be affirmed if supported by substantial evidence.

If a majority of the votes cast should be to affirm, the Chief Judge's order will be affirmed and the circuit executive will prepare an appropriate order to that effect, but if any of the members vote to place the petition on the agenda of a Council meeting, that will be done. If a petition is placed on the agenda of a meeting of the Judicial Council, Council action may be taken by a majority of the members present and voting.

G. Timing and Notice of Decision

If the petition is in proper form, the Judicial Council shall render its decision within 30 days after receipt of the petition for review unless the deadline is extended by the Council for good cause. The original order shall be filed with the

EDR Coordinator, and the EDR Coordinator will promptly transmit copies of the order to the parties and their representatives.

H. Finality

Decisions of the Judicial Council are final and conclusive and shall not be judicially reviewable on appeal or otherwise.

I. Record of Final Decisions

Final decisions of the Chief Judge and of the Judicial Council shall not name the complainant or individual respondents. In addition, the Chief Judge has the discretion to remove sensitive information contained in the final decision that may inadvertently identify the parties. Once final action on a complaint has been taken and is no longer subject to review, the final decision of the Chief Judge and of the Judicial Council shall be available to the public free of charge by written request to the EDR Coordinator.