

EQUAL EMPLOYMENT OPPORTUNITY



EEO POLICY AND PROCEDURE FOR JUDICIAL OFFICERS



**JUDICIARY OF GUAM
EQUAL EMPLOYMENT OPPORTUNITY (EEO)
POLICY AND PROCEDURE FOR JUDICIAL OFFICERS**

I. EQUAL EMPLOYMENT OPPORTUNITY

The Judiciary of Guam (“Judiciary”) is an equal employment opportunity employer. It is the policy of the Judiciary to afford equal employment opportunities to employees, applicants, volunteers and interns (hereinafter “employee” or “employees”) without regard to race, color, national origin, age, religion, disability, genetic information, pregnancy, sex (including gender identity or expression), sexual orientation, ancestry, honorably discharged veteran or military status, or any other protected classification under federal or Guam law. This Equal Employment Opportunity Policy and Procedure for Judicial Officers (“EEO Policy” or “Policy”) applies to all aspects of employment including, but not limited to, recruitment, hiring, placement, training, promotion, compensation, benefits, transfers, detail appointments, leaves of absence, discipline and termination. The Judiciary shall comply with all federal and Guam equal employment opportunity laws and regulations in the workplace.

II. NO DISCRIMINATION, HARASSMENT OR RETALIATION

The Judiciary strives to create and maintain a work environment in which employees are treated with dignity, fairness, and respect. All employees should be able to work and learn in a safe environment. Every employee has the right to be treated courteously and also has the responsibility to treat coworkers in a manner that respects their individual differences. Therefore, it is the responsibility of all employees to conduct themselves in a manner that contributes to a workplace environment that is free of unlawful discrimination and harassment. All employees must treat each other with respect and be professional at all times. Through the enforcement of this Policy and by education of employees, the Judiciary will seek to prevent, correct, and discipline behavior that violates this Policy.

All judicial officers are covered by and expected to comply with this Policy and to take appropriate measures to ensure that prohibited conduct does not occur. Judicial officers include justices, justices *pro tempore*, judges, judges *pro tempore*, magistrates, referees and appointed administrative hearing officers. Appropriate disciplinary action will be taken against any judicial officer who violates this Policy. Based on the seriousness of the offense, disciplinary action may include, but is not limited to, counseling, reprimand, suspension, or termination of employment.

- A. No Discrimination.** The Judiciary is firmly committed to non-discrimination in all employment decisions and practices and in the application of its personnel policies and procedures. Except where a *bona fide* occupational qualification (“BFOQ”) exists, employment decisions will be made irrespective of the employee’s race, color, national origin, age, religion, disability, genetic information, pregnancy, sex (including gender identity or expression), sexual orientation, ancestry, honorably discharged veteran or military status, or any other protected classification under federal or Guam law. A BFOQ is a selective factor, such as sex or age, that is required for a job that would otherwise be considered discrimination if it were not necessary to perform the job in question.

The Judiciary will reasonably accommodate qualified employees with disabilities, if the employee is otherwise qualified to safely perform all essential functions of the job position and if it will not pose an undue hardship to the Judiciary. The Judiciary will also reasonably accommodate requests for religious accommodation if such accommodation will not pose an undue hardship on the Judiciary.

B. No Harassment. Harassment based on race, color, national origin, age, religion, disability, genetic information, pregnancy, sex (including gender identity or expression), sexual orientation, ancestry, honorably discharged veteran or military status, or any other protected classification under federal or Guam law, is prohibited by the Judiciary. Harassment based on a protected classification in any form, including verbal and physical conduct, visual displays, written communications, threats, demands and retaliation is a violation of this Policy and will not be tolerated. Prohibited acts that constitute harassment take a variety of forms. Examples of the kinds of conduct that may constitute harassment include, but are not limited to:

- verbal conduct such as derogatory comments, insults, slurs, or unwanted sexual advances or invitations;
- physical conduct such as unwanted touching, blocking normal movement, or interfering with work;
- visual conduct such as derogatory posters, photography, cartoons, drawings or gestures;
- written communications based on a protected classification distributed in hard copy or via computer network, email, text message or other social media;
- threats and demands to submit to sexual requests in order to keep your job or avoid some other loss, and/or offers of job benefits or conditions in return for sexual favors; or
- retaliation because one has opposed, reported or stated the intent to report harassment or because one is participating in a related investigation, proceeding or hearing.

1. Sexual Harassment. Sexual harassment is a specific form of prohibited harassment which occurs when an individual's behavior constitutes (1) unwelcome sexual advances, (2) unwelcome requests for sexual favors, or (3) other unwelcome verbal or physical behavior of a sexual nature where:

- submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment; or

- submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting the individual's welfare; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or creates an intimidating, hostile, or offensive working environment at the Judiciary.

Sexual harassment can occur between employees of the opposite sex or of the same sex. It is unlawful for males to sexually harass females or other males, and for females to sexually harass males or other females.

- C. No Retaliation.** Retaliation or attempted retaliation against an employee for filing or responding to a good faith complaint of discrimination or harassment; participating as a witness in the investigation of a complaint; serving as an investigator of a complaint; reasonably opposing prohibited behavior; or otherwise participating in the complaint process or in a related investigation, proceeding, or hearing, is a violation of this Policy.
- D. Conduct In and Outside the Workplace.** This Policy applies to conduct in and outside the workplace, which includes conduct in any work-related setting such as business meetings, business trips, and business-related social events. Discrimination and harassment outside of the workplace may also be unlawful if there is a link with the workplace.
- E. Confidentiality.** The Judiciary recognizes the concern employees have regarding their privacy and the confidentiality of personnel information. The Judiciary also recognizes that both the Complainant and Respondent deserve a fair investigation. Therefore, confidentiality will be maintained to the extent possible and disclosed on a need-to-know basis.

III. COMPLAINT REVIEW PROCESS

A. Duty to Report and Investigate Allegations.

1. The Judiciary encourages employees who believe, that they may have experienced discrimination or harassment, that another employee may have experienced discrimination or harassment, or are aware that another employee has allegedly engaged in discrimination or harassment in violation of the EEO Policy, to report such information using this Complaint Review Process. The Judiciary is legally obligated to investigate all allegations against a judicial officer that concern a possible violation of the Judiciary's Policy against discrimination and harassment. The failure to report possible workplace discrimination and harassment against a judicial officer severely restricts the ability of the Judiciary to investigate such allegations and to take prompt and appropriate action in response to a complaint showing a possible violation of the Judiciary's Policy.
2. The Complaint Review Process sets forth the procedure to be followed in the processing of a complaint of discrimination or harassment filed by an employee.

Complaints of discrimination in the receipt of services or benefits from clients, customers, program participants or consumers of the Judiciary and sub-recipients implementing programs funded by the U.S. Department of Justice Grant Programs will be addressed utilizing the Judiciary's EEO Policies and Procedures for Program Beneficiaries.

3. A Supervisor is defined as any individual who is or reasonably appears to be in a position of workplace authority or control over another individual. Supervisors, which include Judicial Officers, Administrators, Division Heads, Managers, and/or Team Leaders are held to a higher liability standard. A Supervisor has an affirmative responsibility to report any EEO concerns or alleged violations of this Policy to the Administrator of the Courts or his/her designee (hereinafter "AOC"), even if the Supervisor has been asked not to report the matter or the parties involved are not under their supervision. The AOC will be responsible for informing the Chief Justice or his/her designee (hereinafter "CJ") of any EEO concerns or alleged violations of this Policy. Supervisors, as applicable, may be subject to disciplinary action for failure to report.

B. Reporting of Complaint.

1. In order to ensure that the Judiciary's EEO procedures can be utilized without risk of preventing the filing of a complaint of discrimination or harassment with Guam or federal entities, an employee should report alleged discriminatory or harassing conduct within thirty (30) calendar days of the date of occurrence.
2. If you feel that you are being discriminated against or harassed by a judicial officer, or if you have witnessed what you believe is discrimination or harassment by a judicial officer, you may present a complaint directly to the CJ or to the Judiciary's EEO Officer, the AOC, the Human Resources ("HR") Administrator, or any Supervisor.
3. If the complaint is not made directly to the CJ but to an employee listed in Section III.B.2, as provided in Section III.A.3, the AOC will be responsible for informing the CJ of the complaint.
4. If the complaint is against the CJ, the AOC will inform the next most senior Associate Justice of the complaint. The next most senior Associate Justice shall then process the complaint in place of the CJ in accordance with this Policy.
5. The Judiciary shall take prompt and appropriate action in response to the complaint, making a determination of the complaint in a manner consistent with the particular facts and circumstances of the complaint.
6. A complaint may be submitted using the "EEO Complaint Form" (Form EEO-O1). If the employee declines or is unable to present a complaint in writing, the EEO Officer or any Judiciary Supervisor who receives the complaint shall prepare a written correspondence of the complaint made in oral fashion.

C. Determination of Jurisdiction. Upon the presentation of a possible EEO complaint, a determination will be made whether the complaint is covered under the Judiciary's EEO Policy. If the complaint falls under the Judiciary's Policy, the Complaint Review Process will be invoked. A case number will be assigned to the complaint that starts with the year, e.g., "EEO Case No. 2018-xx."

The Complaint Review Process may take one of two tracks, the first track will involve the administrative review into the allegations. Such review will include, when possible, the CJ, a staff attorney, the EEO Officer, and/or the HR Administrator. A written Summary and Determination will be issued by the CJ following the administrative review into the allegations. The second track will follow section D below.

The employee filing the complaint shall be referred to as the "Complainant," and the judicial officer alleged to have violated this Policy shall be referred to as the "Respondent."

If the concern does not fall under this EEO Policy, this conclusion shall be communicated in writing by the CJ and the matter thereafter will be referred to the appropriate non-EEO process, as applicable.

D. Investigation of Complaint.

1. The CJ shall be responsible to see that the complaint is handled in the manner prescribed in this Policy. The CJ will inform the Complainant and the Respondent of this Policy and the procedures for resolution.
2. If the CJ determines that the complaint is an EEO matter pursuant to Section III.C above (Determination of Jurisdiction), the CJ will secure the assignment of an EEO Investigator and provide the Investigator with an "Authorization to Investigate Form" (Form EEO-O2) no later than thirty (30) calendar days of receipt of a complaint.
3. Upon assignment, the Investigator shall have thirty (30) calendar days to complete the Investigation and submit an "EEO Investigation Report" (Form EEO-O3) to the CJ. Any investigation will proceed promptly and thoroughly, and may include review of relevant documents and interviews of the Complainant, Respondent, and any witnesses. The EEO Investigation Report shall include findings of fact and determinations regarding whether or not there was discriminatory or harassing conduct, if Judiciary Policy was violated, and if any, the recommended corrective action.

E. Resolution.

1. Within ten (10) calendar days, the CJ shall review the EEO Investigation Report and shall issue to the Complainant and Respondent a written summary of the findings of the investigation and inform them of the action being recommended. If the CJ makes a determination that a violation of this Policy has occurred, a copy

of the confidential Investigation Report will be provided to both the Complainant and Respondent.

2. The appropriate action to resolve a complaint will depend on the following factors: (1) the severity, frequency and pervasiveness of the conduct; (2) prior complaints made by the Complainant; (3) prior complaints made against the Respondent; and (4) the quality of the evidence (e.g., first-hand knowledge, credible corroboration).
3. The Complainant and Respondent may submit written statements to the CJ challenging the factual basis of the findings. Any such statement must be submitted no later than ten (10) calendar days after receiving the findings of the investigation and recommended action.
4. If no written statements are timely submitted, the CJ's decision in Section III.E.1 shall be final. If written statements are submitted, the CJ shall review the statements and issue a final decision within ten (10) calendar days.
5. If the investigation is inconclusive or if it is determined that there has been no violation of policy and potentially problematic conduct may have occurred, the CJ may recommend appropriate preventive action.
6. If the complaint and investigation raise a substantial question as to the judicial officer's fitness for office, the CJ shall refer the complaint and written documentation pertaining to the complaint to the Committee on Judicial Discipline or the Guam Bar Committee on Professional Ethics and Unauthorized Practice of Law.

IV. ALTERNATIVE REMEDIES

Nothing in this Policy may prevent a Complainant or the Respondent from filing complaints or pursuing remedies through the federal Equal Employment Opportunity Commission Honolulu Local Office or the Guam Department of Labor's Fair Employment Practice Office.

This EEO Policy does not preclude the referral of a complaint against a judicial officer to the Committee on Judicial Discipline or the Guam Bar Committee on Professional Ethics and Unauthorized Practice of Law.



Equal Employment Opportunity (EEO) Complaint Form



1. Protected Classification:

☐

Age

☐

Retaliation

☐

Disability

☐

Sex

☐

Genetic Information

☐

Sexual Orientation

☐

National Origin

☐

Ancestry

☐

Pregnancy

☐

Honorably Discharged Veteran/Military Status

☐

Race/Color

☐

Other Protected Classification:

☐

Religion

(Please Type or Print)

2. Name:

Last

First

Middle

3. Division/Section:

4. Job Title:

5. Email Address:

6. Mailing Address:

7. Residential Address:

8. Work Phone:

9. Home Phone:

10. Cellular Phone/Other Contact Numbers:

11. Contact Person if we are unable to reach you:

Name:

Relationship:

Mailing Address:

Contact Numbers:

12. I believe that I was harassed, discriminated, or retaliated against by the following individual:

Name:

Job Title:

Division:

(For Questions 13 & 14, please add additional sheets if necessary)

13. Explain how you believe you were harassed, discriminated, or retaliated against:

14. Please indicate below any witness(es) to the alleged incident(s) of discrimination, harassment, or retaliation:

Signature of Complainant

Date



EQUAL EMPLOYMENT OPPORTUNITY (EEO) AUTHORIZATION TO INVESTIGATE



This is to certify that the Equal Employment Opportunity (EEO) Officer has designated the undersigned, _____, whose signature appears below as EEO Investigator in the complaint of _____, and as such is authorized to conduct an in-depth investigation of the complaint. The Investigator's Report shall make findings of fact and determinations regarding whether or not there was discriminatory, harassing, or retaliatory conduct, if the EEO Policy was violated, and if any, the recommended corrective action.

The Judiciary of Guam recognizes that both the Complainant and Respondent deserve a fair investigation. Therefore, the Administrator of the Courts and the EEO Officer require that all individuals cooperate with the above-named Investigator during the Investigation. Individuals having knowledge of the matter being investigated are directed to furnish testimony with the understanding that this testimony will be kept confidential to the extent possible.

The Investigator has ten (10) business days to conduct the Investigation starting on _____. Investigation may be extended or terminated with the EEO Officer's approval.

EEO Officer

Date: _____

EEO Investigator: _____



EEO INVESTIGATION REPORT



I. DESCRIPTION OF COMPLAINT

- Name, Title, Division, and Section of Complainant
- Protected Classification/Type of alleged discrimination or harassment
- Nature of action, decision, or condition giving rise to complaint
- Date(s) of alleged discrimination, harassment, or retaliation
- Name, Title, Division, and Section of Respondent(s)

II. DESCRIPTION OF INVESTIGATION

- Name and Title of Investigator
- Date case was received by Investigator
- Name, Title, Division, and Section of Person(s) interviewed
- Date(s) of interview(s)

III. UNCOOPERATIVE PARTY(IES)

- Name
- Information sought
- Reason for not cooperating

IV. SUMMARY OF FACTS

V. DESCRIPTION OF EXHIBITS

- Exhibit 1
- Exhibit 2
- Exhibit 3

VI. DETERMINATION AND FINDINGS OF FACT

VII. RECOMMENDED ACTION(S)

Investigator's Signature

Date

(See Training Manual for EEO Investigators)