



## DISCRIMINATION COMPLAINT PROCESS

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## **FOREWORD**

Executive Order 78-24 promulgated by Governor Richard J. Bordallo in September of 1978, reestablished the Equal Employment Opportunity (EEO) Program and required the development of discrimination complaint procedures for resolving discrimination complaints.

The **DISCRIMINATION COMPLAINT PROCESS** sets forth the process and procedures involved in the processing of a discrimination complaint based on race, religion, creed, color, sex age, national origin, marital status, disability, or political affiliation. It was also designed to serve as a working manual for EEO officials, and as a source of information for management and employees. We trust that the **PROCESS** will be of benefit for those who have a need for it.

## **SCOPE OF COVERAGE**

The Judiciary of Guam is an equal opportunity employer and will continue to recruit, hire, train and promote into all levels the most qualified persons without regard to race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation. All other personnel matters such as transfer, layoffs, termination, compensation, benefits, selection for training, education, tuition assistance and social and recreational programs will continue to be administered in accordance with the Judiciary of Guam's policy. Furthermore, any complaints based on non-merit and non-EEO considerations must be addressed through the grievance process or other appropriate procedures set forth in the Judiciary of Guam Personnel Rules and Regulations.

Consequently, only those complaints based on race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation may be pursued through the EEO complaint process. Furthermore, the complaint system is intended to benefit all categories of employees to the extent consistent with Local and/or Federal statutes. In this context, classified employees and applicants for classified positions are fully covered. Unclassified employees, however, have limited access to the complaint process because of the nature of their employment and the EEO's lack of authority over these employees.

All employment decisions are based on objective standards and the furtherance of equal employment opportunity. The Judiciary will ensure that promotion decisions are in accordance with principles of EEO by imposing only valid requirements for promotional opportunities, and that such decisions are based on merit.

# **EEO INTERVIEW PROCEDURES**

## **I. SELECTION OF EEO INTERVIEW OFFICIALS**

When management determines that an interview for employment will be conducted, management will notify the EEO Officers who will contact certified EEO Officials within the Judiciary and ask them if they are willing to serve as an EEO Interview Official for the employment interview. When the EEO Officer receives the consent of one of the EEO Officials to act as an EEO Interview Official for the employment interview, management will be informed.

## **II. DUTIES OF EEO INTERVIEW OFFICIALS**

1. Management will submit a list of proposed questions to the EEO Interview Official at least two (2) days prior to the interview. The EEO Interview Official will review the questions, make any necessary changes based on EEO policy, and return the revised list of questions to management at least one (1) hour prior to the employment interview.
2. At the beginning of the employment interview, the lead interviewer will introduce the interview panel and the EEO Interview Official. The EEO Interview Official will read the statement of "Interviewee Rights" (Form I0-1). After applicants have signified that they understand their rights by signing the Interviewee Rights, the employment interview may commence.
3. If an interview panel member asks a question, either primary or follow up, that the EEO Interview Official believes to be discriminatory, the EEO Interview Official must stop the process before the applicant can answer and must not allow the applicant to answer the question. The EEO Interview Official must instruct the interview panel member that the question is prohibited and must be withdrawn. After the question is withdrawn the interview may proceed.
4. When the employment interview is finished, the EEO Interview Official must officially report any incidents or questions which they believed to be discriminatory, whether or not those incidents or questions actually halted the interview process. These reports must be submitted to the EEO Officer through the "Inappropriate Actions Report" (Form I0-2) within five (5) days of the employment interview.

## **III. FORMS**

1. Form I0-1 Interviewee Rights
2. Form I0-2 Inappropriate Actions Report



**EQUAL EMPLOYMENT OPPORTUNITY (EEO)  
INTERVIEWEE RIGHTS FORM**



The Judiciary of Guam, in accordance with Federal and Local EEO Laws, is a proponent of equal employment opportunities to assure equal access to positions in the Court system and does not tolerate discrimination. If you feel that you have been discriminated against during this interview for any of the following reasons: Age, Color, Disability, National Origin, Race, Religion, Sex, Creed, Marital Status, or Political Affiliation; you have the right to protection under the EEO Policies and Procedures of the Judiciary. You may contact the Judiciary EEO Officer within twenty (20) work days from today. Do you understand your rights, if so, please acknowledge by signing below.

SIGNATURE OF APPLICANT	EEO OFFICIAL
DATE	DATE

***FOR EEO USE ONLY:***

NAMES OF INTERVIEW PANEL: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

NAME OF APPLICANT: \_\_\_\_\_

POSITION APPLIED FOR: \_\_\_\_\_

TIME OF INTERVIEW: \_\_\_\_\_

Date

Memorandum

To: EEO Officer

From: Name, Interview Official

Interview Official Subject: Inappropriate Action Report

This is to officially inform you that on (DAY OF WEEK), (MONTH & DAY), (YEAR), at approximately (TIME) an interview for the position of (POSITION NAME) was held at (PLACE OF INTERVIEW), Judiciary of Guam.

(ADO's Name), (ADO's Position Title) did the following which I believe may constitute discrimination:

Submitted for your information.

---

Interview Official

Form IO-2 Inappropriate Actions Report

# **Discrimination Complaint Procedures**

## **Discrimination Complaint Procedures**

### I. MEDIATION

1. Complainant must contact the EEO Officer within twenty (20) days after becoming aware of the alleged discriminatory action or twenty (20) days after the effective date of a personnel action. Complaints after the twenty (20) day period shall be reviewed on a case by case basis by the EEO Officer for inclusion in the mediation process.
2. Complainant discusses issues of the case with the EEO Official who will act as a Facilitator in trying to resolve the complaint informally within fifteen (15) days. If the complaint involves an adverse action (suspension, dismissal, demotion), Complainant must be advised to follow the adverse action procedures. If it involves a complaint not based on race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation, Complainant must be advised of the appropriate grievance procedures.
3. If the complaint is resolved within fifteen (15) days, mediation is terminated. The Facilitator must submit an "EEO Mediation Report" (Form M-5) to the EEO Officer within five (5) days after completion of mediation. The EEO Officer will provide an EEO Mediation Report to the Complainant and the Alleged Discriminatory Official (ADO).
4. If the Facilitator cannot resolve the problem within fifteen (15) days after the first interview with the Complainant, the Facilitator must provide the Complainant with the "Notice of Right to File a Discrimination Complaint" (Form M-2).
5. If the Complainant does not elect to file a formal complaint within five (5) days, mediation may continue if the Facilitator believes and Complainant agrees that the informal resolution of the complaint is still possible. At the end of each 15 day period, the Facilitator and Complainant must agree to continue informal mediation.
  - a. If the complaint is resolved, mediation is TERMINATED. The Facilitator must submit an EEO Mediation Report to the EEO Officer within five (5) days after termination of mediation. The EEO Officer will provide an EEO Mediation Report to the Complainant and the ADO.
  - b. If the Facilitator is reasonably certain that the complaint cannot be resolved to the satisfaction of the Complainant, mediation is TERMINATED and a final interview is held with the Complainant. The Facilitator must provide the Complainant with the "Notice of Final Interview and Right to File a Complaint" (Form M-3).
6. Should the Complainant wish to continue the complaint process, an "EEO Complaint" (Form M-4) must be filed with the EEO Officer within five (5) days of receiving a Notice of Final Interview and Right to File a Complaint or Notice of Right to File a Discrimination Complaint.

### II. INVESTIGATION

1. The EEO Officer will advise the Administrator of the Courts in writing that a formal complaint has been filed by a Complainant, no later than three (3) days following the receipt of the formal complaint.

2. The EEO Officer will secure the assignment of an EEO Investigator upon receipt of the Mediation Report.
3. Upon assignment, the Investigator has five (5) days to prepare for the investigation. The Investigator has fifteen (15) days after beginning the investigation to conduct the investigation and submit an "EEO Investigation Report" (Form I-4) to the EEO Officer. Extensions of the investigation may be granted for reasonable cause.
4. The EEO Officer will provide copies of the Investigator's Report to the Complainant, ADO, and Administrator of the Courts within five (5) days following receipt of the report. At the same time, the EEO Officer will provide the Complainant with the "Notice of Right to an EEO Review Committee Hearing" (Form RC - 1).

### III. EEO REVIEW COMMITTEE HEARING

1. The Complainant has five (5) days following the receipt of the Notice of Right To an EEO Review Committee Hearing to file a "Request for an EEO Review Committee Hearing" (Form RC-2) with the EEO Officer. The request must include a suggested list of witnesses the Committee may wish to call.
2. Upon receipt of the Complainant's request, the EEO Officer shall provide the ADO with a "Notice of Request for an EEO Review Committee Hearing" (Form RC-3). The ADO has five (5) days following the notification to submit a suggested list of witnesses the Committee may wish to call.
3. The EEO Officer will organize an EEO Review Committee upon receipt of the Complainant's Request for a Review Committee Hearing. Legal representation is not necessary at this stage, however a Complainant may choose to be represented if they so desire.
4. The EEO Review Committee will be composed of three members. The Complainant and the ADO will each select a member of the Review Committee from a list of certified EEO officials provided by the EEO Officer. The EEO Officer will select the third member who will serve as the Chairperson for the Committee. The members of the Review Committee ARE NOT ADVOCATES for either Complainant or ADO and MUST maintain IMPARTIALITY throughout the hearing.
5. The EEO Review Committee has five (5) days to prepare for the hearing. It has fifteen (15) days to conduct the hearing and five (5) days to submit its findings and recommendations to the EEO Officer. Extensions may be granted by the EEO Officer in the EEO Review Committee process for reasonable cause. The EEO Officer will provide copies to the ADO and the Complainant.
6. The EEO Review Committee shall give at least five (5) days notice to both parties and witnesses of the hearing date, time and place.
7. The ADO has five (5) days following the receipt of the Review Committee report to accept or reject the Committee's recommendations, and to submit a response to the EEO Officer.
8. The EEO Officer will provide the Complainant with a copy of the ADO's response together with a "Notice of Right to a Hearing before the EEO Review Board" (Form RB-1) within five (5) days of receiving the ADO's response.

#### IV. EEO REVIEW BOARD - JUDICIAL COUNCIL

1. The Complainant has five (5) days following the receipt of the Notice Of Right to a Hearing Before the EEO Review Board to submit a "Request for a Hearing before the EEO Review Board" (Form RB-2). The Complainant may amend the basis (race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation) once as matter of right at the time of filing. Any amendments thereafter will be at the discretion of the EEO Review Board.
2. Upon receipt of the Complainant's request, the EEO Officer shall provide the ADO with a "Notice of Request for a Hearing before the EEO Review Board" (Form RB-3).
3. A hearing shall be held within ninety (90) days of the receipt of the Complainant's request by the EEO Review Board.
4. The hearing is formal. AT THIS STAGE, THE COMPLAINANT HAS THE RIGHT TO BE REPRESENTED BY AN ATTORNEY AND SHOULD BE PREPARED FOR A TRIAL-TYPE HEARING.
5. The EEO Review Board will issue a written decision within thirty (30) days after the conclusion of the hearing.

# **EEO MEDIATION**

# **EEO MEDIATION**

## I. INTRODUCTION

The Judiciary of Guam's Equal Employment Opportunity Mediation Program provides a means for resolving individual and parallel group employment problems related to equal opportunity. At the same time, the dedicated men and women who serve as EEO Facilitators contribute to improvements in the EEO program, and in personnel management practices.

## II. GUIDELINES FOR EEO OFFICIALS

### 1. Selection of Facilitators

The selection of persons to serve as EEO Facilitators is critical to the successful operation of the mediation program. In selecting and assigning Facilitators, the Court should look for employees with the following characteristics, knowledge, and abilities:

- a. **Personal Characteristics:** Empathy, objectivity, perceptiveness, resourcefulness, flexibility, stability, maturity, honesty, and a personal commitment to EEO.
- b. **Knowledge:** Knowledge of EEO mediation techniques, the EEO Program, and the basic EEO concepts.
- c. **Abilities:**
  - Ability to communicate effectively with persons of different races, sexes, national origins, ages, and economic, cultural and educational backgrounds.
  - Ability to communicate with persons of different levels, including those who hold key management positions in the organization.
  - Ability to understand the problems of employees and to achieve and maintain rapport with employees, supervisors, and managers.
  - Ability to gather and analyze a variety of pertinent facts and opinions concerning EEO issues.
  - Ability to exercise good judgment under pressure and to retain composure when exposed to personal criticism or emotional outbursts.
  - Ability to act equitably in resolving problems.
  - Ability to prepare written reports of mediation activities.

d. Other Criteria:

Regardless of personal qualifications, an employee who cannot be available to perform mediation duties when called upon should not be selected as an EEO Facilitator. If either the employee or the supervisor has legitimate objections to interruptions of normal work schedules to respond to calls for EEO mediation, that employee should not be selected and assigned. EEO Facilitators must be provided full support from their supervisors in performing mediation duties.

Efforts should be made to ensure that the EEO mediation staff is representative of the agency work force in terms of occupation, sex, race, and ethnic background.

Supervisors and personnel office employees are normally involved in the processing of personnel actions and evaluations of persons who seek the services of the EEO Facilitators; for this reason, it is inadvisable to assign EEO mediation responsibilities to supervisors or members of the personnel office.

Final selection and appointment of EEO Facilitators is a management responsibility. Most employers have found it useful to consult with employee organizations or other sources for advice on the selection of EEO Facilitators to ensure the selection of Facilitators with integrity and capability.

2. Training of Facilitators

Under normal circumstances, an EEO Facilitator should not be assigned a case until formally trained and thoroughly briefed on the EEO Program. The Judiciary should arrange for formal training of new EEO Facilitators immediately upon selection.

The Judiciary may develop programs to improve the knowledge and understanding of EEO Facilitators in such areas as:

- The general structure and operations of the personnel system, including position classification, merit promotion, staffing, performance evaluation, career development, employee rights, grievance and appeals procedures.
- The internal procedures and regulations pertaining to personnel, including provisions of negotiated agreements with labor organizations.

### 3. Assignment of Facilitators

- a. Number of Facilitators: The number of Facilitators assigned will vary according to; the mediation and complaint workload, the racial, ethnic, and sex makeup of the work force, and the EEO-related problems and issues, which have been raised. It is suggested that at least one EEO Facilitator be designated for every 50 employees.
- b. Collateral: With few exceptions, employees serve as an EEO Facilitator on a collateral basis, performing services as the need arises. Although they serve on a collateral basis, Facilitators must be free to work exclusively on EEO problems when the circumstances demand.

The Facilitator's position description should include a simple statement of mediation duties and responsibilities; but mediation must not involve so much time or attention that they become the primary responsibility of the regular person.

In regular work assignments, the Facilitator is responsible to the supervisor(s); in mediation assignments the Facilitator is independent. If a Facilitator's collateral duties require too much time, then a determination should be made regarding whether to request that the EEO Officer designate additional employees as EEO Officials to help ease the EEO caseload, or whether the EEO responsibilities of this Official should be reassigned to another employee. In no case, should a Facilitator's duties be reassigned, or additional Facilitators assigned during the handling of an EEO assignment.

- c. Location: Since an EEO Facilitator is the first step in the complaint process, the Judiciary must assure that Facilitators are readily accessible. The Judiciary may post the names, photographs, locations, and the telephone numbers of EEO Facilitators in prominent places, including the reception areas of the personnel offices. Wherever practical, walk-in service shall be made available. Where walk-in service is not feasible, Facilitators should be made available to meet with employees within three (3) work days after an initial request for mediation.

### 4. Role of Facilitators

To be successful in mediation activities, an EEO Facilitator must maintain the confidence of both employees and management. Therefore, a Facilitator is not to serve as a representative for either management or the employee at any stage of the discrimination complaint process; and likewise, persons who normally represent employees for other reasons are not to be designated as EEO Facilitators.

Also, those who serve as Facilitators are not to be asked to serve as management representatives, or as advisors in connection with hearings in individual cases in which they were involved as Facilitators.

5. Management Support of Facilitators

Facilitators need the SUPPORT OF MANAGEMENT. Mediation is an integral and essential part of the total EEO Program; and employees, supervisors, and managers must give Facilitators full cooperation in an effort to resolve problems informally.

The Judiciary will also be required to grant Administrative Leave to Facilitators to perform mediation duties; and to assure them freedom from restraint, coercion, and reprisal.

III. Guidelines for Facilitators

1. Purpose of Mediation

Mediation is the first stage in the discrimination complaint process. Its purpose is to resolve EEO-related problems informally in the least amount of time. The Facilitator, through interviews and inquiries, attempts to resolve problems expeditiously.

Mediation is available to cover applicants and employees who feel they have been discriminated against because of their race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation.

2. General Instructions for Facilitators

a. Scheduling of Interviews:

Place: The Facilitator ordinarily must try to schedule interviews with employees away from executive offices or other areas in which employees might feel intimidated or uncomfortable. The Judiciary should make suitable facilities available to Facilitators where they conduct interviews in private, and where Complainants may freely discuss their problems without fear of being overheard.

Time: The Facilitator should arrange interviews with employees and management officials at times when there will be few or no interruptions. The Facilitator can hope to accomplish little if the interview is constantly interrupted by telephone calls, messages, etc. Upon receipt of a request for mediation, the Facilitator must begin mediation immediately or within three (3) days upon notification.

b. Interview Techniques:

Authorities agree that the first impression during the initial interview may be the most important. Facilitators must endeavor to create a climate of trust with Complainants so that they may talk freely about what's bothering them. The Complainant may be highly emotional at this time. It is

important for the Facilitator to be respectful of the Complainant at this stage. The Facilitators should allow the Complainant to talk as long as necessary to explain the problem.

In any event, Complainants must be made to feel that the Facilitator will attempt to do whatever is necessary to resolve their complaint.

The development of each interview will depend on the Facilitator's insight into the personal relationships involved, understanding of the attitudes of the people interviewed, and overall judgment. Management officials or employees may be cooperative, indifferent, evasive, or hostile. The Facilitator must weigh the temperament of the people interviewed, and direct the interviews in such a way that all the needed information will be obtained. The Facilitator must also be familiar with personnel policies and procedures since complaints often involve these.

c. Attitude:

In addition to knowing the methods and procedures for mediation, the Facilitator's personality, attitude, and character are instrumental in successful mediation. The Facilitator must be tactful and flexible in all contacts.

In interviews with Complainants and with others who are involved in the inquiry, the Facilitator must maintain a fair, impartial, and objective attitude towards the matters under discussion. Additionally, Facilitators should remember that they are being observed, and they should take care that their conduct, motives, and remarks are not misinterpreted.

3. Duties of the Facilitator

a. Discussing Problems with Complainant:

EEO mediation begins when an aggrieved applicant or employee comes to the Facilitator with a complaint. Where walk-in mediation is possible, the problem may be fully discussed when the aggrieved first contacts the Facilitator. In other cases, the Complainant may contact the Facilitator and ask to schedule an appointment. In this situation, the Facilitator must set a definite time and place convenient for the Complainant for the first mediation session. **The Complainant is to be informed of the right to have a representative present at all mediation sessions, including the first one.**

A single incident may be the immediate cause for a complaint; but the problem may also be the result of previous incidents. Although the cause of employee problems are varied, the matters usually called to the attention of Facilitators include:

- Failure to be promoted or to be considered for promotion;
- Failure to be selected for training; disciplinary action; or
- Harassment by supervisors or others.

The Facilitator must listen attentively and maintain an atmosphere which facilitates communication. The Facilitator should not prevent the Complainant from talking about a problem even if it does not appear to be a matter under the purview of the discrimination complaint process.

If the problem is clearly not an EEO matter, the Facilitator should direct the Complainant to the proper channels.

Facilitators must advise Complainants that if they choose, their identities will be kept in confidence; however, the Facilitator must also explain any difficulties or limitations which may be encountered as a result of withholding a Complainant's identity. Facilitators should have the Complainants sign the "Use of Name" (Form M-1).

b. Making Inquiries:

After the initial interview with the employee and after having determined that the complaint falls under the purview of the EEO process, the Facilitator should determine what facts will be needed to resolve the issues raised during the discussion of the problem. The Facilitator must then attempt to gather these facts through interviews with Judiciary officials, supervisors, and other employees, and through examination of pertinent records and materials. Where necessary for a complete inquiry, a review of personnel records of a Complainant and others who are involved may be made with the written permission of these individuals.

The Facilitator's interviews with the Complainant's supervisors, associates, and others are to be conducted informally without sworn testimony. Informal interviews and record reviews are not to be confused with the kind of in depth investigation that is made by a trained investigator under formal discrimination complaint procedures.

To avoid confusion regarding the Facilitator's role, the word "investigation" should not be used during interviews.

The Facilitator should develop a good working relationship with the personnel office staff, since many of the records and much of the information needed to resolve EEO problems are found in the personnel office.

c. Attempting Informal Resolution:

When the Facilitator believes there is enough information to resolve the problem, the inquiry should be suspended and efforts at resolution should be made by consulting with the Complainant and appropriate management officials.

There is no formula for the Facilitator to follow in attempting a resolution. Any solution proposed should be based on the facts gathered in the inquiry. When action is suggested for management it should be sensible and sound so that management may reasonably be expected to implement it. A Facilitator must be cautious not to suggest action which would violate law, or regulation, and should be aware of the provisions of any previously negotiated agreements. If management agrees to some action, it is good practice for the Facilitator to see

that a written record is made of the agreement and that a copy is provided to the Complainant and ADO.

The Facilitator maintains full control in resolving individual cases; but where appropriate, may ask for assistance or guidance from the EEO Officer. The Facilitator should explain what has been learned in the inquiry (using the employee's name only if the employee has given permission to do so) and be prepared to recommend possible corrective actions.

d. Terminating Mediation When Informal Resolution Fails:

If the Facilitator cannot resolve the problem within fifteen (15) days after the first interview with the Complainant, the Facilitator must provide the Complainant with the Right to File a Formal Complaint of Discrimination. If the Complainant does not elect to file a formal complaint, mediation may continue if the Facilitator believes informal resolution of the problem is still possible. As soon as the Facilitator is reasonably certain that the complaint cannot be resolved to the satisfaction of the Complainant, mediation must be terminated and a final interview be held with the Complainant.

At the final interview, the Facilitator must provide the Complainant with the Notice of Final Interview and Right to File a Formal Complaint. The Facilitator must inform the Complainant that the EEO Complaint must be completed and signed. The basic information outlined in the EEO Complaint is sufficient since the Facilitator covers the details in the Mediation Report. The Facilitator may assist the Complainant to understand what information is being asked for in the EEO Complaint if needed.

The Facilitator must explain that once the complaint reaches the formal processing stage, the complaint filed will be open to all who are involved and need access to it, including the EEO Officer, Management officials, and ADO.

e. Writing a Report When Employee Files a Complaint:

When a formal complaint of discrimination is filed, the Facilitator must submit an EEO Mediation Report to the EEO Officer within five (5) days of the filing of the discrimination complaint. The EEO Mediation Report must clearly identify the issues, summarize the information gathered in the interviews and inquiries, and state the proposed resolutions offered both to the ADO and the Complainant.

f. Briefing the Officer and Recommending Improvements:

Facilitators should keep notes of all mediation activities in order to discuss program improvements with the EEO Officer, furnish input for the Judiciary's mediation activity reports, or provide information on mediation activities to EEO Officials.

4. Consolidation of Complaints

In situations where complaints arise out of the same incident or set of facts, and the claims or interests being asserted are sufficiently related, a Facilitator, after securing permission from the Complainants, may consolidate these complaints if it would be more efficient to pursue a single action than a series of separate actions.

5. Unclassified Employees

Unclassified employees may utilize the EEO mediation process to resolve complaints of discrimination. Unclassified employees **DO NOT** have a right to file a formal complaint.

#### IV. FORMS

1. Form M-1: Use of Name
2. Form M-2: Notice of Right to File a Discrimination Complaint
3. Form M-3: Notice of Final Interview and Right to File Complaint
4. Form M-4: EEO Complaint
5. Form M-5: EEO Mediation Report

Use of Name

Date: \_\_\_\_\_

To whom it may concern:

After having discussed this matter with an EEO Facilitator, and having duly considered my options, I have decided:

Please initial after your choice:

- 1) To allow the EEO Facilitator to use my name while pursuing the informal EEO mediation process. \_\_\_\_\_
- 2) Not to allow the EEO Facilitator to use my name while pursuing the informal EEO mediation process. I understand that this restriction may hamper the mediation process with regard to my case. \_\_\_\_\_

\_\_\_\_\_  
Signature of Complainant

Note: The original form is retained by the EEO Official and the Complainant receives a copy.

TO: Complainant's Name, Complainant's Job Title

FROM: EEO Facilitator's Name, EEO Facilitator

SUBJECT: Notice of Right to File a Discrimination Complaint

Informal mediation with regard to resolving the concerns you brought to the EEO process has not yet been completed. However, fifteen (15) consecutive work days have elapsed since you first spoke with an EEO Facilitator. You now have the right to file a discrimination complaint if you believe that you have been discriminated against on the basis of race, color, religion, creed, sex, age, national origin, disability, marital status, or political affiliation. If you choose to file a complaint, you must do so within five (5) consecutive work days from the date you receive this memorandum. If you file a complaint, the informal mediation process will end and the formal EEO complaint process will begin.

If you decide not to file a complaint at this time, you may choose to continue with the informal mediation process, or to discontinue your case entirely. If you choose to continue the informal mediation process, you will be informed of your final interview with the EEO Facilitator when the matter has been resolved, or when the EEO Facilitator determines that the matter cannot be resolved. If the matter has not been resolved to your satisfaction at that time you will have another five (5) consecutive work days to file a formal EEO complaint.

If you choose to file a complaint at this time, the complaint must be in writing and be filed in person or by mail with the following official authorized to receive discrimination complaints (Please review the attached form for information regarding what must be included in your complaint) :

Equal Employment Opportunity Officer  
Judiciary of Guam  
120 West O'Brien Drive  
Hagatna, Guam 96910

---

EEO Facilitator's Name  
EEO Facilitator

Received By:

---

Complainant's Name/Representative

Date Received: \_\_\_\_\_

2. Form M-2 Notice of Right to File a Discrimination Complaint

TO: Complainant's Name, Complainant's Job Title

FROM: EEO Facilitator's Name, EEO Facilitator

SUBJECT: Notice of Final Interview and Right to File a Complaint

This is to inform you that the final mediation interview with regard to the matter you brought to the EEO process was held on Month Day, Year. I do not believe that an informal resolution of your concern is possible. Therefore, if you believe you have been discriminated against on the basis of race, color, religion, creed, sex, age, national origin, disability, marital status, or political affiliation, you have the right to file a formal discrimination complaint. If you decide to file a complaint, you must do so within five (5) consecutive work days after receipt of this notice.

If you decide to file a complaint, the attached EEO Complaint form must be completed and filed in person or by mail with the following official authorized to receive discrimination complaints:

Equal Employment Opportunity Officer  
Judiciary of Guam  
120 West O'Brien Drive  
Hagatna, Guam 96910

---

EEO Facilitator's Name  
EEO Facilitator

Received By:

---

Complainant's Name/ Representative Signature

Date Received: \_\_\_\_\_

3. Form M-3 Notice of Final Interview and Right to File a Complaint

**EEO Complaint**  
Judiciary of Guam

(Please Type or Print)

1. Basis of Complaint: Race, Religion, Creed, Color, Sex, National Origin, Age, Disability, Marital Status, or Political Affiliation. \_\_\_\_\_

2. Name: \_\_\_\_\_  
Last First Middle

3. Division/Section: \_\_\_\_\_

4. Job Title: \_\_\_\_\_

5. Mailing Address: \_\_\_\_\_

6. Work Phone: \_\_\_\_\_ 7. Home Phone: \_\_\_\_\_

8. Other contact numbers: \_\_\_\_\_

9. Name, Division, and Title of person(s) you believe discriminated against you:  
\_\_\_\_\_

10. What is the Pay Range of your current job? \_\_\_\_\_

11. Date on which most recent alleged discrimination took place:  
Month: \_\_\_\_\_ Day: \_\_\_\_\_ Year: \_\_\_\_\_

12. List why you believe you were discriminated against:

// Race or Color (If so, state your Race or Color) \_\_\_\_\_

// Religion or Creed (If so, state your Religion or Creed) \_\_\_\_\_

// National Origin (If so, state your National Origin) \_\_\_\_\_

// Sex (If so, state your sex) \_\_\_\_\_

// Disability (ies) (If so, state your disability (ies) \_\_\_\_\_

// Marital Status (If so, state your Marital Status) \_\_\_\_\_

// Age (If so, state your age) \_\_\_\_\_

// Political Affiliation (If so, state your Political Affiliation) \_\_\_\_\_

13. Explain how you believe you were discriminated against:

---

---

14. Have you discussed your complaint with an Equal Employment Opportunity Facilitator?  
If yes, state the Facilitator's name: \_\_\_\_\_

15. What corrective action do you want taken in your behalf on your complaint?

---

EQUAL EMPLOYMENT OPPORTUNITY OFFICE  
Judiciary of Guam  
120 West O'Brien Drive  
Hagatna, Guam 96910

**EEO Mediation Report**  
**Issues**  
 (Non-selection, Non-promotion, Hostile environment)

Type of alleged discrimination	Issue #1	Issue #2	Issue #3
Race			
Color			
Sex			
Religion			
Creed			
Age			
National Origin			
Persons with Disabilities			
Marital Status			
Political Affiliation			

5. Form M-5 Mediation Report

1. Date complaint received by Facilitator:
2. Name and Title of Complainant (if not anonymous):
3. Complainant's description of event(s): (Include specifics, dates, names, etc.).
4. Requested relief:
5. Alleged discriminatory official(s) (ADO):
6. ADO's Description of events:
7. People contacted (Name, Title, Place, & Date of Interview):
8. Facts developed:
9. Attachments:
10. Information consistent with the allegation:
11. Information inconsistent with the allegation:
12. Advice and/or recommendations to the Complainant:
13. Advice and/or recommendations to the ADO:

- 14. Advice and/or recommendations to management:
  
- 15. Date of Notice of Right to File Discrimination Complaint given:
  
- 16. Date of Notice of Final Interview with EEO Official given:
  
- 17. Disposition:

(R) Resolved, (N) Not resolved, (W) Withdrawn:

Note: If resolved the Complainant should sign the form. If withdrawn, a letter of withdrawal signed by the complainant should be attached. If not resolved, then the reasons why should be outlined by the Facilitator.

\_\_\_\_\_  
EEO Facilitator

\_\_\_\_\_  
Date

# **EEO INVESTIGATION**

# **EEO INVESTIGATION**

## I. FORMAL FILING

Before a complaint of discrimination may be formally filed, employees who believe they have been subjected to discrimination must bring the matter to the attention of an EEO Facilitator, who then attempts an informal resolution. If the matter cannot be resolved through mediation, a formal complaint may then be filed and an Investigator will be assigned by the EEO Officer.

## II. GUIDELINES FOR EEO OFFICIALS

### 1. Selection of Investigators

a. Personal Characteristics: Empathy, objectivity, perceptiveness, resourcefulness, flexibility, stability, maturity, honesty, and a personal commitment to EEO.

b. Knowledge and Skills

Persons assigned duties as an EEO Investigator should have investigative training or experience. Since discrimination complaints often arise as a result of personnel actions, an Investigator should be familiar with the applicable Judiciary of Guam Personnel Rules and Regulations. An Investigator should also be familiar with the basic goals of equal employment opportunity.

c. Abilities

- Ability to communicate effectively with persons of different races, sexes, national origins, ages, and economic, cultural and educational backgrounds;
- Ability to communicate with persons at different levels within an organization;
- Ability to identify issues, and to gather and analyze facts;
- Ability to exercise sound judgment and self-control when exposed to personal criticism or emotional outbursts;
- Ability to produce a clear and concise report.

d. Other Criteria:

Regardless of personal qualifications, an employee who cannot be available to perform investigation duties when called upon should not be selected as an Investigator. If either the employee or the supervisor has legitimate objections to interruptions of normal work schedules to respond to calls for EEO Investigation, that employee should not be selected and assigned. EEO Investigators must be provided full support from their supervisors in performing investigation duties.

Efforts should be made to ensure that the EEO investigation staff is representative of the agency work force in terms of occupation, sex, race, and ethnic background.

Supervisors and personnel office employees are normally involved in the processing of personnel actions and evaluations of persons who seek the services of the EEO Investigators; for this reason, many agencies have found it inadvisable to assign EEO investigation responsibilities to supervisors or members of the personnel office.

## 2. Training of Investigators

An EEO Investigator should not be assigned a case until formally trained and thoroughly briefed on the EEO Program. The Judiciary should arrange for formal training of new EEO Investigators immediately upon selection.

The Judiciary may develop programs to improve the knowledge and understanding of EEO Investigators in such areas as:

- The general structure and operations of the personnel system, including position classification, merit promotion, staffing, performance evaluation, career development, employee rights, and grievance and appeals procedures.
- The internal procedures and regulations pertaining to personnel, including provisions of negotiated agreements with labor organizations.

## 3. Role of Investigators

The Investigator is a FACT-FINDER, NOT AN ADVOCATE. In conducting the investigation, the Investigator must display and exercise fairness, impartiality and objectivity. The Investigator must avoid forming theories or opinions based on information developed early in the investigation, and must pursue the investigation to conclusion, securing and using relevant information.

## 4. Assignment of Investigators

The EEO Officer will assign an EEO Investigator within five (5) days after receiving the written formal complaint.

An Investigator has five (5) days after being assigned to prepare for the investigation.

The EEO Officer will furnish the Investigator an "Authorization to Investigate" (Form I-1) to:

- a. Investigate all relevant aspects of the complaint.
- b. Require all employees to cooperate with the Investigator in the conduct of the investigation.

The authorization shall not extend to permitting physical access to personnel files without written authorization (Form I-2) from the individuals whose files are being sought. Information not of a private nature could be obtained from public files, although the information may also be found in a personnel file. Investigations are to be completed within fifteen (15) days after the preparation period.

An extension of the investigation period may be requested from the EEO Officer within 5 days before the end of the period.

5. Management Support of Investigators

Investigators need the SUPPORT OF MANAGEMENT. Investigation is an integral and essential part of the total EEO Program; and employees, supervisors, and managers must give Investigators full cooperation in an effort to resolve problems.

The Judiciary will also be required to grant Administrative Leave to Investigators to perform investigation duties; and to assure them freedom from restraint, coercion, and reprisal.

### III. GUIDELINES FOR INVESTIGATORS

1. Purpose of Investigation

Investigation is part of the second stage in the Discrimination Complaint Process. Its purpose is to aid the Review Committee in determining the facts of the case. The Investigator, through interviews and investigation, attempts to gather the facts expeditiously.

Investigation is part of the process available to assist applicants and employees who feel they have been discriminated against because of their race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation.

2. Preparing for the Investigation

a. Preliminary Work

To conduct the investigation as efficiently and effectively as possible, the Investigator must understand what the issues are and what information will be relevant and necessary to the investigation. It is advisable that the Investigator take certain steps prior to beginning the investigation.

The Investigator must:

- i. Obtain and make a thorough review of the complaint file;
- ii. Identify the issues;
- iii. Review the applicable rules and regulations of policies;

iv. Prepare a tentative list of documents needed and persons to be interviewed; and

v. Plan for the investigation.

b. Contents of the Complaint File

The file must, at a minimum, include the EEO Complaint and the EEO Mediation Report. If there is no EEO Mediation Report in the complaint file, the Investigator must obtain a copy of the report before beginning the investigation.

c. Pre-Investigation Coordination

Before going on site, the Investigator should inform the EEO Officer when the investigation will begin, and to make any advance arrangements necessary for the investigative contacts.

d. Scope of Investigation

The Investigator, in reviewing the file and determining what the scope of the investigation will be, shall make certain that the issues to be investigated include only matters raised in the EEO Complaint.

The Investigator must avoid enlarging the scope of the investigation beyond the specific issues complained of and must assure the pertinent issues are not obscured.

At the same time, the investigation should be comprehensive enough to uncover any evidence of discrimination. A properly conducted investigation should provide enough information to permit an informed decision on the issues.

During the investigation, an Investigator may uncover facts that may indicate a pattern of discrimination against the Complainant or Complainant's complaint group (shown on the EEO Complaint as the basis of the complaint, e.g. race, sex, color, etc.). In this case the Investigator should indicate this finding in the "EEO Investigation Report" (Form I-4).

e. Independence of Investigator

Once the scope of the investigation is defined, the Investigator working within the established guidelines has full control of the conduct of the investigation. In times of doubt, the Investigator may seek the advice of the EEO Officer.

f. Access to the Investigative File

The Investigator must not allow anyone access to the investigative file while the case is still under investigation. This is to prevent, and avoid possible charges of, interference and improper influence from interested parties. All affidavits and documents obtained during the investigation become part of the investigative file.

### 3. Conducting the Investigation

#### a. Witnesses

Witnesses are those persons identified by the Investigator as having knowledge or information relevant to the complaint and useful to the investigation.

This identification process is accomplished, first, after a pre-investigation review of the complaint file and, second, after interviews with witnesses.

The Complainant and the ADO are known as party-witnesses; all other witnesses are non-party witnesses.

Prior to interviewing witnesses, Investigators must identify themselves and explain the purpose of the investigation. The interview should be conducted privately and away from distractions.

Questions should be asked in a manner that would elicit or lead to information regarding the basis (e.g. sex) and issue (e.g. non-selection) of the complaint.

#### b. Uncooperative Witnesses

The written authorization to investigate issued by the EEO Officer requires all employees to cooperate during the investigation. An Investigator may encounter a witness who refuses to give testimony. In this situation, the Investigator should present the authorization form and explain to the witness that the purpose of the investigation is to secure sufficient facts to assure a proper evaluation of the complaint by the EEO Review Committee. If the witness persists, the Investigator should include in the investigation report the name of the witness, the reason for refusal, and the information being sought.

#### c. Affidavits

After obtaining testimony from each witness, the Investigator must reduce it to writing in the form of an "Affidavit" (Form I-3) to be reviewed and signed by the witness. Any changes should be noted and initialed by the witness.

Prior to the close of the investigation, a witness may have additional information to provide. In this event, the Investigator must prepare an additional Affidavit, have it signed, and attach it to the earlier Affidavit.

#### d. Documents

Documents play an important part in the investigation of a complaint. The kinds of documents or written materials to be acquired depend on the nature of the complaint; normally they may include rules and regulations, internal policies, memoranda, job specifications, eligibility list, etc.

The authenticity of official documents are generally self-evident; however, when an Investigator is uncertain about the authenticity of a particular document, the

document should be certified by an agency official with responsibility over the maintenance of the document.

e. Restrictions

- There is no right to physical access to an individual's personnel file without written consent. Even where consent is given, an Investigator's access is limited to securing relevant information. The Investigator may acquire information contained in public records which may also be found in personnel files.
- There is no right to information intended solely for the use of testing examiners.
- There is no right to information protected from disclosure by law, or by rule issued pursuant to law, unless the privilege is waived by the holder of the privilege.
- There is no right to information exclusively of a private nature, unless such information is relevant and permitted by the person who has a right to that privacy.

4. Preparing the Investigative File

Upon completion of the investigation, the Investigator must organize the affidavits and documents, and prepare the EEO Investigation Report.

In preparing the report, the Investigator should include only those documents believed to be relevant to the complaint, although all documents are to be made a part of the investigative file. In preparing the summary for the report, the Investigator should summarize the results of the investigation.

Upon completion of all the requirements, the Investigator must submit the investigative file to the EEO Officer.

5. Investigator's Report

The EEO Officer will provide copies of the EEO Investigator's Report to the Complainant, ADO, and the Administrator of the Courts within five (5) days following receipt of the report.

#### IV. FORMS

1. Form I-1: Authorization to Investigate
2. Form I-2: Authorization to Access Personnel Records
2. Form I-3: Affidavit
3. Form I-4: EEO Investigation Report

AUTHORIZATION TO INVESTIGATE

This is to certify that the Equal Employment Opportunity (EEO) Officer has designated the bearer, \_\_\_\_\_, whose signature appears below as EEO Investigator in the discrimination

complaint of \_\_\_\_\_, and as such is authorized to conduct an in-depth investigation on the complaint in preparation for a hearing.

The EEO Officer requires that all employees of the Judiciary of Guam cooperate with the above-named Investigator during the investigation. Employees having knowledge of the matter complained of are directed to furnish testimony under oath or affirmation with the understanding that this testimony is not confidential.

The Investigator has fifteen (15) workdays to conduct an investigation starting on Month Day, Year, unless otherwise amended by the EEO Officer. Investigation may be extended or terminated upon the EEO Officer's directives. Request for extension must be made within five (5) days before the end of the investigation period.

It is imperative that the Investigator be given access to all documents and files that are relevant to the case. All affidavits and documents shall be made part of the investigative file. During the investigation, all privileged and classified information relevant to the case shall be kept confidential and shall not be divulged to either parties without consulting the appropriate authority. The investigative file shall not be released to any parties involved in the case during the investigation process.

By this authorization, the Investigator shall interview any Judiciary of Guam employee whose written affidavits may assist in the formal resolution of the complaint.

\_\_\_\_\_  
Equal Employment Opportunity Officer

Date: \_\_\_\_\_

EEO Investigator: \_\_\_\_\_

MEMORANDUM

TO: Human Resources Administrator

FROM: Person's Name, Person's Title

SUBJECT: Authorization to Release Personnel Records

I, <PERSON'S NAME>, the undersigned, hereby grant authorization to release information in my personnel records to, <INVESTIGATOR'S NAME>, for the purposes of an EEO investigation.

I hereby direct you to release such information upon request of the Investigator. This release is executed with full knowledge and understanding that the information is for use in an EEO investigation.

I hereby release you, as custodian of such records, or any related personnel both individually and collectively, from any and all liability for damages of whatever kind which may at any time result to me, my heirs, family, or associates because of compliance with this authorization and request for information or any other attempt to comply with it.

This authorization shall have a duration no longer than that reasonably necessary to effectuate the purpose for which it is given, or for the period of investigation as authorized in the EEO policies and procedures, whichever comes first.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**AFFIDAVIT**

IN THE MATTER OF

\_\_\_\_\_  
(Name of Complainant)

Island of Guam  
SS.

I, \_\_\_\_\_ (Name of Affiant) \_\_\_\_\_, swear/affirm that the following (Name of Affiant) is an accurate statement (in whole or as modified and indicated by my initials) of the testimony I had given in the investigation of the complaint of \_\_\_\_\_ :

Page \_\_\_\_\_ of \_\_\_\_\_ pages.

\_\_\_\_\_  
(Affiant's Signature)

Sworn/Affirmed to before me at \_\_\_\_\_, on  
this \_\_\_\_\_ day of \_\_\_\_\_,

\_\_\_\_\_  
(Investigator's Signature)

## EEO INVESTIGATION REPORT

### COMPLAINT OF

---

#### I. DESCRIPTION OF COMPLAINT

- Title of Complainant's position:
- Name of Division and Section involved in complaint:
- Nature of action, decision, or condition giving rise to complaint:
- Date(s) of alleged discrimination:
- Kind of discrimination alleged:
- Identity of Alleged Discriminatory Official(s) (Name & Title):

#### II. DESCRIPTION OF INVESTIGATION

- Identity of Investigator:
- Date case received by Investigator:
- Places of investigation:
- Person(s) interviewed (state position) and date(s) of interviews:

#### III. UNCOOPERATIVE WITNESS(ES)

- Name of Witness:
- Reason for not cooperating:
- Information sought:

#### IV. DESCRIPTION OF EXHIBITS

Exhibit 1:  
Exhibit 2:  
Exhibit 3:

#### V. SUMMARY OF INVESTIGATION

---

(Investigator's Signature)

---

(Date)

# **EEO REVIEW COMMITTEE**

## EEO REVIEW COMMITTEE

### I. ORGANIZATION

The EEO Officer will provide the Complainant with the Notice of Right to an EEO Review Committee Hearing. The Complainant then has five (5) days following the receipt of the Notice of Right to File a Request for an EEO Review Committee Hearing to file a Request for an EEO Review Committee Hearing.

After a Complainant has filed a Request for a Review Committee Hearing, the EEO Officer will notify the ADO with the Notice of Request for an EEO Review Committee Hearing and coordinate the formation of the Committee. The Committee consists of three (3) members and will be organized as follows:

1. The Complainant and the ADO will each be given a list of EEO officials (Form RC-4) by the EEO Officer within three (3) days of receipt of the Request for an EEO Review Committee Hearing.
2. Each party must select three (3) names from the list, and must submit the names of their selectees in order of preference within three (3) days after the date the list is received.
3. One (1) person from each of the party's listings will be selected and designated as Committee members by the EEO Officer.
4. The third member will be selected by the EEO Officer, and shall serve as the Chairperson.
5. If a party fails to submit the names of the selectees within the 3-day deadline, the non-complying party will forfeit the privilege of choosing a Committee member. In this situation, the EEO Officer will make the selection.

The EEO Officer will designate all Review Committee members and send investigative files to them within five (5) days of receiving the names from the Complainant and ADO. After the Committee members have been designated and copies of the investigative files have been received by them, the Review Committee will be considered officially formed.

### II. PREPARATION

After formation, the Review Committee has five (5) days to prepare for the hearing, fifteen (15) days to conduct the hearing, and five (5) days to submit its findings, decision, and recommendations to the EEO Officer. Extensions may be granted by the EEO Officer for reasonable cause. In preparation, the Committee must do the following:

Review the investigative file.

1. Identify the basis of alleged discrimination (e.g. race, religion, sex, etc.), and the action complained of (e.g. non-promotion, non-selection, hostile environment).
2. Determine whether the testimonial affidavit of each witness identified in the investigative file is sufficient or whether further testimony will be required from any of these witnesses.
3. Determine what other witnesses and/or documents are needed.

4. Set a hearing date, time, and place, and inform the parties and witnesses by written notice at least five (5) days prior to the date.
5. Secure additional documents before the hearing.
6. Prepare a list of questions to be asked of the witnesses, and a time schedule showing when each witness will be called. If a hearing is scheduled for more than one (1) day, only those witnesses scheduled to testify on a given day need appear on the day. Witnesses must then be notified of the time and date on which they must appear.
7. Review the hearing procedure.
8. Secure the recording equipment and cassette tapes.
9. Inform the parties and witnesses of any changes in the hearing date, time, or place.

### III. ROLE OF THE COMMITTEE

The Review Committee serves as an impartial fact-finder and mediator. The Committee conducts a fact-finding hearing to gather the facts needed to determine whether or not an alleged prohibited discrimination has occurred. After a decision has been made, the Committee develops recommendations in the interest of resolving the complaint without the necessity of a formal adjudication before the EEO Review Board.

### IV. NATURE OF THE HEARING

The Review Committee hearing is structured to facilitate the fact-finding, decision-making, and recommendation process. It is not the trial-type hearing that is conducted by the EEO Review Board. A trial-type hearing involves, among other things, the right to examine and cross-examine witnesses, the right to present and object to evidence, the allocations of the burden of proof, and other formalities. In a Committee hearing, none of these rights and obligations exist. The Complainant and ADO have the RIGHT to present moral and/or written statements, and TO HAVE A REPRESENTATIVE. The Committee conducts the questioning, determines who the additional witnesses will be, what questions will be asked, and what documents will be used.

### V. CONDUCTING THE HEARING

#### 1. Preliminaries

Prior to convening:

- a. The Committee must identify the basis of the alleged discrimination and the issues. This is essential in establishing the scope of the hearing.
- b. The witness schedule and a list of questions should be prepared.
- c. The members should be thoroughly familiar with Committee guidelines.
- d. The recording instrument should be set and ready for recording.

2. Convening the Hearing

The Chairperson opens the hearing by:

- a. Stating that the EEO Review Committee is in session to hear the complaint of "Complainant's Name" versus "ADO's Name" on the scheduled date.
- b. Introducing the members of the Committee.
- c. Stating the basic issues. For example: "The issue to be decided is whether the non-selection of 'Complainant's Name' for the position of Deputy Marshal I was based on sex and political affiliation."
- d. Explain the role of the committee as stated in "III. Role of the Committee, pg."

3. Calling the Parties

After opening the hearing, the Chairperson calls in the Complainant (or representative). The Complainant takes the oath, and presents oral or written statements on the matter; after which members may commence their questioning. When questioning is completed the Complainant will be excused. The ADO (or representative) is then called, and the Committee proceeds in the same manner.

4. Calling the Witnesses

After the parties have been excused, the Committee may call the witnesses in the sequence provided in the witness schedule. The witnesses testify under oath and may be excused when questioning is completed. If witnesses are to be recalled, they should be informed when their presence will be required.

5. Closing the Hearing

After the parties and all the witnesses have testified, the Chairperson adjourns the hearing. If the hearing is to be continued, the Chairperson calls for a recess until the next scheduled date and time.

VI. FINDINGS, DECISIONS, AND RECOMMENDATIONS

The Committee must determine whether the preponderance of the facts support the allegation of discrimination. The Committee must prepare the written findings, decisions, and recommendations. The findings should reflect those facts which the Committee relied on in reaching its decision. The recommendations should address solutions suggested by the findings.

The EEO Review Committee Report must be submitted to the EEO Officer within five (5) days after completion of the hearing.

## VII. FORMS

1. Form RC-1: Notice of Right to an EEO Review Committee Hearing
2. Form RC-2 Request for an EEO Review Committee Hearing
3. Form RC-3: Notice of Request for an EEO Review Committee Hearing
4. Form RC-4: Request for Choice of EEO Review Committee Members
5. Form RC-5: Notice to Appear before the EEO Review Committee
6. Form RC-6: EEO Review Committee Report

TO: Complainant's Name, Complainant's Title  
FROM: Equal Employment Opportunity Officer  
SUBJECT: Notice of Right to an EEO Review Committee Hearing

This is to inform you that you have five (5) days following the receipt of this notice to file a request for an EEO Review Committee Hearing.

The EEO Review Committee serves as an impartial fact-finder and mediator. The Committee conducts a fact-finding hearing to gather the facts needed to determine whether or not an alleged discrimination has occurred. The hearing is structured to facilitate the fact-finding, decision-making and recommendation process. It is not a trial-type hearing since there is no right to examine and cross-examine witnesses, or present and object to evidence; the burden of proof is not imposed upon either party. The Committee conducts the questioning, determines who the witnesses will be, what questions will be asked, and what documents will be used. The Committee reviews and evaluates the facts overall, makes the decision as to the existence of discrimination, as alleged, and then prepares its findings, decisions, and recommendations.

If you file a request, it must be in writing and include a suggested list of witnesses you may wish the Committee to call. The Committee will decide which witnesses will be called.

You may file your request in person or by mail with the following authorized official:

EQUAL EMPLOYMENT OPPORTUNITY Officer  
Judiciary of Guam  
120 West O'Brien Drive  
Hagatna, Guam 96910

---

EQUAL EMPLOYMENT OPPORTUNITY Officer

RECEIVED BY:

---

Complainant's Name/Representative

Date: \_\_\_\_\_

1. Form RC-1 Notice of Right to an EEO Review Committee Hearing

TO: EEO Officer  
FROM: Complainant's Name  
SUBJECT: Request for an EEO Review Committee Hearing

I have received and reviewed the Investigator's Report for my case. I believe I have been discriminated against. Therefore, I want to go forward with this case. I am requesting that you arrange for an EEO Review Committee Hearing to be held in this matter.

\_\_\_\_\_  
Complainant's Signature

\_\_\_\_\_  
Date

RECEIVED BY:

\_\_\_\_\_  
EEO Officer

\_\_\_\_\_  
Date:

2. Form RC-2 Request for an EEO Review Committee Hearing

TO: ADO's Name, ADO's Title  
FROM: Equal Employment Opportunity Officer  
SUBJECT: Notice of Request for EEO Review Committee Hearing

This is to inform you that "Complainant's Name" has filed a request with the Equal Employment Opportunity Officer for an EEO Review Committee Hearing on "Date of Request".

The EEO Review Committee serves as an impartial fact-finder and mediator. The Committee conducts a fact-finding hearing to gather the facts needed to determine whether or not an alleged discrimination has occurred. The hearing is structured to facilitate the fact-finding, decision-making and recommendation process. It is not a trial-type hearing since there is no right to examine and cross-examine witnesses, or present and object to evidence; the burden of proof is not imposed upon either party. The Committee conducts the questioning, determines who the witnesses will be, what questions will be asked, and what documents will be used. The Committee reviews and evaluates the facts overall, makes the decision as to the existence of discrimination, as alleged, and then prepares its findings, decisions, and recommendations.

You must submit to the EEO Officer a suggested list of witnesses you may wish the Committee to call no later than five (5) days following the receipt of this notice.

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EQUAL EMPLOYMENT OPPORTUNITY Officer

RECEIVED BY:

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ADO'S NAME

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Date:

**Request for Choice of EEO Review Committee Members**

TO: Complainant's/ADO'S Name, Title  
FROM: Equal Employment Opportunity Officer  
SUBJECT: Request for Choice of EEO Review Committee Members

Pursuant to the Equal Employment Opportunity Discrimination Complaint Process, you must select three (3) names, in order of preference, from the list presented below, and you must submit the names of your selectees to me within three (3) days after the date you receive this list. One of the people you select will be chosen to become a member of the EEO Review Committee which will hear this case. If you fail to submit the names of your selectees within the 3-day period, you will forfeit the privilege of choosing a Committee Member and therefore, I will make the selection.

- |    |    |
|----|----|
| 1. | 4. |
| 2. | 5. |
| 3. | 6. |

If you have any questions, please contact me at \_\_\_\_\_.

Equal Employment Opportunity Officer Received by:

\_\_\_\_\_  
Name, Title

RECEIVED BY:

\_\_\_\_\_  
Name & Signature

\_\_\_\_\_  
Date:

**Notice to Appear before the EEO Review Committee**

Complaint of <COMPLAINANT'S NAME>

<DATE>

TO: Complainant/ADO/Witness, Title

YOU ARE HEREBY notified to appear before the EEO Review Committee on the <DAY>, of <MONTH>, <YEAR>, at <TIME> a.m. /p.m. in the <PLACE> in reference to the above named case.

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Equal Employment Opportunity Officer

**EEO Review Committee Report**  
Complaint of <COMPLAINANT'S NAME>

**I. DESCRIPTION OF COMPLAINT**

- Title of Complainant's position:
- Name of Division and Section involved in complaint:
- Basis of alleged complaint
  - a. Kind of discrimination alleged
  - b. Nature of action, decision, or condition giving rise to complaint:
- Date(s) of alleged discrimination:
- Identity of Alleged Discriminatory Official(s) (Name & Title):

**II. DESCRIPTION OF REVIEW COMMITTEE HEARING**

- Date case received by committee:
- Chairperson (Name & Title):
- Review Committee Members (Names & Titles):
- Place(s) of hearing(s):
- Date(s) of hearing(s):

**III. EXHIBITS EXAMINED**

- Description of exhibit(s)

**IV. WITNESSES CALLED**

- Name, Title, & Date Called for each witness

**V. FACTS DEVELOPED**

**VI. FINDINGS**

**VII. RECOMMENDATIONS**

\_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

\_\_\_\_\_  
Committee Member

Date: \_\_\_\_\_

\_\_\_\_\_  
Committee Member

Date: \_\_\_\_\_

**JUDICIAL COUNCIL**  
**EQUAL EMPLOYMENT**  
**OPPORTUNITY REVIEW BOARD**

## **EEO REVIEW BOARD - JUDICIAL COUNCIL**

### I. LEGAL AUTHORITY

The Judicial Council as established by Title 7 Guam Code Annotated - Civil Procedure, Division 1, Court and Judicial Officers, Chapter 5 will serve as the EEO Review Board. The Judicial Council serving as the EEO Review Board will hear cases of alleged discrimination based on race, religion, creed, color, sex, national origin, marital status, disability, age, or political affiliation.

### II. REQUEST FOR HEARING

A Complainant who has had a complaint processed through the earlier phases of the complaint procedures (Mediation, Investigation, Review Committee Hearing) may file a written request for a hearing on the complaint as provided in the discrimination complaint procedures.

### III. AMENDMENT OF COMPLAINT

The Complainant may amend the basis (race, color, sex, religion, creed, national origin, marital status, disability, age, or political affiliation) of the complaint once, as a matter of right, at the time of filing a request for a hearing. Thereafter, any further amendments will be at the discretion of the EEO Review Board.

### IV. SUBMITTAL OF DOCUMENTS AND WITNESS LIST

The Complainant and ADO must submit a list of witnesses and a set of documents they propose to submit as exhibits to the EEO Review Board for each member of the Board. A copy of the list and an additional set of documents must be provided to the opposing party. The list and documents must be submitted at least ten (10) days prior to the scheduled date set for the hearing.

### V. PRE-HEARING CONFERENCE

After the exchange of documents and list of witnesses by the parties, the EEO Review Board may require the Complainant and ADO to confer prior to the hearing. The objectives of the conference are to:

1. Define or limit the issues to be presented at the hearing.
2. Enter into stipulations.
3. Provide the opportunity to settle the case.

The conference may be held before the EEO Review Board or its legal counsel, or may be between the parties themselves. All stipulations and agreements will be made a part of the record.

## VI. HEARING PROCESS

1. The parties are referred to as the Complainant and Respondent.
2. Prior to presenting their opening statements, the Complainant and Respondent may make preliminary motions or requests.
3. If there are no preliminary motions or requests, or if they have been acted upon and the hearing is to continue as scheduled, the Complainant and Respondent may then make their respective opening statements.
4. After the opening statements, the Complainant may present the case by calling, examining, and re-examining witnesses, and by introducing documentary evidence for admission into the record.
5. Respondent will have the right to cross and re-cross examine the witnesses, and to object to the admission of evidence where appropriate.
6. After Complainant has completed the presentation of the case, the EEO Review Board will adjourn the hearing and decide in executive session whether Complainant has established a PRIMA FACIE case of discrimination. A PRIMA FACIE case is made when the Complainant has produced sufficient evidence which, if uncontradicted, proves the existence of discrimination and precludes the dismissal of the complaint at this stage.
7. If Complainant failed to prove a PRIMA FACIE case, the complaint will be dismissed.
8. If Complainant established a PRIMA FACIE case, the hearing will continue. The Respondent may then rebut by calling, examining, and re-examining witnesses, and by introducing documentary evidence for admission into the record. Complainant will have the right to cross and re-cross examine the witnesses, and to object to the admission of evidence where appropriate.
9. After Respondent has completed the presentation of the case, the Complainant may present additional testimonies and documentary evidence. Respondent may do likewise in rebuttal. When both parties have concluded their additional presentations, each may present closing arguments to conclude the hearing. The EEO Review Board will render a written decision which it will submit to the EEO Officer within thirty (30) days from the date the hearing was concluded.
10. The process listed in this section is the basic adjudication process and does not preempt the authority of the presiding officer or the EEO Review Board to vary or expand upon these procedures in the interest of a fair and expedient hearing.

## VII. WITHDRAWAL OF COMPLAINT

A Complainant who withdraws a complaint which is properly before the EEO Review Board is barred from bringing the complaint before the EEO Review Board after sixty (60) calendar days from the date of withdrawal.

## VIII. SETTLEMENTS

Any settlement or agreement entered into between Complainant and Respondent which serves to forego adjudication of the complaint must be filed with the EEO Officer within five (5) workdays from the date the agreement is ratified. The settlement or agreement will serve as a notice to withdraw the complaint and will bar the railing of the complaint after sixty (60) calendar days from the date the settlement or agreement is received.

A settlement or agreement referred to in this section is considered to be a contract between the parties and will not require the endorsement or signatures of the members of the EEO Review Board; any action for enforcement of the contract must be through the Judiciary of Guam.

## IX. APPEAL

Any decision rendered by the EEO Review Board, after a hearing on the merits of the complaint, may be appealed to the Superior Court of Guam for the purposes of judicial review, within thirty (30) calendar days from the date the decision is received by the appealing party, unless otherwise provided by statute.

## X. FORMS

1. Form RB-1 Notice of Right to a Hearing before the EEO Review Board
2. Form RB-2 Request for a Hearing before the EEO Review Board
3. Form RB-3 Notice of Request for a Hearing before the EEO Review Board

TO: Complainant's Name, Complainant's Title

FROM: Equal Employment Opportunity Officer

SUBJECT: Notice of Right to an EEO Review Board Hearing

This is to inform you that you have five (5) days following the receipt of this notice to file a request for an EEO Review Board Hearing.

The EEO Review Board serves as an impartial fact-finder and adjudicator. The EEO Review Board conducts a formal hearing to gather the facts needed to determine whether or not an alleged discrimination has occurred. The hearing is structured to facilitate the fact-finding, decision-making and adjudication process. It is a trial-type hearing. You will have the right to examine and cross-examine witnesses, and to present and object to evidence. The burden of proof is placed upon you to establish a Prima Facie case. You will call witnesses, conduct questioning, and present documents into evidence. The EEO Review Board reviews and evaluates the facts overall, makes the decision as to the existence of discrimination, as alleged, and then prepares its decision.

If you file a request, it must be in writing, and must include a list of witnesses you may intend to call, and a list of documents you intend to submit as exhibits with enough copies for each member of the EEO Review Board and for the opposing party. You have the right to amend the basis of your complaint at this time.

You may file your request in person or by mail with the following authorized official:

EQUAL EMPLOYMENT OPPORTUNITY Officer  
Judiciary of Guam  
120 West O'Brien Drive  
Hagatna, Guam 96910

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EQUAL EMPLOYMENT OPPORTUNITY Officer

RECEIVED BY:

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Complainant's Name/Representative

Date: \_\_\_\_\_

1. Form RB-1 Notice of Right to a Hearing before the EEO Review Board

TO: EEO Officer

FROM: Complainant's Name, Complainant's Title

SUBJECT: Request for a Hearing before the EEO Review Board

I have received the report produced by the EEO Review Committee and have reviewed their recommendations for my case. I do not believe that these recommendations adequately address the issue which I brought before the EEO Review Committee. I am therefore requesting a hearing before the EEO Review Board.

\_\_\_\_\_  
Complainant's Name

Date: \_\_\_\_\_

RECEIVED BY:

\_\_\_\_\_  
EEO Officer's Name

Date: \_\_\_\_\_

2. Form RB-2 Request for a Hearing before the EEO Review Board

TO: ADO's Name, ADO's Title

FROM: Equal Employment Opportunity Officer

SUBJECT: Notice of Request for EEO Review Board Hearing

This is to inform you that "Complainant's Name" has filed a request with the Equal Employment Opportunity Officer for an EEO Review Committee Hearing on "Date of Request".

The EEO Review Board serves as an impartial fact-finder and adjudicator. The EEO Review Board conducts a formal hearing to gather the facts needed to determine whether or not an alleged discrimination has occurred. The hearing is structured to facilitate the fact-finding, decision-making and adjudication process. It is a trial-type hearing. You will have the right to examine and cross-examine witnesses, and to present and object to evidence. You will call witnesses, conduct questioning, and present documents into evidence. The EEO Review Board reviews and evaluates the facts overall, makes the decision as to the existence of discrimination, as alleged, and then prepares its decision.

You have five (5) days from the receipt of this notice to submit a list of witnesses you intend to call, and a list of documents you intend to submit as exhibits with enough copies for each member of the EEO Review Board and for the opposing party.

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EQUAL EMPLOYMENT OPPORTUNITY Officer

RECEIVED BY:

\_\_\_\_\_  
ADO'S NAME

Date: \_\_\_\_\_

3. Form RB-3 Notice of Request for a Hearing before the EEO Review Board

## GLOSSARY

**ADO-Alleged Discriminatory Official:** A Judiciary of Guam administrator, division head, supervisor, employee, vendor, or patron alleged to have discriminated against a complainant.

**Advocate:** A person who pleads on the behalf of another person.

**Complainant:** Any person who may be an employee of the Judiciary of Guam or an applicant for any position within the Judiciary of Guam who alleges discrimination in employment practices, policies, or procedures.

**Consolidated Complaints:** Complaints arising from some facts or transactions and alleging similar claims or interests which are joined by the EEO Mediator for efficiency.

**Days:** Work days excluding Holidays.

**Discrimination:** In an employment situation, discrimination is defined as showing favoritism or bias against any employee or applicant for employment because of race, color, religion, creed, sex, national origin, marital status, disability, age, or political affiliation. It is a practice or policy which results in differential treatment of a protected individual or an adverse impact upon a protected group based on any of the above factors.

There are four general categories or theories of discrimination:

1. **Disparate treatment:** Treating people differently because of race, color, sex, etc.
2. **Disparate effect/impact:** This occurs when a person is initially treated the same way as others. However, the result of this kind of treatment is different. It is no longer sufficient to determine that what is done to one group is the same as that which is done to another group.
3. It is no longer sufficient to establish that no unequal thing was done. It is now necessary to determine whether equal kinds of practices, or treatments, result in unequal effects, and to determine whether these practices were necessary and/or relevant.
4. **Present effects of past discrimination:** Policies or practices which perpetuate in the present the effects of past discrimination.
5. **Failure to make reasonable accommodations for religious beliefs or disability.**

**Impartial:** A person who is not biased toward one side or another is impartial. A fair person.

**EEO Facilitator:** A person trained in EEO procedures who serves as a bridge between the Complainant and ADO in an effort to resolve the problem on an informal basis.

**EEO Investigator:** A person trained in EEO procedures who serve as a fortifier in assembling sufficient information relevant to the complaint or which would provide a basis for determining whether the action complained of was related or unrelated to a prohibited discrimination factor.

**EEO Officer:** A person trained in EEO procedures who serve as the overall coordinator of the EEO Program in the Judiciary of Guam.

**EEO Review Committee:** The EEO Review Committee hears cases to determine the validity of a discrimination complaint. The committee is composed of three members who have been trained in EEO procedures.

**EEO Review Board:** The EEO Review Board hears and makes final decisions on EEO cases that have not been resolved at lower levels.

**Sexual Harassment:**

1. **Hostile Environment:** A form of sexual harassment where acts by people create an intimidating and offensive environment which interferes with an individual's work performance.
2. **Quid Pro Quo:** A form of sexual harassment in which submission to or rejection of sexually harassing conduct is used as the basis for employment decisions for the victim.
3. **Unwelcome:** A key term in determining whether an incident is sexual harassment. "Unwelcome" means that the conduct was not willingly permitted or admitted.

**Prima Facie Case:** There is sufficient evidence to raise the presumption of a case, unless this evidence is rebutted

