

DISTRICT OF COLUMBIA
Human Resources Division

District of Columbia Courts Comprehensive Personnel Policies
Administrative Instruction for Policies 400 and 410

SUBJECT: Equal Employment Opportunity

Date: May 2015

I. Purpose. The purpose of this administrative instruction is to advise current and former employees and applicants for employment on the complaint procedures relating to both the Courts' Equal Employment Opportunity (EEO) Program (Personnel Policy 400) and Sexual Harassment policy (Personnel Policy 410). The aggrieved person must exhaust the informal discrimination complaint process (Appendix 1) before filing a formal discrimination complaint (Appendix 2). If an employee pursues a complaint process other than that described in this policy, he/she shall be deemed to have waived the rights to have such complaint processed in accordance with this policy. The parties involved in a potential discrimination complaint have the option of requesting mediation at any stage of the discrimination complaint process.

- A. When necessary, the Executive Officer is the next level reviewer for complaint dismissals, reasonable cause determinations, and final EEO decisions, except when the Executive Officer is the named offender in the EEO complaint. In that case, the Chief Judge of the Court of Appeals will replace the Executive Officer as the next level reviewer throughout this administrative instruction.
- B. All references in these instructions to "days" refer to calendar days, except where otherwise stated.

II. Objectives. The objectives of the informal discrimination process are to:

- A. Provide a forum for addressing discrimination allegations in a context that facilitates resolution at the lowest level;
- B. Frame the issues of the allegations for more formal fact-finding, if informal resolution is unsuccessful; and
- C. Provide the first opportunity to participate in mediation.

III. Informal Complaint Process

- A. **Timeliness.** Any complainant alleging discrimination who elects to take advantage of the Courts' complaint process shall initiate contact with the EEO Office (for intake and EEO

counseling) within 45 days of the date of the alleged act or when the complainant reasonably should have become aware of it.

- B. Extension of Time for Initial Contact. The EEO Officer may extend the 45-day time limit when the complainant shows:
 - 1. Lack of notice about the time limit in the case of applicants for employment:
 - 2. A reasonable lack of awareness that the alleged act or personnel action occurred:
 - 3. An inability to contact the EEO Officer within the time limits because of circumstances beyond his/her control and despite due diligence: or
 - 4. Other reasons considered sufficient by the EEO Officer. The time limit including any extension should not exceed 90 days.
- C. Initial Intake Counseling Session. At the initial intake counseling session, an advisement of rights and responsibilities will be explained to the complainant.
- D. Voluntary mediation under the DC Courts' Employee Mediation Program is available at any time during the informal stage of the complaint process as a means to resolve the matter. Mediation is undertaken only when both parties agree to participate. A complainant who desires to participate in the Employee Mediation Program may make the request to the EEO Officer. The EEO Officer will make a determination of whether mediation is appropriate to address the complainant's allegations. Mediation may stay the complaint process.
- E. Stay of Personnel Actions. Proposed personnel actions may be stayed by the Executive Officer or the applicable Clerk of the Court upon recommendation of the EEO Officer during all or part of the complaint process.
- F. Informal Inquiry. Within thirty (30) days of initial intake counseling session, the EEO Office shall conduct an informal inquiry into the complainant's allegations for the purpose of informal fact-finding and/or informal resolution of the matter. If additional time is required, the EEO Officer may extend this time period by an additional thirty (30) days provided notification is given to all parties.
- G. Resolution Agreement. If a complaint has been resolved, a written Resolution Agreement outlining any remedies or actions taken shall be forwarded to all parties.
- H. Final Counseling Session. The final counseling session shall include a review of a written report that summarizes actions taken, including Employee Mediation that was attempted or informal resolution achieved. A copy of the report and any resolution agreement shall be forwarded to all applicable parties.

- I. Notice of Right to File Formal Discrimination Complaint. If the matter is not resolved, the complainant shall receive notice, in writing, from the EEO Officer of the inability to resolve the matter informally and the employee's right to file a formal discrimination complaint. The notice shall inform the complainant of his/her right to:
 1. File a formal complaint within 15 days of receipt of the notice;
 2. Name the appropriate official with whom to file a complaint; and
 3. The complainant's duty to inform the Court immediately if the complainant retains counsel or a representative.

IV. FORMAL COMPLAINT PROCESS

- A. Filing a Formal Complaint. A formal EEO complaint shall be filed by an individual claiming to be personally aggrieved; complaints will not be accepted from any organizations or their representatives. A formal complaint will be processed when:
 1. It is in writing and filed within 15 days of receipt of the Notice of Right to File Formal Discriminatory Complaint. The EEO Officer may extend the 15-day period for good cause shown, but in no instance shall this period of time exceed 45 days; or
 2. The EEO Officer files a complaint on behalf of unnamed complainants or affected persons where appropriate and combines cases for reasons of administrative efficiency. The EEO Officer may also investigate complaints for good cause and without prompting.
- B. Representation of Parties. The complainant has the right to consult with a representative of his/her choice which may include legal counsel retained at his/her own expense.
- C. EEO Determination. Within 15 days of receipt of the complaint, the EEO Officer shall notify the parties, in writing, of the decision to dismiss or accept the complaint. If the decision is to dismiss, the EEO Officer shall provide the reason(s) for dismissal and notify the complainant of his or her appeal rights.
- D. Dismissal. If it is determined that the complaint is not an EEO matter, or if there is no reasonable cause to support the complainant's allegations, the EEO Officer shall notify the parties with a dismissal letter that states the following reasons for the dismissal:
 1. Failure to state a claim: The complaint does not allege a violation or basis of discrimination covered in the Equal Employment Opportunity Policy of the DC Courts, or does not allege personal harm or loss to the complainant.
 2. Frivolous: The complaint lacks merit and/or is filed to harass, delay, or misuse the process as intended;

3. Unduly repetitive: The complaint relies on the same or substantially similar facts raised in a previous complaint or which were resolved in another forum or context, in which complainant was a party. Complaints are not repetitive or identical simply because they are related.
4. Untimely: The complaint was not timely filed. Dismissal is not appropriate when the complainant was:
 - a. Not notified or aware of the time limits; or
 - b. Prevented from timely filing the complaint by circumstances beyond the complainant's control.

The complainant may, within 10 work days, request a review of the dismissal letter by the Executive Officer. The Executive Officer shall issue a review decision within 15 work days.

- E. Acceptance. If it is determined the complaint is an EEO matter, the EEO Officer shall notify the parties with an acceptance letter that states:
 1. A formal investigation of the complaint is about to commence;
 2. The issue(s) identified for inquiry;
 3. An explanation of the complainant's rights; and
 4. Notice to the named respondent in the complaint that he/she may submit a position statement within 10 work days to the EEO Officer.
- F. Voluntary Mediation. Voluntary mediation under the DC Courts' Employee Mediation Program is available at any time during the formal stage of the complaint process as a means of resolving the matter. Mediation is utilized only when both parties agree to participate. A complainant who desires to participate in the Employee Mediation Program may make the request to the EEO Officer. The EEO Officer will make a determination of whether mediation is appropriate to address the complainant's allegations. Mediation may stay the process.
- G. Stay of Personnel Actions. Proposed personnel actions may be stayed by the Executive Officer or the applicable Clerk of the Court upon recommendation of the EEO Officer during all or part of the formal complaint process.
- H. Formal Investigation. The EEO Officer shall complete the investigation and render the reasonable cause determination within 180 days of the filing date. A timely amended complaint may result in the reasonable cause determination being completed within 120 days after the last amendment. The EEO Officer (or designee) may use a variety of formal fact-finding methods, including but not limited to an exchange of letters or

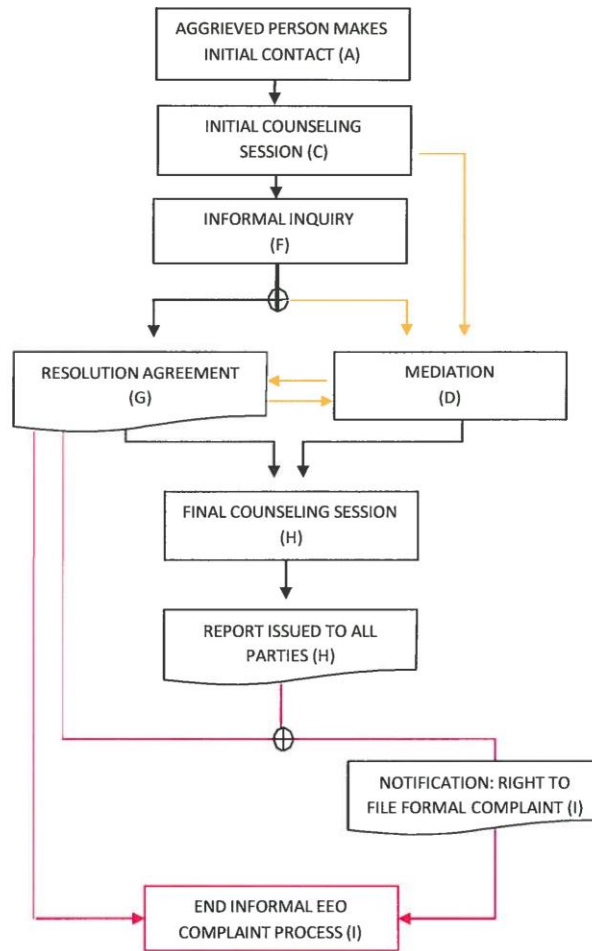
memoranda, interrogatories, investigations, factfinding conferences, or any other fact-finding method that efficiently and thoroughly addresses the matters at issue.

- I. Final Determination of Reasonable Cause. Upon conclusion of the formal investigation, the EEO Officer shall provide the parties and the division head with:
 1. A letter of the final reasonable cause determination;
 2. A copy of the investigative report upon request;
 3. Notification to the complainant of his/her rights; and
 4. Notification to the division head that a statement may be filed with the Executive Officer with copies forwarded to the complainant and EEO Officer within 10 working days.

- J. Next Level Review. The next level review process is as follows:
 1. If no reasonable cause determination is found, the complainant may request a review by the Executive Officer, and forward copies of such request to the EEO Officer, within 10 working days.
 - a. Within 15 working days of receipt of the request for next level review, the Executive Officer will issue the final determination to the complainant and the EEO Officer. This notification may include remedial actions to be implemented.
 - b. The complainant has 10 working days to notify the EEO Officer, division head, and the Executive Officer if he or she accepts or rejects the Executive Officer's determination including what sections.
 2. If a reasonable cause determination is found, the Executive Officer will propose a remedy. The complainant must inform the Executive Officer within 10 working days if he or she accepts or rejects the remedy.
 3. If the complainant rejects the Executive Officer's remedy, the complainant may request a hearing at that time.
 - a. If the Executive Officer grants the request, a hearing will be directed.
 - b. If the Executive Officer denies the request, the complainant will be notified of his or her rights.
 4. If the complainant fails to notify the Executive Officer whether he or she accepts or rejects the remedy, the Executive Officer may administer the original remedy proposed.

- K. Hearings. If the Executive Officer directs a hearing, a Hearing Officer shall conduct the hearing to establish a complete and accurate record of the events raised in the complaint and decide whether discrimination occurred. The Hearing Officer will administer any and all hearing instructions.
1. Procedure for Selecting the EEO Hearing Officer. The Executive Officer shall provide the complainant with the names of 2 potential Hearing Officers. The complainant shall reply to the Executive Officer with his or her selection within 5 working days.
 2. Timeliness of Hearings. Hearings should be scheduled within 60 days of the Hearing Officer's selection.
 3. Hearing Officer's Recommendations. The Hearing Officer shall submit a written report with recommendations, including any remedial actions, to the Executive Officer within 30 days of the completion of the hearing.
- L. Final Decision. The Executive Officer may accept, reject, or modify the recommendations and shall enter a final decision in writing. The final decision shall be transmitted to the parties, the division head, the EEO Officer and the Clerk of the appropriate court.

APPENDIX 1: DC COURTS' INFORMAL EEO COMPLAINT PROCESS



Legend



A document is produced to all parties.



This symbol means "or."



Each rectangle represents a stage in the formal complaint process

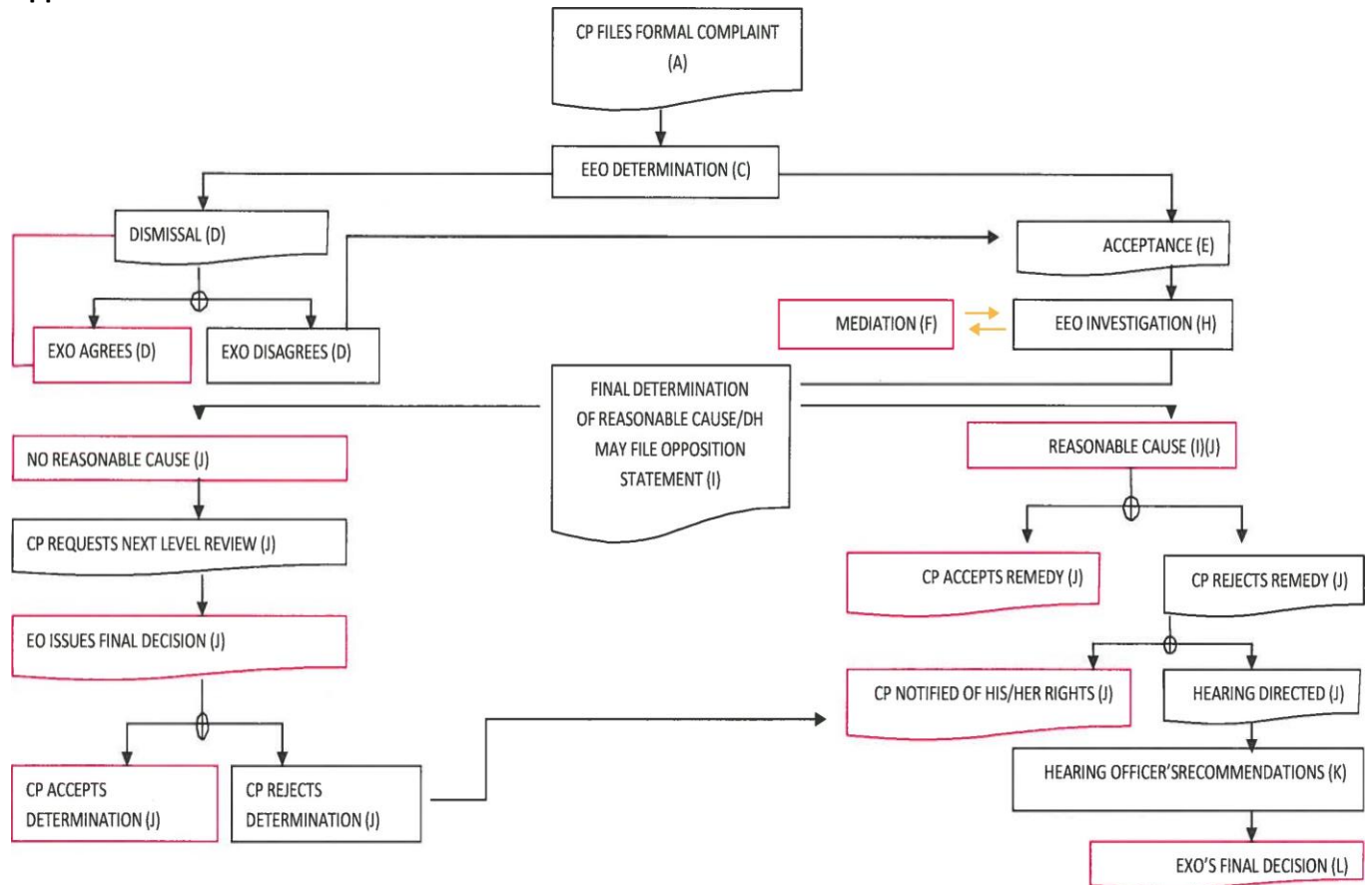


Yellow arrows represent the stay mediation will have on the process.

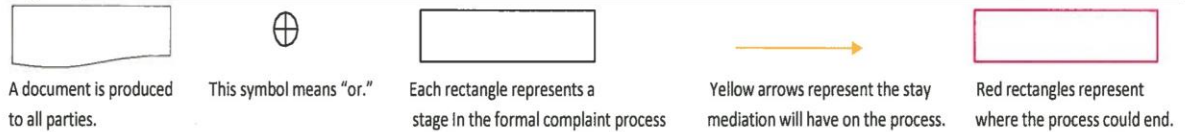


Red rectangles represent where the process could end.

Appendix 2: DC Courts' Formal EEO Process



Legend



EXO = Executive Officer EEO = EQUAL EMPLOYMENT OFFICER CP= COMPLAINANT DH= DIVISION HEAD