



## MEMORANDUM

**To:** ✓ Chief District Judge Michael R. Hogan, District of Oregon  
Chief Bankruptcy Judge Donal D. Sullivan, District of Oregon

**From:** Judge Marilyn L. Huff, Chair-Gender Fairness Committee

**Date:** December 6, 1996

**Re:** EEO Plan

This is to confirm that the Judicial Council in its meeting on November 22, 1996 approved your courts' proposed alternative EEO Plan. We understand that the same plan covers both the district and bankruptcy courts. Thank you for your cooperation in this matter.

**cc:** Donald M. Cinnamond, Clerk of District Court  
Terence H. Dunn, Clerk of Bankruptcy Court  
Chuck Loughran

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**EQUAL EMPLOYMENT OPPORTUNITY  
AND  
NON-DISCRIMINATION PLAN**

**Adopted by the Court  
June 1996**

## **Chapter One**

### **INTRODUCTION**

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#### **Section 1.01 BACKGROUND**

In 1987, the Judicial Conference of the United States directed each court to adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age, or handicap. Later that same year, the United States District Court for the District of Oregon adopted the model plan recommended by the Judicial Conference of the United States.

In the spring of 1996, the Judicial Council of the Ninth Circuit Court of Appeals directed each court to update and re-publish their Equal Employment Opportunity (EEO) plan.

In accordance with that directive, the following **Equal Employment Opportunity and Non-Discrimination Plan** is adopted by the court and will become effective when approved by the Judicial Council of the United States Court of Appeals for the Ninth Circuit.

#### **Section 1.02 INTENT**

- (a) **Discrimination and Harassment Free Work Place:** The United States District Court for the District of Oregon is committed to a work place which provides equal employment opportunity free from discrimination, including sexual harassment and discriminatory harassment.

Discrimination based on factors unrelated to job performance is harmful and disrespectful to individuals, undermines working relationships, and compromises the integrity of the Court. The Court will not tolerate any such discrimination.

- (b) **Permissible Distinctions Based on Relevant Job Performance Requirements:** Nothing in this plan is intended to modify or reduce the qualification standards established by the Judicial Conference of the United States for employment in the federal courts. Therefore, employment and personnel related decisions based on distinctions relevant to job performance are not in violation of this plan<sup>1</sup>.

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<sup>1</sup> Examples of permissible distinctions may include (but are not limited to) years of experience, specialized experience, or other physical or mental requirement mandated by law, regulation, policy, rule, or guideline of the Judicial Conference of the United States, etc.

## Section 1.03 DEFINITIONS

Unless otherwise modified or abrogated by legislation or case law, the following definitions apply to the provisions of this plan:

- (a) **Age:** At least 40 years of age at the time of the alleged discrimination except for the age restrictions prescribed by 5 U.S.C. § 8335(b) and 8425(b) and described in the Judiciary Salary Plan and the Court Personnel System, applying to the appointment and retirement of federal probation and pretrial services officers.
- (b) **Gender:** Discrimination on the basis of marital status or parenthood is also categorized as gender discrimination.
- (c) **National Origin:** National origin includes ethnicity, however, federal law requires that all federal court employees be citizens of the United States, or citizens of countries with treaty relations with the United States, as defined by the United States Department of State, or persons subject to the Chinese Student Protection Act, 8 U.S.C. §1255.
- (d) **Disability:** For purposes of this plan, "*disability*" (formerly referred to as "handicap") means any physical or mental impairment which substantially limits one or more of a person's major life activities<sup>2</sup> where there is a record of such impairment and the person is regarded as having such impairment.

A qualified disabled person is one who meets the criteria for appointment, and one who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others.

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<sup>2</sup> 29 CFR § 1614.203 defines "major life activities" to mean functions such as caring for one's self, performing manual tasks, walking, seeing, breathing, learning and working.

Under the standard of "reasonable accommodation" the court unit shall reasonably accommodate to the known physical or mental limitations of a qualified disabled applicant or employee unless the court can demonstrate that the accommodation would impose an undue hardship on the court's operations. Such accommodations may include, but shall not be limited to:

- (a) Making facilities readily accessible to and usable by disabled persons; and
- (b) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers and interpreters and other similar actions.

Certain other conditions that are temporarily disabling such as pregnancy and childbirth are treated as disabilities for purposes of protections afforded under this Plan.

HIV infection is considered to be a non-interfering disability absent medical and workplace documentation regarding the extent to which the infection may affect job performance, leave, or conduct.

- (e) **Appointing Officers:** For purposes of this plan, every district, bankruptcy, and magistrate judge; and the Federal Public Defender, the Chief U.S. Probation Officer, the Chief Pretrial Services Officer, and the clerk of the bankruptcy and district courts are designated to be an appointing officers
- (f) **Employment Actions and Conditions:** For purposes of this plan, the phrase "*employment actions and conditions*" applies to:
  - (1) Terms and conditions of employment;
  - (2) Recruitment, hiring and promotion decisions;
  - (3) Advancements;
  - (4) Work assignments;
  - (5) Compensation and benefits over which the local court unit has discretionary control;
  - (6) Training and education opportunities; and
  - (7) Disciplinary actions, including terminations.

- (g) **Sexual harassment:** Sexual harassment is gender discrimination and is defined as unwelcome sexual advances or conduct<sup>3</sup> such as an overture, an offer, or 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; or
  - (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 work environment; and
  - (4) Such conduct is engaged in either in or outside the workplace, during working hours or after working hours, and where there is a direct connection with workplace matters.
- (h) **Discriminatory Harassment:** Discriminatory harassment is any conduct, threat, insinuation, innuendo, slur, offensive statement, or conduct that is directed at an individual or a specific class or group and is based on non-job related personal characteristics.

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<sup>3</sup> Prohibited unwelcome conduct includes offensive sexual flirtations, suggestive comments, sexual innuendo, unwanted physical contact, impeding or blocking movement, repeated requests or pressure for dates, advances, propositions, insults or verbal abuses of a sexual nature, graphic verbal comments about an individual's body, sexually degrading words describing an individual, humor and jokes about sex or gender-specific traits, or the display of sexually suggestive objects or pictures.

Prohibited discriminatory conduct also includes non-verbal, suggestive, or sexually insulting actions such as leering, whistling, suggestive sounds, and obscene gestures.

Prohibited touching includes any unwelcome touching of a sexual nature, pinching, intentional brushing of the body, sexual assault, and coerced sexual acts.

- (i) **Discrimination Complaint:** A discrimination complaint is any allegation that a person has been denied employment, promotion, advancement, or has been affected in any other aspect of employment, because of personal characteristic unrelated to job performance.

A discrimination complaint also includes allegations of restraint, interference, coercion, discrimination, or reprisal because a person has raised an allegation of discrimination or has served as a representative, a witness, or advisor in connection with a complaint.

## **Section 1.04 SCOPE**

- (a) **Application:** The provisions of this plan apply to the following individuals:
- (1) **Judicial Officers and Employees:** The provisions of this plan apply to district, bankruptcy, and magistrate judges, chambers staffs, and to officers and employees of the Federal Public Defender's Office, United States Probation Office, Pretrial Services Office and the district and bankruptcy clerks' offices.
  - (2) **Applicants:** Except as limited by the Sections 1.04(b) and other relevant portions of this plan, the provisions of this plan apply to any person applying for employment with this court.
- (b) **Limitations:** The provisions of this plan do not apply to the following persons or situations:
- (1) **Applicants for Article III Position Vacancies:** Complaints from applicants for Article III judicial positions may not file a complaint pursuant to this plan.
  - (2) **Applicants for Bankruptcy Judge Position Vacancies:** Complaints about the conduct of the bankruptcy judge merit selection process should be submitted to the chief judge of the court of appeals.
  - (3) **Applicants for Magistrate Judge Position Vacancies:** Complaints about the conduct of the magistrate judge merit screening process should be submitted to the chief judge of the district court.
  - (4) **Allegations of Judicial Misconduct:** Allegations of *judicial misconduct* must be filed in accordance with 28 U.S.C. § 372(c).

- (5) **Employee Grievances:** This plan provides neither a mechanism nor a remedy for addressing employee grievances that are not based on allegations of equal employment opportunity violations or on sexual or discriminatory harassment.
- (6) **Limitations on Contractual Rights:** Nothing in this plan, nor the complaint resolution procedures established in Chapter Two shall be construed to create or constitute a contractual right, or legally enforceable obligation.
- (7) **Limitations on Discovery:** Materials, papers, documents, and/or information relating to, or arising from any complaint or allegation processed under this plan shall not be discoverable in any court proceeding.

## **Section 1.05      RESPONSIBILITIES**

- (a) **Creating a Discrimination Free Workplace is Everyone's Responsibility:** Appointing officers, supervisors, and employees are responsible for creating and maintaining an equal employment opportunity and discrimination free work place.
- (b) **Affirmative Duty to Raise a Claim of Discrimination:** It is incumbent upon every staff member or applicant for employment, who believes that he or she has been discriminated against on a basis irrelevant to job performance to speak with the individual perceived to be discriminating, a supervisor, or the EEO coordinator for that particular office.
- (c) **Affirmative Duty to Raise a Claim of Sexual Harassment:** Any employee or applicant who believes that he or she is being sexually harassed should directly and promptly inform the harasser that the conduct is unwelcome and must stop.

If the conduct does not stop immediately, or if the employee or applicant believes that he or she cannot speak directly with the harasser; then they should immediately seek assistance from a supervisor, the court unit executive, or the office's EEO Coordinator in accordance with the provisions of Chapter Two of this plan.

- (d) **Affirmative Duty to Investigate and Resolve Complaints:** Every claim for discrimination or harassment will be immediately investigated, resolved and reported in accordance with the procedures set forth in Chapter Two.

- (e) **Fairness to Those Accused of Discrimination or Harassment:** The Court will give serious, respectful, and impartial consideration to those accused of discrimination or harassment. The Court will give these individuals a prompt, impartial and thorough resolution of any complaint against them.
- (f) **Disciplinary Action for Frivolous or Harassing Complaints:** The Court will take appropriate disciplinary action against any person found to have filed a false, frivolous, or harassing complaint of discrimination or harassment.
- (g) **Retaliation Prohibited:** It is prohibited, and grounds for disciplinary action, for any appointing officer, supervisor, or other employee, to retaliate against an employee for filing a discrimination or sexual harassment complaint; or to retaliate against any person involved in the processing of a complaint such as a witnesses or employee representative or advisors.

## **Section 1.06 EEO PROGRAM REQUIREMENTS**

- (a) **Appointing Officer Responsibilities:** Each appointing officer is responsible for implementing the provisions of this plan within their respective court unit or office.
- (b) **Public Announcement of Position Vacancies:** Appointing officers will ensure that all vacancies (with the exception of chambers law clerk vacancies) are publicly announced<sup>4</sup> to attract candidates who represent the make-up of persons available in the qualified labor market.
- (c) **Staff Development Responsibilities:** Appointing officers should make reasonable efforts to ensure that the skills, abilities, and potential of each employee are identified and developed; and where those abilities exceed general performance standards, to recommend employees for appropriate personnel actions and awards designed to recognize and reward performance in areas of employment actions and conditions (Section 1.03[e]).

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<sup>4</sup> A "public announcement" is a reasonable attempt to notify applicants and potential applicants about the existence of job vacancies. In some situations this will involve the placement of a job notice in a widely circulated publication, whereas in others it may simply involve the posting of a notice on bulletin boards in appropriate places. The purpose of a public announcement is to afford all possible applicants, an opportunity to compete for the position(s) in question.

(d) **Personnel Management Practices -- Generally:** Actions and decisions relating to *employment actions and conditions* (Section 1.03[e]) must be based on relevant job performance requirements and the provisions of Section 1.02 of this plan.

(e) **Equal Employment Opportunity Coordinator:**

(1) **Court-wide EEO Coordinator:** The chief district judge will designate one person to be the Equal Employment Opportunity (EEO) Coordinator for the court.

(2) **Court Unit EEO Coordinators:** The chief district judge may also appoint additional EEO Coordinators in the district clerk's office, the probation office, the pretrial services office, and the Federal Defender's Office

The chief bankruptcy judge may appoint an additional EEO coordinator for the bankruptcy court and bankruptcy clerk's office.

(3) **Responsibilities of the EEO Coordinator:** An EEO Coordinator must be committed to the goals of equal employment opportunity, and must possess the experience and training necessary to perform the investigative and record-keeping aspects of the position.

EEO Coordinators will be responsible for preparing statements, collecting, analyzing, and consolidating statistical data, and submitting an annual EEO report as required by this plan.

EEO Coordinator will also seek to resolve discrimination complaints informally<sup>5</sup> and will provide EEO information to the public in accordance with the provision of Chapter Two.

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<sup>5</sup> Informal resolutions are solutions to discrimination complaints that are satisfactory to all parties involved that are arrived at through discussion, mediation, and/or other techniques short of a complete processing of a complaint to a written decision. Experience has shown that such resolutions are generally preferable to the parties involved and less disruptive to the work environment than formal decisions rendered in an adversarial context.

## **Section 1.07 ANNUAL ASSESSMENT**

- (a) **Annual Assessments:** The appointing officer and EEO Coordinators will develop an annual equal employment opportunity and non-discrimination assessment for each court unit or office. The purpose of the annual assessment is to review EEO related matters for the fiscal year ending September 30th; and to identify potential areas for improvement. This annual assessment should consider (but is not limited to) the following areas:
- (1) **Establishment and Maintenance of a Discrimination-Free Work Place**
  - (2) **Recruitment** efforts to attract qualified applicants who reflect the diversity of the relevant labor market, and analysis of efforts which might be taken to improve successful recruiting.
  - (3) **Hiring** of qualified applicants based their ability to perform the duties of the position satisfactorily.
  - (4) **Promotions** based on experience, training, and demonstrated ability to perform duties at a higher level.
  - (5) **Advancements** and efforts to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

## **Section 1.08 ANNUAL REPORT**

The EEO Coordinator will also prepare an annual report for each court unit in accordance with the requirements mandated by the Administrative Office of the United States Courts. This annual report will summarize statistical data about the court's Equal Employment Opportunity and Non-Discrimination Plan, including a narrative statement covering at least the following areas:

- (a) **Recruitment:** The report will briefly describe efforts made to bring a representative cross-section of the relevant labor market into the pool of applicants available for any given position.
- (b) **Hiring:** The report will identify where recruitment efforts resulted 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 with the office when it was offered.

- (c) **Promotions:** The report will describe promotional opportunities which occurred throughout the fiscal year; analyze the distribution of promotions actually given; and include a description of those persons who were promoted to supervisory positions.
- (d) **Advancement:** The report will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training. In addition, the report should:
- Include information on factors inhibiting achievement of EEO objectives;
  - Include a breakdown according to the race, gender, color, national origin, and disability of the personnel involved; and
  - Cover all personnel actions occurring in the year ending September 30.
- (e) **EEO and Harassment Claims:** The report will describe the number and types of discrimination and sexual or discriminatory harassment complaints initiated, resolved and pending. The report will also indicate how many complaints were resolved informally, or resolved without a hearing.

Information about the names of parties will not be included in the annual report.

## **Section 1.09      DISTRIBUTION AND PUBLIC NOTICE**

- (a) Copies of the annual EEO reports will be made available to the public upon request.
- (b) Copies of this plan will be made available to each employee of the court, and upon request, to applicants for positions of employment with the court.

DONE on behalf of Court this 17<sup>th</sup> day of June, 1996.

  
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**MICHAEL R. HOGAN**  
Chief Judge

## **CHAPTER TWO**

### **COMPLAINT RESOLUTION PROCESS**

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#### **Section 2.01 SCOPE OF COVERAGE**

All court employees<sup>1</sup> 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.

#### **Section 2.02 RIGHTS OF PERSONNEL**

- (a) **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.
- (b). **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 officer<sup>2</sup>.

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<sup>1</sup> 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).

<sup>2</sup> 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.

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.

- (c) **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.
- (d) **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 duties<sup>3</sup>.

### **Section 2.03 PROCEDURES**

- (a) **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.

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<sup>3</sup>

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.

- (b) **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 circumstances<sup>4</sup>.

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 and is available upon request from the EEO Coordinator.

Complainants may use alternative written forms at their option.

- (c) **Complaints Against Judges and Chambers Staff, and/or Appointing Officers:**

(1) **Informal Complaints:**

- (A) **Against a Judge:** 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 senior active district judge, next in line to assume the office of chief judge.

If the complaint is against the chief bankruptcy judge, the matter may be taken up with the senior active bankruptcy judge, next in line to assume the office of chief judge; or the chief judge of the district court if no active bankruptcy judges are available.

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<sup>4</sup> As with employee representatives (see footnote 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.

- (B) **Against Chambers Staff:** If a member of chamber's staff has a complaint against another member of the 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.
- (C) **Against an Appointing Officer:** 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.

(2) **Formal Complaints:**

- (A) **Against Judges:** 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).
  - (B) **Against Chambers Staff:** 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.
  - (C) **Against Appointing Officers:** Formal complaints against appointing officers are to be filed with the chief judge of that court.
  - (D) **Against the Chief Judge:** 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.
- (d) **Withdrawal of a Complaint:** Complainants may withdraw their complaint at any time following its filing. Such withdrawal must be in writing, signed and dated.

## **Section 2.04 INVESTIGATIONS**

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 complaint.
- (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 safety<sup>5</sup>.
- (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.

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<sup>5</sup> 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.

## Section 2.05 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.<sup>1</sup>
- (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:
- (1) Conduct any additional investigation which he or she deems necessary;
  - (2) Determine whether to interview the parties or other persons;
  - (3) Determine whether to hold a formal hearing on the matter; and
  - (4) 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.
- (d) **Deadlines:** Initial complaints and the review of complaints are subject to the following deadlines<sup>6</sup>:
- (1) All complaints must be filed within sixty (60) days<sup>2</sup> 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;

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<sup>6</sup> All deadlines unless otherwise specified, 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.

- (2) The EEO Coordinator will prepare a report within twenty-one (21) days after consultation with the involved parties;
- (3) 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;
- (4) 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<sup>7</sup>;
- (5) 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
- (6) The chief judge or his or her designee may extend any of the above-mentioned deadlines for good cause.

## **Section 2.07 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 or the other of the 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.

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<sup>7</sup> 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.

## **Section 2.08 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.

## **Section 2.09 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.

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**DISCRIMINATION COMPLAINT FORM**

**ADOPTED JUNE 1996**

## Complaint of Discrimination

Filed Under The Equal Employment Opportunity and Non-Discrimination Plan for the  
United States District Court for the District of Oregon

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Prior to completing this form, please refer to the court's plan and the Discrimination Complaint Procedures under which this complaint is being filed. If necessary, consult with the appropriate EEO Coordinator for clarification. Please complete this form legibly.

1. Full Name of Person Filing Complaint \_\_\_\_\_

2. Mailing Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

3. Home Phone(\_\_\_\_\_) \_\_\_\_\_ Work Phone(\_\_\_\_\_) \_\_\_\_\_

4. If you are a court employee, state the following:

Court Unit in which employed \_\_\_\_\_

Job Title \_\_\_\_\_

5. Type of alleged discrimination (check and identify all that you believe apply)

\_\_\_\_ Race \_\_\_\_\_

\_\_\_\_ National Origin \_\_\_\_\_

\_\_\_\_ Gender \_\_\_\_\_

\_\_\_\_ Religion \_\_\_\_\_

\_\_\_\_ Age \_\_\_\_\_

\_\_\_\_ Disability \_\_\_\_\_

\_\_\_\_ Other (SEE Section 1.02 of the Plan) \_\_\_\_\_

6. Date(s) of alleged discrimination \_\_\_\_\_

7. Identify by name and position the official(s) you believe discriminated against you.

\_\_\_\_\_  
\_\_\_\_\_

8. Have you attempted to resolve this matter through the informal complaint procedure established under the EEO Plan and Complaint Procedures?  Yes  No

9. Please summarize the actions or occurrences giving rise to your complaint. Explain how you believe you were discriminated against (i.e., treated differently from other employees or applicants because of your race, national origin, gender, etc.). If there is insufficient space below, you may attach additional pages.

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[Please attach a copy of any documents that relate to your complaint, such as an application form, resume, letters, notices of discipline or termination, etc..]

10. What corrective action do you seek from your complaint?

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11. Do you have an attorney or any other person who will represent you in this matter?  Yes  No

If yes, please provide the following information concerning that person:

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Work Phone(\_\_\_\_\_) Fax(\_\_\_\_\_) \_\_\_\_\_

I affirm that the information provided in this complaint is true and correct to the best of my knowledge.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date