

APPENDIX A

EMPLOYEE DISCRIMINATION
AND
DISCRIMINATORY HARASSMENT
COMPLAINT PROCEDURES

A. SCOPE OF COVERAGE

All court employees¹ and applicants for non-judicial positions may seek timely redress of discrimination complaints through these procedures. These procedures, however, are not intended to be a replacement for the working relationship which must exist between supervisors and employees, nor are they intended to interfere with the administrative process of the courts.

B. RIGHTS OF PERSONNEL

1. Retaliation

Every complainant has the right to be free from retaliation, coercion, or interference because of filing a complaint pursuant to these procedures. Likewise, any person who participates in the filing or processing of a complaint, such as a witness, EEO Coordinator, or co-worker is also entitled to freedom from retaliation.

2. Representation

Every complainant and every person against whom a complaint has been filed 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 officer². A representative who is a court 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.

3. Notice

Every person against whom a complaint has been timely filed has the right to have reasonable written notice of the charges filed against him or her. All persons involved have the right to reasonable notice of any hearing conducted on a complaint, any action taken, and of their right to have the decision reviewed.

4. Preparation

All court employees involved in a complaint procedure may use a reasonable amount of official time to prepare their case so long as it does not interfere with the performance of their court duties³.

C. PROCEDURES

1. Initiation of an Informal Complaint

Any applicant or any non-judicial court employee, or his or her representative, may complain of treatment or conduct which the applicant or employee believes is in violation of the EEO Plan. In lieu of, or prior to, the filing of a formal complaint, the person wishing to complain may elect to have the matter treated on an informal basis. In order to do so, the complaining party should discuss the facts and circumstances with the EEO Coordinator, a supervisor, or a co-worker. In appropriate circumstances, the complaining party may wish to discuss the matter with the person(s) who appear(s) to be directly responsible for the complained of treatment or conduct. The methods employed to resolve the matter may be as simple as a telephone conversation or as complex as a multi-party mediation.

The intent of this informal procedure is to obtain a resolution of the complaint in a manner that best serves the needs of the complaining party and the court unit involved. Resolutions reached may be reduced to writing where the nature of the resolution requires monitoring or follow up action.

2. Initiation of a Formal Complaint

Any applicant or any non-judicial court employee, or his or her representative, may file a timely discrimination complaint with the EEO Coordinator. If the EEO Coordinator is named in the complaint or otherwise directly involved in the complaint, he or she shall promptly transmit the complaint to the appointing officer who will appoint another person to perform the functions of the EEO Coordinator with respect to the complaint in question. Court units may wish to use an EEO Coordinator from another court unit in certain circumstances⁴.

The complaint must be in writing, must allege all relevant facts constituting the basis for such complaint, and must specify the relief requested. A complaint form developed by the Administrative Office of the United States Courts (form shown in Appendix B) is available upon request from the EEO Coordinator. Complainants may use alternative written forms at their option.

3. Complaints Against the Appointing Officer and Against Judges and Their Chambers Staff

a. Informal complaints

- (1) If an employee has a complaint against a judge, and wishes to seek an informal resolution of the matter either in lieu of, or prior to, filing a complaint of judicial

misconduct, the employee may take up the matter with the chief judge of that court. If the complaint is against the chief judge, the matter may be taken up with the active Article III judge next in order to become the chief judge.

- (2) If a member of chamber's staff has a complaint against another member of such staff, and the staff member wishes to seek an informal resolution of the matter either in lieu of, or prior to, filing a formal complaint of discrimination, the staff member may take the matter up with the judge of the chambers in which the party alleged to have discriminated is employed.
- (3) If an employee has a complaint against an appointing officer, and wishes to seek an informal resolution of the matter either in lieu of, or prior to, filing a complaint of discrimination, the employee should follow the procedure set forth Section C.1. above.

b. Formal complaints

- (1) Formal complaints against judges are not subject to these procedures. They may be filed as complaints of judicial misconduct pursuant to 28 U.S.C. § 372(c).
- (2) Formal complaints by a member of chambers staff against another member of chambers staff are to be filed with the chief judge of that court.
- (3) Formal complaints against appointing officers are to be filed with the chief judge of that court.
- (4) Where the chief judge deems it appropriate with regard to complaints submitted to him or her, the matter(s) may be delegated to a person from another court.

4. Investigative Procedures

Upon receipt of a complaint, the EEO Coordinator will make any investigation into the matter which he or she deems necessary, which may include the following:

- a. Consulting with the involved parties and seeking an informal resolution of the problem. The EEO Coordinator should caution discretion and the value of confidentiality to the involved parties;
- b. Consulting with supervisory personnel regarding appropriate recommendations;
- c. Preparing a report to the parties identifying the issues, describing his or her findings and recommendations, explaining what resolution, if any, was achieved, and defining what corrective actions, if any, will be undertaken. A proposed resolution to a

written, formal complaint of discriminatory harassment should first be approved by the affected appointing officers and supervisors;

- d. Rejecting a complaint that was not timely filed and dismissing those allegations in the complaint that are not within the purview of these Discrimination Complaint Procedures, or that have already been made in a pending or previous discrimination complaint filed by the same complainant;
- e. Dismissing a complaint because of the complainant's failure to cooperate in the processing of the complaint⁵.
- f. Where a complaint of discriminatory harassment (including sexual harassment) is involved, the EEO Coordinator will assess immediately whether the nature of the harassment allegations affects the physical safety of the complainant and whether removal from the premises or relocation of any person from the work area involved is necessary to protect any person's physical safety⁶.
- g. Where a complaint of discriminatory harassment (including sexual harassment) has been concluded, the EEO Coordinator shall subsequently conduct follow-up interviews with the complainant to ensure that no retaliation has taken place and that the discriminatory harassment has ceased.

5. **Review Procedures**

a. **Filing**

If either the complainant or the person against whom the complaint has been filed objects to the rejection or dismissal of the complaint or any portion thereof, or to the findings and recommendations of the EEO Coordinator, such person may file a written request with the chief judge or a designee of the chief judge to have the matter reviewed.⁷

b. **Review**

Upon receipt of a request to review the findings and recommendations of the EEO Coordinator, the chief judge or his or her designee will:

- i. conduct any additional investigation which he or she deems necessary;
- ii. determine whether to interview the parties or other persons;
- iii. determine whether to hold a formal hearing on the matter⁸; and
- iv. issue a final decision on the dismissal or merits of the complaint if it is found that no interviews or hearings are necessary.

c. Hearing

If the chief judge or the chief judge's designee finds that a hearing is necessary, all parties will receive reasonable notice of such action. The chief judge or his or her designee will issue a final decision on the merits based upon his or her findings.

6. Deadlines

Initial complaints and the review of complaints are subject to the following deadlines:

- a. All complaints must be filed within sixty (60) days⁹ of a particular act or occurrence or within sixty (60) days of becoming aware of the act or occurrence, and no late filing will be accepted unless good cause is presented to the EEO Coordinator. Within ten (10) days from the receipt of the complaint, a copy thereof will be provided by the EEO Coordinator to the person against whom the complaint was filed;
- b. The EEO Coordinator will prepare a report within twenty-one (21) days after consultation with the involved parties;
- c. All requests for review of the EEO Coordinator's findings must be submitted within seven (7) days after receipt of the report by the complainant;
- d. The chief judge or his or her designee will issue a final decision within twenty-one (21) days after receipt of the request for review if no hearing is held;
- e. The chief judge or his or her designee will issue a final decision within twenty-one (21) days after the close of a hearing; and
- f. The chief judge or his or her designee may extend any of the above-mentioned deadlines for good cause.

7. Relationship to Appeals from Adverse Actions and Grievances

If an employee or employee representative files an appeal of an adverse action or a grievance in addition to a complaint of discrimination (including discriminatory harassment) concerning the same or substantially the same subject matter, the employee must elect one of those procedures under which the complaint is to be processed. Similarly, if a complaint has already been processed under one of these procedures (e.g., the grievance procedure or these procedures), it may not be the subject of a complaint under the other.¹⁰

D. RESPONSIBILITIES OF APPOINTING OFFICERS AND SUPERVISORS

Appointing officers and supervisors have an affirmative responsibility to take corrective action to remedy discriminatory circumstances or behavior, including disciplinary action. In cases of discriminatory harassment (including sexual harassment) the appointing officer will take whatever action is deemed necessary to shield or protect the complainant from a potentially hostile work environment during and after the investigation of such discriminatory harassment.

E. RECORDS

Except as required by law, all complaints, responses, reports of investigation and all other papers created pursuant to this policy shall be kept confidential. All papers, files, and reports will be maintained under seal by the EEO Coordinator, or such other person who conducted the investigation of the complaint, at the conclusion of any informal or formal proceeding on a complaint. No papers, files, or reports relating to a complaint will be filed in any employee's personnel folder, except as necessary to implement disciplinary action against any person who is found to have engaged in discriminatory conduct. The EEO Coordinator shall maintain the files and records with respect to all complaints of discrimination and discriminatory harassment filed in that unit. Files and records with respect to informal complaints filed against judges shall be maintained by the chief judge. All such files shall be maintained in strict confidence, and are not subject to discovery in any proceeding.

Notes—Discrimination Complaint Procedures

1. The complaint procedures are available to all employees of the court including supervisors, law clerks, court reporters and employees in other classifications. Complaints filed against judges are to be processed in accordance with judicial misconduct procedures as set forth in 28 U.S.C. § 372(c). These discrimination procedures are not available to the public, volunteers or uncompensated employees (e.g. externs who are not on the payroll of the courts), employees of other branches (e.g., U.S. Marshals), nor independent contractors (e.g., contracted interpreters), or other persons who may perform services on behalf of the courts, but are not court employees (e.g., CJA panel attorneys, lawyer representatives, lawyer arbitrators and mediators).
2. It is often advisable for the employee representative to be from another court unit, especially where the nature of the complaint and/or the persons involved indicate that disruption or conflicting loyalties may result from representation within the work unit. Use of an employee from another work unit is subject to the approval of the court unit head of the other unit.
3. It is difficult to specify the amount of time that would be “reasonable” since the nature and complexity of the case, possible travel involved, number of witnesses, etc., will all influence preparation time. Likewise, the needs of the court and the ability to cover employees’ absences can be a factor. Employees and court unit officials are advised to be accommodating and flexible in making arrangements to use official time for case preparation.
4. As with employee representatives (see note 2), certain types of cases and parties involved suggest that it may be advisable to rely on employees from other court units. This is particularly appropriate where the EEO Coordinator is, or has been, directly involved in the decisions or actions complained of, or where the EEO Coordinator reports directly to the person taking the actions or making the decisions against which the complaint has been filed.
5. Complainants may withdraw their complaint at any time following its filing. Such withdrawal must be in writing, signed and dated.
6. While such instances are rare, there may be occasions where the nature of the harassment is so aggressive and threatening that prompt action is required. The EEO Coordinator, with the concurrence of the appointing officer if possible, shall seek the assistance of court security personnel or use other appropriate means to alleviate the threat to physical safety.
7. Requests for review concerning complaints filed by employees in bankruptcy court units which have their own EEO Coordinator are to be filed with the chief bankruptcy judge of that court.
8. If a formal hearing is determined to be necessary by the chief judge or the chief judge’s designee, a hearing officer will be appointed by the chief judge to conduct the hearing. Witnesses may be called and sworn by either side, and other evidence may be received. The hearing officer

will determine what, if any, record will be made of the hearing. Formal rules of evidence will not apply, and the hearing officer will determine what evidence is admissible based upon a judgment of what evidence is reasonably reliable. There is no right to formal discovery in advance of such hearing, although documents contained in an employee's personnel file shall be available to that employee.

9. All deadlines unless otherwise specified, which are set forth in this appendix shall be measured in terms of calendar days, except that if the deadline falls on a Saturday, Sunday or holiday, it shall be extended to the following Monday or court business day respectively.

10. Appeals from adverse actions and grievances are means by which employees in some court units may protest personnel actions that adversely affect pay or other conditions of employment. Employees in those court units that have procedures for processing appeals from adverse actions and/or grievance procedures must elect to use such procedures or the discrimination complaint procedures set forth in Appendix A, but they may not use both.