



**BEFORE THE 2014 JUDICIAL COUNCIL OF GUAM**

**RESOLUTION NO. JC14-008**

**RELATIVE TO APPROVAL of the JUDICIARY OF GUAM EQUAL EMPLOYMENT OPPORTUNITY POLICY AND DISCRIMINATION CHARGE PROCEDURE**

**WHEREAS**, at the February 20, 2014 monthly meeting of the Judicial Council, the Chairman of the Judicial Council announced that the Judiciary Equal Employment Opportunity (“EEO”) Discrimination Complaint Process, adopted by the Judiciary in April 1997, had been in the process of being revised by EEO personnel at the Judiciary; and

**WHEREAS**, on March 10, 2014, the revised EEO Policy and Discrimination Charge Procedure was circulated to all Judicial Council members, and at the March 20, 2014, monthly meeting of the Judicial Council, the revised EEO Policy and Discrimination Charge Procedure were taken up for discussion. Comments were taken and minor revisions were made. The proposed revised Policy and Procedure incorporating those comments are appended hereto as Exhibit “A;” and

**WHEREAS**, at the April 17, 2014, monthly meeting of the Judicial Council, which continued on April 24, 2014, after discussion and minor revisions, the newly Revised EEO Policy and Discrimination Charge Procedure were found to be acceptable and were adopted;

**NOW THEREFORE BE IT RESOLVED**, that the Judicial Council hereby APPROVES the Judiciary of Guam EEO Policy and Discrimination Charge Procedure, attached hereto, which shall apply to any EEO Discrimination Charge filed on or after the date of this adoption.

**DULY ADOPTED** this 17<sup>th</sup> day of April, 2014 at a duly-noticed meeting of the Judicial Council of Guam.

A handwritten signature in blue ink that reads "R. Torres".

\_\_\_\_\_  
**ROBERT J. TORRES, Chairman**

Dated: \_\_\_\_\_

4/9/14

ATTEST:

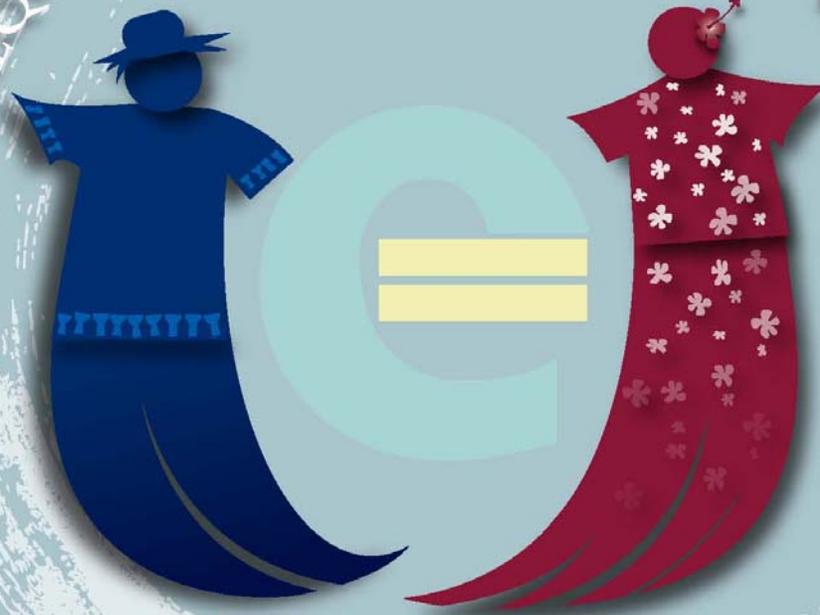
A handwritten signature in blue ink that reads "Joanna S. McDonald".

\_\_\_\_\_  
**JOANNA S. McDONALD, Assistant Secretary**

Dated: \_\_\_\_\_

6/9/14

EQUAL EMPLOYMENT OPPORTUNITY  
"EEO"



**EEO POLICY AND  
DISCRIMINATION  
CHARGE PROCEDURE**



## **EQUAL EMPLOYMENT OPPORTUNITY (EEO) POLICY**

- I. The term Equal Employment Opportunity, hereinafter referred to as “EEO,” is the right of all employees, applicants, and interns to work and be interviewed in an environment free from all forms of discrimination and harassment that are unlawful in accordance with applicable local and federal laws. Discrimination and harassment outside of the workplace may also be unlawful if there is a link with the workplace. The Judiciary of Guam, hereinafter referred to as “Judiciary,” is committed to ensuring the compliance of these EEO regulations and prohibiting unlawful discrimination or harassment based on the following protected classifications:
  1. **Age**
  2. **Disability**
  3. **Equal Pay/Compensation**
  4. **Genetic Information**
  5. **Harassment**
  6. **National Origin**
  7. **Pregnancy**
  8. **Race/Color**
  9. **Religion**
  10. **Retaliation**
  11. **Sex**
  12. **Sexual Harassment**
  13. **Any other classification protected by law**
  
- II. In addition to this Policy, the Judiciary has two other EEO policies in place: (1) Discrimination and Harassment Prevention Policy and (2) EEO Policies and Procedures for Program Beneficiaries. Complaints from employees, job applicants, or interns will be addressed utilizing the Discrimination Charge Procedure contained herein. Complaints from clients, customers, program participants or consumers of the Judiciary and sub-recipients implementing programs funded by U.S. Department of Justice Grant Programs will be addressed utilizing the EEO Policies and Procedures for Program Beneficiaries.
  
- III. The Judiciary is an equal opportunity provider and employer, and is firmly committed to non-discrimination in all employment decisions and practices. The only exception is if a *Bona Fide Occupational Qualification* (BFOQ) exists. A BFOQ is a selective factor, such as sex/gender, that is required for a job that would otherwise be considered discrimination if it were not necessary to perform the job in question.
  
- IV. Upon applying for a job, having accepted a position, or already employed at the Judiciary, an individual with a disability, as defined by federal law, may request a reasonable accommodation. Such accommodation may be granted if the individual is qualified to safely perform all essential functions of the job and provided that it will not pose an undue hardship to the Judiciary.

- V. It is the responsibility of all employees and interns to conduct themselves in a manner that contributes to a workplace environment that is free of unlawful discrimination and harassment. The Judiciary reminds all employees and interns to treat everyone with respect and be professional at all times.
- VI. The Judiciary encourages individuals who believe that they may have experienced discrimination or harassment in violation of Judiciary policy, or are aware that another person has allegedly engaged in such discrimination or harassment, to report such information utilizing the Discrimination Charge Procedure contained herein. The failure to report workplace discrimination or harassment severely restricts the ability of the Judiciary to identify and take remedial action to stop such conduct from continuing, and to prevent further harm.
- VII. Retaliation against employees, applicants, interns, or witnesses for filing a charge or participating in the charge process is prohibited.
- VIII. The Discrimination Charge Procedure is to be utilized as a guideline for corrective action. It sets forth the process and procedure involved in the processing of a discrimination charge based on the protected classifications. The charge procedure is intended to benefit all applicants, interns, and employees, classified or unclassified, consistent with local and/or federal statutes. The person filing the charge shall be referred to as the “Charging Party.” The person who is alleged to have acted discriminatorily shall be referred to as the “Respondent.”
- IX. The Judiciary recognizes the concern employees have regarding their privacy and the confidentiality of personnel information. The Judiciary also recognizes that both the Charging Party and Respondent deserve a fair investigation. Therefore, confidentiality will be maintained to the extent possible and on a need to know basis.
- X. The Judiciary will take prompt and appropriate action in response to any charge showing a violation of policy. Although you do not have to be represented by an attorney while a charge is being handled, you have a right, and may wish to retain an attorney to represent you. If you do retain an attorney, please inform the Judiciary of your attorney’s name, address and phone number, and ask your attorney to confirm such representation in writing. In addition to this procedure, charges may be filed with the Equal Employment Opportunity Commission (EEOC) at the Honolulu Local Office or the Guam Department of Labor’s Fair Employment Practice Office.

# **DISCRIMINATION CHARGE PROCEDURE**

## **I. DUTY TO REPORT AND INVESTIGATE ALLEGATIONS**

The Judiciary of Guam is legally obligated to investigate all allegations that concern possible EEO violations relative to workplace discrimination and harassment. These EEO concerns may be brought forward by filing a charge or through a third party; namely, someone other than the person against whom the EEO violation was made, such as a Supervisor, Division Head, or Manager.

Supervisors, Division Heads, and Managers are held to a higher liability standard. A Supervisor is defined as any individual who is or reasonably appears to be in a position of workplace authority or control over another individual. Due to the serious legal implications, a Supervisor, Division Head, or Manager has an absolute responsibility to report any EEO concerns or alleged violations to the EEO Officer and the Administrator of the Courts hereinafter referred to as "AOC," and/or his/her representative, hereinafter referred to as "Management," even if he or she is asked not to report the matter or the parties involved are not under their supervision. Supervisors, Division Heads, and Managers may be subjected to disciplinary action for failure to report.

The very nature of workplace discrimination and harassment may make it difficult or impossible to substantiate a particular allegation. The Judiciary recognizes that the inability to corroborate or substantiate an allegation does not necessarily mean the allegation was false. However, where it is determined that an individual has made an allegation in willful disregard for the truth or has been intentionally dishonest, that individual may be subject to disciplinary action.

The EEO Officer or the designated alternate is responsible to facilitate this procedure and therefore does not advocate or represent the Charging Party, Respondent, nor Management. If a charge is against any of the parties who facilitate this procedure (i.e. EEO Officer or Management), the charge should be filed or the Investigator's Report should be transmitted to that individual's immediate Supervisor. For example, if a charge is against the EEO Officer, the charge should be filed with the AOC. If the charge is against the AOC, the Investigator's Report shall be transmitted to the Chief Justice for disposition.

## **II. DETERMINATION OF JURISDICTION**

Upon the presentation of a possible EEO concern to the EEO Officer directly or via a Supervisor, Division Head, or Manager, the EEO Officer shall first confer with the AOC and/or Management. The EEO Officer and Management will then meet with the parties involved separately in order to make a determination whether the concern is covered under a

protected classification by EEO law. If the concern involves an EEO protected classification, the Discrimination Charge Procedure will be invoked. The EEO Officer will assign a case number to the EEO Concern that starts with the year, i.e., "EEO Case No. 2014-xx." If the concern does not involve one of the EEO protected classifications, this conclusion shall be communicated in writing by Management to the EEO Officer and the matter thereafter will be referred to the appropriate non-EEO process, if applicable.

### **III. INTERIM MEASURES**

After a concern is brought to the EEO Officer's and/or Management's attention, interim steps, such as a temporary employee reassignment may be taken pending the completion of the Investigation. Interim measures are neither disciplinary action nor an indication of belief regarding the truth of allegations or the outcome of the Investigation.

### **IV. STEPS IN PURSUING A DISCRIMINATION CHARGE**

1. Investigation and Report to AOC
2. Appeal to Judicial Council

#### **1. INVESTIGATION AND REPORT TO AOC**

- a. Charging Party must contact the EEO Officer within thirty (30) business days after becoming aware of the alleged discriminatory action or thirty (30) business days after the effective date of a personnel action. Charges received after the thirty (30) business day period shall be reviewed on a case by case basis by the EEO Officer for inclusion in the Discrimination Charge Procedure.
- b. A Discrimination Charge shall be submitted to the EEO Officer and a copy provided to the AOC, using the "EEO Discrimination Charge Form" (Form EEO-1).
- c. If the EEO Officer and/or Management has determined that the charge is an EEO matter pursuant to Subpart II above (Determination of Jurisdiction), the EEO Officer will secure the assignment of an EEO Investigator and provide the Investigator with an "Authorization to Investigate Form" (Form EEO-2) within three (3) business days of the receipt of a Discrimination Charge. The EEO Officer will select an EEO Investigator from a pool of trained Investigators who have undergone in-house EEO Investigation Training.
- d. Upon assignment, the Investigator has ten (10) business days to complete the Investigation and submit an "EEO Investigation Report" (Form EEO-3) to the EEO Officer. The Investigator's Report shall make findings of fact and

determinations regarding whether or not there was discriminatory conduct and if Judiciary Policy was violated.

- e. Extensions of the Investigation may be granted by the EEO Officer for reasonable cause.
- f. The EEO Officer will provide copies of the Investigator's Report to the Charging Party, Respondent, and AOC within three (3) business days following receipt of the Report. At the same time, the EEO Officer will provide the Charging Party with the "Notice of Right to Appeal to the Judicial Council" (Form EEO-4).
- g. The AOC must accept, reject, or "accept with qualifications" the Investigator's Report in writing. This written response shall be submitted to the EEO Officer within ten (10) business days after receipt of the Investigator's Report. The AOC's response to the Investigator's Report may include imposing disciplinary action, which may include adverse action, and/or other corrective measures, or other suitable modifications of the work environment. Proceeding with any such action shall be in accordance with the Personnel Rules and Regulations of the Judiciary of Guam, which confers the right of appeal of adverse actions on all employees.

## **2. APPEAL TO JUDICIAL COUNCIL**

- a. The Charging Party has five (5) business days following the receipt of the Notice of Right to Appeal to the Judicial Council (Form EEO-4) to appeal the Investigator's Report. The appeal shall be submitted in writing to the EEO Officer on the form "Appeal of EEO Investigator's Report" (Form EEO-5). The Charging Party may not change the basis of, or add to the discrimination charge, without the approval of the Judicial Council.
- b. Upon receipt of the Charging Party's Appeal, the EEO Officer shall file the Appeal with the Judicial Council Secretary, and provide a stamp received copy to the Charging Party, Respondent and the AOC. The Chairman of the Judicial Council will place the EEO Appeal on the agenda of the next scheduled Judicial Council meeting. Except for the time to file an appeal which is governed by Paragraph IV 2a above, the EEO Appeal will proceed pursuant to the Judicial Council of Guam Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions and Grievances, as adopted by the Judicial Council on December 18, 2003 and amended and re-entitled "Judicial Council of Guam Hearing Officer Procedures for the Hearing of Appeals of Adverse Actions, Grievances, and EEO Matters" on April 24,

2014. These procedures provide that the Judicial Council will appoint an Administrative Hearing Officer, whose decision is advisory and subject to adoption, with or without modification, or rejection by the Judicial Council, and subject to judicial review.





# EQUAL EMPLOYMENT OPPORTUNITY (EEO) AUTHORIZATION TO INVESTIGATE



This is to certify that the Equal Employment Opportunity (EEO) Officer has designated the undersigned, \_\_\_\_\_, whose signature appears below as EEO Investigator in the discrimination charge of \_\_\_\_\_, and as such is authorized to conduct an in-depth investigation of the charge. The Investigator's Report shall make findings of fact and determinations regarding whether or not there was discriminatory conduct.

The Judiciary of Guam recognizes that both the Charging Party and Respondent deserve a fair investigation. Therefore, the Administrator of the Courts and the EEO Officer require that all individuals cooperate with the above-named Investigator during the Investigation. Individuals having knowledge of the matter being investigated are directed to furnish testimony under oath or affirmation with the understanding that this testimony may not be completely confidential.

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

By this authorization, the Investigator shall interview any individual whose written affidavits may assist in the Investigation of the charge.

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

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

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



# EEO INVESTIGATION REPORT



## I. DESCRIPTION OF CHARGE

- Name, Title, Division, and Section of Charging Party
- Classification (Type) of alleged discrimination/harassment
- Nature of action, decision, or condition giving rise to charge
- Date(s) of alleged discrimination/harassment
- Name, Title, Division, and Section of Respondent(s)

## II. DESCRIPTION OF INVESTIGATION

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

## III. UNCOOPERATIVE PARTY(IES)

- Name
- Information sought
- Reason for not cooperating

## IV. SUMMARY OF FACTS

## V. DESCRIPTION OF EXHIBITS/AFFIDAVITS

- Exhibit 1
- Exhibit 2
- Exhibit 3

## VI. DETERMINATION AND FINDING OF FACTS

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(Investigator's Signature)

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(Date)

**(See Training Manual for EEO Investigators)**



# Judiciary of Guam

Guam Judicial Center • 120 West O'Brien Drive • Hagåtña, Guam 96910



TO: Name and Title of Charging Party

FROM: Equal Employment Opportunity (EEO) Officer

SUBJECT: Notice of Right to Appeal to the Judicial Council

This is to inform you that you have five (5) business days following the receipt of this notice to file a request for Appeal to the Judicial Council.

You may file your request with the EEO Office utilizing the Appeal of EEO Investigator's Report (Form JC-1).

\_\_\_\_\_  
EEO Officer's Signature

RECEIVED BY:

\_\_\_\_\_  
Charging Party's Signature

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



# Judiciary of Guam

Guam Judicial Center • 120 West O'Brien Drive • Hagåtña, Guam 96910



TO: Judicial Council Secretary

VIA: Equal Employment Opportunity (EEO) Officer

FROM: Name and Title of Charging Party

SUBJECT: Appeal of EEO Investigator's Report  
Ref: EEO Case Number \_\_\_\_\_

I have received the EEO Investigator's Report and have reviewed the recommendations for my case. I do not believe that these recommendations adequately address the issue(s) which I brought forward. I am therefore requesting a hearing before the Judicial Council.

\_\_\_\_\_  
Charging Party Signature

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

RECEIVED BY:

\_\_\_\_\_  
EEO Officer's Name/Signature

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