

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN RE EQUAL EMPLOYMENT
OPPORTUNITY PROGRAM

RESCINDED 5/19/2011

GENERAL ORDER NO. 16

I. PREAMBLE.

This Court is committed to the policy of providing equal employment opportunity to all persons regardless of race, color, sex, national origin, political affiliation, religion, age, or handicap.

It is the policy of this Court voluntarily to pursue an Affirmative Action Employment Program to compensate for, and to eradicate the effects of, past discrimination based on race, handicap, or sex.

It is the policy of this Court voluntarily to actively avoid employment discrimination based on color, national origin, political affiliation, religion or age.

These policies are hereby incorporated into this Court's Equal Employment Opportunity Program, which program shall apply to all court personnel.

This program is not intended to modify the qualification standards for employment in the federal courts which have been approved by the Judicial Conference of the United States even if said standards are, or appear to be, inconsistent with the provisions of this order; nor is this program intended to modify, supersede, or affect any law, statute, or constitutional provision of the United States. It is not the intent or purpose of this general order, the policies stated herein, or the programs described herein to establish or create any entitlement or substantive employment rights in favor of any person or class of persons. The purpose of this Order is to publicly state certain employment policies of the Court and to create procedures which will enable employees of the Court to clearly, concretely, and forcefully bring to the attention of the Court any alleged failure to adhere to such policies.

This general order will be disseminated to all court personnel and within the community served by this Court. Every applicant not offered employment shall be informed by letter that General Order Number 16 describes the Court's "Equal Employment Opportunity Program," that the order is on file in the Clerk's office, and that a copy of the order will be mailed upon request.

II. DEFINITIONS.

- A. The "Equal Employment Opportunity Program" is the entire program established by this general order.
- B. The "Affirmation Action Employment Program" is the program identified and established in Part IV of this general order.
- C. An "employment unit" is a group of court personnel, the employment decisions with respect to which are made by the same employment authority.
- D. "Employment decisions" include hiring, initial placement, promotion, transfer, establishment of conditions of employment, and termination.
- E. An "employment authority" is any person or group of persons with authority and responsibility for the making employment decisions relating to any court personnel position.
- F. "Court personnel" includes the staffs of United States District Judges, the staffs of the United States Magistrates, the staffs of the United States Bankruptcy Judges, the Clerk of the Court and the Clerk's staff, and the Chief Probation Officer and the Chief Probation Officer's staff.
- G. The "relevant labor pool" for each job classification shall be defined by the Coordinator (as identified in Part V, infra) in consultation with the Circuit Executive for the Eighth Circuit Court of Appeals and, where possible, with persons having expert knowledge of such matters.

- H. “Qualified” means herein possessing the requisite skills, temperament, training and experience to competently discharge the duties of the position under consideration.
- Only job-related factors may be considered in making qualification determinations.

III. PERSONNEL PRACTICES.

- A. Recruitment - Each employment authority shall use every reasonable and practical means to effectively publicize vacant court personnel positions with the objective of obtaining a wide variety of qualified applicants.
- B. Filling vacancies - Each employment authority shall fill each vacant position with the best qualified applicant.
- C. If the best qualified applicants have substantially equivalent qualifications, reference shall be made to the Affirmative Action Employment Program in Part IV hereof to determine if a preference must be granted. In this situation, if no preference is conferred by the Affirmative Action Program, then preference shall be given to those applicants who are already court personnel, in accordance with their seniority.
- D. Initial placement and termination - Except as provided in the Affirmative Action Employment Program each employment authority shall make decisions regarding initial placement and termination without regard to race, color, sex, national origin, political affiliation, religion, age, or handicap.
- E. Promotion, transfer and advancement - Each employment authority shall strive to improve the skills and abilities of the court personnel under its supervision and to cross train personnel on a voluntary basis where such cross training does not interfere with the efficient operation of the employment unit involved. Except as provided in the Affirmative Action Employment Program, each employment authority shall promote, transfer and advance court personnel according to their

qualifications to competently perform duties of the different or higher position they may be seeking.

IV. AFFIRMATIVE ACTION EMPLOYMENT PROGRAM

- A. Background - The Court observes that race, sex, and handicap have been, and sometimes still are, bases for discrimination in employment in Arkansas. The Court further notes that the residual effects of past discrimination continue to disadvantage certain people today. For this reason, the Court adopts this Affirmative Action Employment Program.
- B. Policy - It is the voluntarily adopted policy of this Court to compensate for the residual effects of race, sex, and handicap discrimination by giving preference to applicants of an under represented race, sex or handicap so that all qualified citizens may share in court employment opportunities.
- C. Practices - When two or more applicants for hiring, initial placement, promotion, transfer, or advancement have substantially equivalent qualifications and ability to perform a particular job, each employment authority shall give preference to the applicant or applicants whose race, sex or handicap is represented in a greater percentage of the relevant labor pool than of the position classification being filled in the employment unit.

V. EQUAL EMPLOYMENT OPPORTUNITY COORDINATOR

- A. The judges of this Court will upon the entry of this general order appoint an Equal Employment Opportunity Coordinator, who shall serve until replaced by the Court.
- B. The Equal Employment Opportunity Coordinator will have the following responsibilities:

1. To monitor the progress of each employment unit under the Equal Employment Opportunity Program with respect to recruitment, working conditions, hiring, transfers, promotions, and terminations;
2. To recommend to the Court and to employment authorities goals and timetables for implementation fo the Equal Employment Opportunity Program;
3. To report to the Court the outcome of all complaints under Part VI hereof; and
4. To prepare an annual comparative analysis of court personnel with particular regard for the characteristics of race, sex, and handicap as they relate to salary, job category, and other indicia of employment status. Specific evaluation of each employment unit shall be included in this analysis. This analysis shall be used in preparing an annual report for the year ending June 30, consolidating the data and statements received from each court unit. The report will include tables to be provided by the Administrative Office of the United States Courts.

C. All reports, recommendations, and analyses required under this Part V shall be available for public inspection unless otherwise ordered by the Court.

VI. DISCRIMINATION COMPLAINT PROCEDURE

A. Policy - These procedures are not intended to be a replacement for the ordinary and usual working relationships among court personnel. They are not intended to create substantive employment rights in favor of any employee of the Court. The “rights” set forth in paragraph B hereof are limited to those which are incident to the protection of the integrity of the procedures established. Those procedures are intended to be a vehicle by which an employee may freely, and in concreted form,

bring to the attention of the Court and the pertinent employment authority any failure to follow the Court policies set forth in and adopted by this general order.

B. Rights

1. Retaliation - Every complainant has the right to be free from retaliation, coercion, or interference resulting from the filing of a complaint under this general order.
2. Representation - Each party to a complaint has the right to be represented by a person of his or her choice.
3. Notice - Every party against whom a complaint has been timely filed has the right to have notice of the charges filed against him or her. All parties have the right to reasonable notice of any hearing conducted on a complaint.

C. Procedures

1. Complaint - Any applicant or any court employee may file a timely written discrimination complaint with the Equal Employment Opportunity Coordinator. The Coordinator will note thereon the filing date.
2. Forms - The complaint shall be set forth by the complainant or by the Equal Employment Opportunity Coordinator at the direction of the complainant on forms provided by the Coordinator.
3. Initial procedures - An Equal Employment Opportunity Referee shall be appointed by the Court. It shall be the duty of such referee to investigate each complaint, to make all reasonable efforts to effect an informal resolution, and to prepare and file a written report on the outcome of the complaint.

4. Review - Anyone involved in or affected by a discrimination complaint proceeding before an Equal Employment Opportunity Referee may request in writing a review of the matter.

D. Deadlines

1. All complaints must be filed within 30 calendar dates of: a particular act or occurrence of alleged discrimination; the date of the last act of any alleged ongoing proactive of alleged discrimination; or the date on which the complainant first became aware of the act or occurrence, whichever date is the latest. Upon a showing of justifiable neglect, the Equal Employment Opportunity Coordinator may, in his or her discretion, permit late filings if the rights or other parties are not prejudiced thereby.
2. The Referee will prepare and file with the Coordinator his or her report within twenty-one (21) days after consultation with the involved parties. Copies thereof will be sent to or delivered to each of the involved parties and to the appropriate employment authority.
3. Requests for review of the Referee's report must be submitted in writing to the Coordinator within seven (7) days after receipt of the report.

- E. Review procedures - Any request for review filed pursuant to paragraphs C(4) and D(3) of this Section VI shall be disposed of by a Reviewing Officer or Reviewing Committee (appointed by the Court) in accordance with appropriate procedures specified by the Court in the particular proceeding. The parties shall be given ample notice of the procedures adopted by the Court for the disposition of the review of the particular matter.

It is the Court's view that it should gain experience through the use of ad hoc review procedures tailored to the needs of the individual cases, at least until such time as this might appear that more formal, standard procedure should be adopted.

- F. Review decisions - At the conclusion of the review procedures, the Reviewing Office or Reviewing Committee shall make and file his, her, or its report affirming, modifying, or reversing the decision of the Referee, or it may return the matter to the Referee for further action as it deems appropriate. The decision for the Reviewing Officer or Reviewing Committee shall be final. No further appeal of any kind, administrative or judicial, shall be permitted based upon the provisions of this general order.
- G. Neither the Coordinator, the Referee, nor the Reviewing Officer or Reviewing Committee shall have authority to make any employment decisions in connection with any complaint. However, the Referee or the Reviewing Officer (or Reviewing Committee) shall have authority to make all reasonable efforts to effect an informal resolution of the problem and, failing that, shall report his, her or its opinion as to any failure to adhere to Court policy and his, her, or its recommendation as to appropriate action. The employment authority may accept and follow the recommendation or indicate in the complaint file his or her reason for not doing so. The Coordinator will include this information in his report under paragraph V(B)(3).
- H. No United States District Judge, Magistrate, or Bankruptcy Judge shall be required to testify or to give evidence in any proceeding instituted hereunder although they may voluntarily do so. Where any such judge, magistrate or bankruptcy judge is the employment authority with respect to any complaint filed hereunder, he or she shall either comply with the recommendations of the Hearing Officer or Reviewing

Officer (or Reviewing Committee) or indicate his or her reason for not doing so in compliance with paragraph G above.

- I. Records - The Equal Employment Opportunity Coordinator shall keep written records of all discrimination complaint proceedings.

IT IS SO ORDERED this 18th day of January, 1985.

FOR THE COURT:

/s/ Garnett Thomas Eisele
GARNETT THOMAS EISELE, CHIEF JUDGE
UNITED STATES DISTRICT COURT

Amended November 10, 2009

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN RE EQUAL EMPLOYMENT
OPPORTUNITY PROGRAM

APPENDIX NO. 4
GENERAL ORDER NO. 16

I. PREAMBLE.

A. The Judicial Conference of the United States has directed that each court adopt a plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap. Each court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. This program, 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.

B. This general order will be disseminated to all Court personnel and within the community served by this Court. Every applicant not offered employment shall be informed by letter that General Order Number 16 describes the Court's "Equal Employment Opportunity Program," that the order is on file in the Clerk's office, and that a copy of the order will be mailed upon request.

II. SCOPE OF COVERAGE.

This Equal Employment Opportunity Program applies to all court personnel. "Court personnel" includes the staffs of United States District Judges, the staffs of the United States Magistrates, the staffs of the United States Bankruptcy Judges, the Clerk of the District

Court, the Clerk of the Bankruptcy Court, and each Clerk's staff, and the Chief Probation Officer's staff.

III. ORGANIZATION.

A. Implementation.

The court shall implement the Equal Employment Opportunity Program. On behalf of the court, the Chief Judge will submit modifications in the plan for judicial council approval.

B. Heads of Court Support Units.

The heads of each court support unit must ensure that all vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and 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 by being offered, when the work of the court permits and within the limits of available resources, cross-training, reassignments, job restructuring, special assignments, and outside job-related training.

C. Judges, Court Managers, and Supervisors.

Judges and designated court managers and supervisors must apply equal employment opportunity practices and policies in their work 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 personnel actions and awards recognizing such achievements. As resources permit, it also requires providing training programs which enable employees to develop their job skills fully.

D. Equal Employment Opportunity Coordinator.

The court will designate one person to be the Equal Employment Opportunity Coordinator. This person will be responsible for collecting, analyzing, and consolidating the statistical data and statements prepared by each court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the court's achievements in providing equal employment opportunities, identifying those areas in which improvements are needed, and explaining those factors inhibiting achievement of equal employment opportunity objectives. Based upon this evaluation and report, the Coordinator will recommend modifications in the plan to the court. The Coordinator will also seek to resolve discrimination complaints informally and will provide discrimination complaints informally and will provide EEO information to the public. The court will also designate an alternate coordinator whose duties are defined in Section IV (A) of Appendix 1.

IV. PERSONNEL PRACTICES.

A. Recruitment.

Each court unit will seek qualified applicants who reflect the make-up of all such persons in the relevant labor market. Each unit will publicize all vacancies.

B. Hiring.

Each court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

C. Promotion.

Each court unit will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

D. Advancement.

Each court unit will seek insofar as reasonably practicable to improve the skills and abilities of its employees through cross training, job restructuring, assignments, details, and outside training.

E. Discrimination Complaints.

The court adopts the procedures for resolving discrimination complaints set forth in Appendix 1.

V. EVALUATIONS.

Each court unit will prepare a brief report for the EEO Coordinator describing its efforts to provide equal employment opportunities in –

A. Recruitment.

Each court unit will describe briefly efforts to bring a fair cross-section of the pool available for the position into its applicant pool, including listing of all employment sources used (e.g., state employment offices, schools, organizations, etc.). Each unit will also explain the methods it uses to publicize vacancies.

B. Hiring.

Each court unit will identify where its 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 court when it was offered.

C. Promotions.

Each court unit 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.

Each court unit 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, minimal numbers of qualified applicants in the relevant labor market, and on all persons in the unit who have received all relevant training. This report will also include a breakdown according to the race, sex, national origin, and handicap of the court's 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 EEO Coordinator by November 1 of each year.

VI. OBJECTIVES.

Each court unit will develop annually its own 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.

VII. ANNUAL REPORT.

The EEO Coordinator will prepare for the court's approval an annual report for the year ending September 30, consolidating the data and statements received from each court unit. The report will include tables to be provided by the Administrative Office of the United States Courts consolidating the information provided by each court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will explain factors inhibiting achievement of equal employment opportunity objectives. Upon approval of the

court, this report will be submitted by the Chief Judge to the Administrative Office of the United States Courts by November 30 of each year.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

IN RE DISCRIMINATION COMPLAINT
PROCEDURES

APPENDIX NO. 5
GENERAL ORDER NO. 16

I. SCOPE OF COVERAGE.

All applicants for court positions and all court personnel 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 in the administrative processes of the courts.

II. DEFINITION.

A discrimination complaint is any allegation that a person has been denied employment, promotion, or advancement, or has been affected in any other condition of employment, because of his or her race, sex, color, national origin, religion, age (at least 40 years of age at the time of the alleged discrimination), or handicap. It 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 other dissatisfactions in a person's conditions of employment which are commonly known as grievances.

III. RIGHTS OF PERSONNEL.

A. Retaliation.

Every complainant has the right to be free from retaliation, coercion, or interference because of filing a timely complaint.

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. 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 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.

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 unduly interfere with the performance of their court duties.

IV. PROCEDURES.

A. Initiation of a Complaint.

Any applicant or any 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 Chief Judge or a designee who will appoint another person to perform the functions of the EEO Coordinator with respect to the complaint in questions. 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 is available upon request.

B. Informal Procedures.

Upon receipt of a complaint, the EEO Coordinator:

1. May reject a complaint that was not timely filed and shall reject those allegations in the complaint that are not within the purview of Section II of these Discrimination Complaint Procedures, or that set forth identical matters contained in a pending or previous complaint filed by the same complainant;
2. Will make any investigation into the matter which he or she deems necessary;
3. Will consult with the involved parties and seek an informal resolution of the problem;
4. Will prepare 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; and
5. May cancel a complaint because of the complainant's failure to prosecute the complaint.

C. Formal Procedures.

1. Filing.

If either the complainant or the person against whom the complaint has been filed objects to the rejection or cancellation 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 to have the matter reviewed.

2. Review.

Upon receipt of a request to review the findings and recommendations of the EEO Coordinator, the Chief Judge or designee will:

- a. Conduct any additional investigation which he or she deems necessary;
- b. Determine whether to interview the parties or other persons;
- c. Determine whether to hold a formal hearing on the matter; and
- d. Issue a final decision on the rejection, cancellation, or merits of the complaint if it is found that no interviews or hearings are necessary.

3. Hearing.

If the Chief Judge or a designee finds that a hearing is necessary, all parties will be notified of such action. At the hearing, each party will have the right to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses. The Chief Judge or a designee will issue a final decision on the merits based upon his or her findings. No United States District Judge, Magistrate Judge, or Bankruptcy Judge shall

be required to testify or to give evidence in any proceeding instituted hereunder, although they may voluntarily do so.

D. Deadlines.

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

1. All complaints must be filed within twenty-one (21) days of a particular act or occurrence or within twenty-one (21) 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;
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;
4. The Chief Judge or a designee will issue a final decision within 45 calendar days after receipt of the request if no hearing is held;
5. The Chief Judge or a designee will issue a final decision within 30 calendar days after the close of a hearing; and
6. The Chief Judge may extend any of the above-mentioned deadlines for good cause.

V. RECORDS.

All papers, files and reports will be filed with the EEO Coordinator at the conclusion of any informal or formal proceeding in 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 engaged in discriminatory conduct.

II ANNUAL REPORT.

The EEO Coordinator will prepare an annual report for the year ending September 30, indicating:

1. The number of complaints initiated;
2. The types of complaints initiated according to race, sex, color, national origin, religion, age, or handicap;
3. The number of complaints resolved informally;
4. The number of complaints resolved formally without a hearing; and
5. The number of complaints resolved formally with a hearing.

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

A copy of the report will remain in the court and will be made available to the public upon request.

VII NOTICE.

Copies of these procedures shall be given to all employees and, upon request, to members of the public.

Amended November 10, 2009

COMPLAINT OF DISCRIMINATION
UNDER THE JUDICIARY EQUAL EMPLOYMENT OPPORTUNITY PLAN

1. Full Name of Complainant: _____
2. Address: _____
_____ Zip Code: _____
3. Home Phone: _____ Work Phone: _____
4. If you are now a court employee, state the title and grade of your job: _____

5. Type of alleged discrimination: (check and identify as many as are applicable)
6.

Race	_____	Sex	_____
Religion	_____	Handicap	_____
Color	_____	Age	_____
National Origin	_____		
7. Date of alleged discrimination: _____
8. Please identify by name and position the official you believe discriminated against you. _____

9. Please summarize the events or occurrences giving rise to your complaint, and explain how you believe you were discriminated against (i.e., treated differently from other employees or applicants because of your RACE, SEX, COLOR, NATIONAL ORIGIN, RELIGION, AGE OR HANDICAP).* You should attach a copy of any documents that relate to your complaint, such as applications, resumes, notices of denial of employment or promotion, letters of reprimand, termination, etc.

*Please use back if additional space is needed.

9. Corrective action sought by you: _____

10. Do you have an attorney or other person to represent you?_____

If yes, name and address of attorney:_____

SIGNATURE

DATE