UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ALASKA

IN THE MATTER OF THE ADOPTION OF THE MODEL EQUAL EMPLOYMENT OPPORTUNITY PLAN AND COMPLAINT PROCEDURE	)))))	Administrative Order No. 96-01

ORDER ADOPTING MODEL
EQUAL EMPLOYMENT OPPORTUNITY PLAN
AND COMPLAINT PROCEDURE

On the Court's own motion, IT IS ORDERED:

The Model Equal Opportunity Plan and Complaint Procedure approved by the Judicial Council of the Ninth Circuit, a copy of which is annexed hereto and incorporated by reference, is adopted and approved for use in the United States Bankruptcy Court for the District of Alaska, effective immediately. The Clerk shall distribute copies of this order with its attachment to all court employees, including those working in chambers.

DATED: March 18, 1996.

BY THE COURT

DONALD MacDONALD IV
Chief Bankruptcy Judge

Serve: Chief Judge James K. Singleton, Jr.
C. Loughran, Asst. Circuit Executive
W. Wolfe, Clerk

UNITED STATES COURTS FOR THE NINTH CIRCUIT

MODEL EQUAL EMPLOYMENT OPPORTUNITY PLAN AND COMPLAINT PROCEDURES

ADOPTED AUGUST 1995
BY THE
JUDICIAL COUNCIL OF THE NINTH CIRCUIT

I. PREAMBLE

A. Statement of Policy

The Judicial Conference of the United States in 1987 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, color, national origin, religion, age, or handicap.

The Judicial Council of the Ninth Circuit adopts this model plan for all courts of the Ninth Circuit providing equal employment opportunity to all persons or classes of persons regardless of their race, color, national origin, gender, religion, age, disability and/or sexual orientation[1].

The Judicial Council of the Ninth Circuit directs each court to adopt this model plan and complaint procedures or to submit an alternative plan for the review and approval of the Judicial Council of the Ninth Circuit.

Each appointing officer and supervisor will promote equal employment opportunity through a plan encompassing all facets of employment actions and conditions including recruitment, hiring, training, promotion, advancement, and supervision.

Each appointing officer and supervisor will promote a court or office environment free of discrimination and discriminatory harassment. Any instances of discriminatory harassment for which a person seeks relief or assistance should be immediately reported. All court units shall address promptly all complaints alleging discrimination or discriminatory harassment and shall pursue resolution of each complaint in accordance with the procedures described in Appendix A.

Retaliation by an appointing officer or supervisor, or by any other employee against an employee for having filed a discrimination or discriminatory harassment complaint, or against any persons involved in the processing of a complaint such as employee representatives or witnesses, is prohibited and constitutes grounds for disciplinary action. The filing of frivolous or harassing complaints, however, may also be grounds for disciplinary action.

This plan, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the federal courts as such standards have been approved by the Judicial Conference of the United States.

Neither this plan, nor the complaint procedures set forth in Appendix A, shall constitute a contract or create any legally enforceable obligation. No actions taken or documents created or processed pursuant to this plan or the complaint procedures related thereto are discoverable in any court proceeding.

B. Definitions.

1. **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.

2. **Disability**. Formerly referred to as "handicap." Any physical or mental impairment which substantially limits one or more of a person's major life activities where there is a record of such impairment and the person is regarded as having such impairment. A qualified disabled person is 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 and who meets the criteria for appointment[2].

   Certain other conditions that are temporarily disabling such as pregnancy and childbirth are treated as disabilities for purposes of protections afforded under this Plan[3].

3. **National origin.** National origin includes ethnicity. Employees of the United States courts must 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.

4. **Gender.** Discrimination on the basis of marital status or parenthood is also categorized as gender discrimination.

5. **A discrimination complaint** is any allegation that a person has been denied employment, promotion or advancement, or has been affected in any other aspect of employment, because of his or her race, color, national origin, gender, religion, age, disability and/or sexual orientation.

   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 an EEO Coordinator in connection with a complaint. It does not include complaints relating to other dissatisfactions with a person's conditions of employment which are commonly known as grievances.

6. **Sexual harassment** is a form of gender discrimination. Sexual harassment is defined as unwelcome sexual advances, such as an overture, an offer, or requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

c. 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;[4] and

d. Such conduct is engaged in either the workplace or outside the workplace, during working hours or after working hours, where there is a direct connection with workplace matters.

7. **Discriminatory Harassment.** Conduct, threats, insinuations, innuendo, or slurs, or other offensive statements or conduct based on race, color, national origin, gender, religion, age, disability and/or sexual orientation directed at an individual or a specific class or group is considered discrimination.

8. **Employment Actions and Conditions.** Includes all employment and personnel decisions, actions, impacts, terms and conditions of a person's employment. Included are the following: recruitment, hiring, promotions, advancement, work assignments, compensation and benefits, training, education, disciplinary actions, terminations, and other such categories.

II. SCOPE OF COVERAGE

This Equal Employment Opportunity Plan applies to all court personnel, and applicants for positions, defined as follows:

1. All judges and their staffs;
2. Circuit executive and staff;
3. All circuit, district, and bankruptcy clerks of court and staff;
4. The staff attorney director, appellate commissioner, settlement conference director and their staffs;
5. Circuit librarian and staff;
6. All chief probation and chief pretrial services officers and staffs.
7. Federal public defenders and staffs.

Article I and Article III judges and applicants for Article II judgeships may not file a complaint pursuant to this plan. Complaints against judges are filed pursuant to judicial misconduct procedures. 28 U.S.C. § 372(c) Complaints about the conduct of the bankruptcy judge merit selection process should be submitted to the chief judge of

the court of appeals. Complaints about the conduct of the magistrate judge merit screening process should be submitted to the chief judge of the district.

For the purposes of this Plan, all chambers and offices will be described as "court units."

III. ORGANIZATION

A. Implementation

Each appointing officer shall implement this plan or such equal employment opportunity plan as has been approved by the Judicial Council of the Ninth Circuit.

B. Appointing Officers

All appointing officers, including the judicial council, the court of appeals, the district court, the bankruptcy court, individual judges, and court unit heads must ensure that all vacancies, [with the exception of chambers law clerk vacancies], are publicly announced[5] to attract candidates who represent the make-up of persons available in the qualified labor market and that all hiring decisions are based solely 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 and for other advantageous employment actions and conditions.

C. Appointing Officers and Supervisors

All appointing officers must apply equal employment opportunity practices and policies in their court units. This includes giving each employee a fair and equal opportunity to demonstrate his or her skills and, where those abilities exceed general performance standards, to be recommended for such personnel actions and awards recognizing such achievements as may be warranted and available.

D. Equal Employment Opportunity Coordinator

The chief district judge will designate one person to be the Equal Employment Opportunity (EEO) Coordinator for each district. Additional EEO coordinators may be appointed by the chief district judge in probation and pretrial services offices, and by the chief bankruptcy judge in the bankruptcy court, to facilitate the administration of the plan. The chief judge of the circuit will designate one person to be the EEO Coordinator for the court of appeals and the circuit library. The chief judge of the circuit will designate one person to be the EEO Coordinator for the office of the circuit executive and the federal public defender offices.

The EEO Coordinator should be a person committed to the goals of equal employment opportunity with the experience and training necessary to perform the investigative and record-keeping aspects of the position. An appointing officer should not be designated as the EEO Coordinator, except in very small courts where there is no one employed in the court unit except the appointing officer who is qualified to carry out the responsibilities of the EEO coordinator[6].

The EEO Coordinator will be responsible for preparing statements, collecting, analyzing, and consolidating statistical data, and submitting an annual EEO report as described in Sections VI and VII of this plan. The EEO Coordinator will also seek to resolve discrimination complaints informally[7] and will provide EEO information to the public.

IV. OBJECTIVES

Each appointing officer will develop annual objectives which reflect those improvements needed in recruitment, hiring, promotions, and advancement, and will prepare a specific plan for the EEO Coordinator explaining how those objectives will be achieved.

V. PERSONNEL PRACTICES

A. Discrimination-Free Workplace

All appointing officers will provide a discrimination-free workplace for their employees and applicants. No court unit will tolerate discrimination or discriminatory harassment in hiring or in any employment actions or conditions, on the basis of race, color, national origin, gender, religion, age, disability and/or sexual orientation. Appointing officers should make available to court employees training and education with respect to equal employment opportunity, including, but not limited to, sexual harassment, subject to available funds for such training.

B. Recruitment

All appointing officers will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. All vacancies, except those for judicial clerkships and externs, will be publicly announced[8].

C. Hiring

All appointing officers will make their hiring decisions based upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

D. Promotion

All appointing officers will promote employees, if promotions are available, according to their experience, training, and demonstrated ability to perform duties of a higher level.

E. Advancement

All appointing officers and supervisors will seek, insofar as appropriate and reasonably practical, to improve the skills and abilities of employees through cross-training, job restructuring, assignments, details, and outside training.

F. Employee Discrimination Complaints

All appointing officers will adopt the procedures for resolving complaints of discrimination and discriminatory harassment set forth in Appendix A, or such procedures as have been approved by the Judicial Council of the Ninth Circuit.

VI. EVALUATIONS

The EEO Coordinator will prepare a compiled annual report for each court unit, summarizing the appointing officers' efforts to provide equal employment opportunities in recruitment, hiring, promotions and advancement. The EEO Coordinator will collect this information through evaluations prepared by all appointing officers, addressing these areas of concern:

A. Recruitment

The report will briefly describe efforts made to bring a fair cross-section of the pool available for the position into its applicant pool, including listing all employment sources used (state employment offices, schools, organizations, etc.). Each appointing officer will also explain the methods used to publicize vacancies.

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 briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including 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, this evaluation should include information on factors inhibiting achievement of EEO objectives, such as no vacancies or minimal numbers of qualified applicants in the relevant labor market, and on all persons in the court who have received relevant training. This report will also include a breakdown according to the race, gender, color, national origin, and disability of the personnel involved on forms to be provided by the Administrative Office of the United States Courts. The report will cover personnel actions occurring in the year ending September 30 and will be submitted to the Administrative Office by November 1 of each year.

VII. ANNUAL REPORT

The EEO Coordinator in each court will submit to the chief judge of the court for his or her approval the annual report for the year ending September 30. The EEO Coordinator for the circuit executive will prepare for the judicial council's approval an annual report for the year ending September 30. The report for the court of appeals or the district will consist of the consolidated reports and data received from each reporting court unit.

The report will describe instances where significant achievements were made in providing equal employment opportunities, identify areas where improvements are needed, and explain factors inhibiting achievement of equal employment opportunity objectives. The report will be the same report as that submitted annually to the Administrative Office of the United States Courts. This report will detail:

a. The number of discrimination and discriminatory harassment complaints initiated;

b. The types of discrimination and discriminatory harassment complaints initiated according to race, color, national origin, gender, religion, age, disability and sexual orientation.

c. The number of discrimination and discriminatory harassment complaints resolved informally;

d. The number of discrimination and discriminatory harassment complaints resolved formally without a hearing; and

e. The number of discrimination and discriminatory harassment complaints resolved formally with a hearing.

The foregoing information will not identify the names of the parties involved.

The individual court unit reports will be submitted to the Judicial Council of the Ninth Circuit. The reports for the bankruptcy court and the probation and pretrial services offices of a district will be consolidated with the report for the district court and submitted to the Administrative Office of the United States Courts. The reports of the court of appeals, circuit library, federal public defenders, and judicial council (office of the circuit executive) will be consolidated into a report submitted to the Administrative Office of the United States Courts.

These consolidated reports will be submitted by the chief judge to the Administrative Office of the United States Courts by November 30 of each year. A copy of the consolidated reports will be submitted to the Judicial Council of the Ninth Circuit.

Copies of the annual EEO reports will be made available to the public upon request.

VIII. DISTRIBUTION AND PUBLIC NOTICE

Copies of these procedures shall be available to all employees and, upon request, to applicants for positions of employment with the United States Courts.

Notes—Model EEO Plan

1. The federal government, including the federal courts, is bound by 38 U.S.C. § 4301 pertaining to the employment of individuals with military reserve status. While the federal courts are not required to honor veterans' preference in employment decisions, the federal courts are prohibited from denying hiring, retention in employment, or any promotion or other incident or advantage of employment because of any obligation as a member of a Reserve component of the Armed Forces." 38 U.S.C. § 4301(b)(3). Federal court employees are also guaranteed re-employment rights if their employment is interrupted by active military duty in any branch of the armed forces, by reserve training activities, or by reporting for examinations to determine their fitness for military service.

2. Further clarification of this definition can be found in 29 CFR § 1614.203. That section provides that "major life activities" means 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: (1) making facilities readily accessible to and usable by disabled persons, and (2) 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.

3. 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.

4. 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.

5. 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, including women and minorities, an opportunity to compete for the position(s) in question.

6. For purposes of processing and investigating discrimination complaints in small courts, it would usually be necessary to obtain the services of an employee of another court unit to fulfill these functions to ensure objectivity and avoid any appearance of conflict of interests.

7. 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.

8. See Note 5.

APPENDIX A

EMPLOYEE DISCRIMINATION AND DISCRIMINATORY HARASSMENT COMPLAINT PROCEDURES

ADOPTED AUGUST 1995
BY THE
JUDICIAL COUNCIL OF THE NINTH CIRCUIT

A. SCOPE OF COVERAGE

All court employees[1] 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 officer[2]. 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 duties[3].

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 circumstances[4].

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. If the complaint is against the chief bankruptcy judge, the matter may be taken up with the bankruptcy judge next in order to become the chief bankruptcy 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 complaint[5].

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[6].

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 matter[8]; 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.

~~e. **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) days[9] 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.

APPENDIX B

DISCRIMINATION COMPLAINT FORM

ADOPTED AUGUST 1995
BY THE
JUDICIAL COUNCIL OF THE NINTH CIRCUIT

Complaint of Discrimination

Filed Under The Ninth Circuit Model Equal Employment Opportunity Plan
and Complaint Procedures or Other Plan Approved by the Ninth Circuit Judicial Council

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Prior to completing this form, please refer to the Equal Employment Opportunity 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_____

   ___Sexual Orientation_____

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?

_____

_____

_____

_____

_____

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