

FEB 20 1981

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF IDAHO

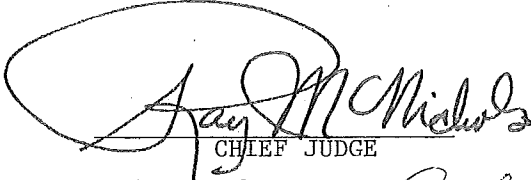
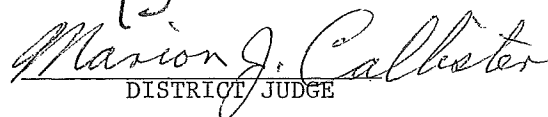
JERRY L. CLAPP, Clerk
By JS Deputy

IN THE MATTER OF AMENDING THE)
DISTRICT OF IDAHO'S AFFIRMATIVE)
ACTION PLAN)

GENERAL ORDER NO. 22

The Judges of this court hereby adopt the attached Affirmative Action Plan, as amended. This amended plan will become effective upon approval of the Judicial Council of the 9th Circuit Court of Appeals.

DATED THIS 20th DAY OF February, 1981.


ALAN McMICHAEL
CHIEF JUDGE

MARION J. CALLISTER
DISTRICT JUDGE

AFFIRMATIVE ACTION PLAN FOR THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

I. PREAMBLE

The Judicial Conference of the United States has directed that each Court adopt an affirmative action plan in conformance with the national policy of providing equal employment opportunity to all persons regardless of their race, sex, color, national origin, religion, age, or handicap. Each Court will promote equal employment opportunity through a program encompassing all facets of personnel management including recruitment, hiring, promotion, and advancement. This program, which will be periodically evaluated, is not intended to modify or reduce the qualification standards for employment in the Federal Courts as such standards have been approved by the Judicial Conference of the United States.

II. SCOPE OF COVERAGE

The Equal Employment Opportunity Program applies to all Court personnel including Judge's staff and Court officers and their staffs. Court units are defined as follows:

1. Judges' staffs, and contract court reporters
2. Clerk's office
3. Probation office

Unit #1 will be composed of the personnel on the staffs of District Court Judges and will also include all contract court reporters. Each Judge will exercise individual discretion in terms of the promotions, hiring decisions, and the advancement of the employees in their work unit. It will be the responsibility of each Judge, or their designated representative, to submit a written report to the Chief Judge of the District of Idaho in compliance with the equal opportunity reporting provisions of this Plan. The Chief Judge will act as the head of Unit #1.

Unit #2, which will be headed by the Clerk of the Court, will be composed of all personnel in the Clerk's office.

Unit #3 will be composed of all the personnel in the Probation office. The Chief Probation Officer will function as the chairperson of this unit.

III. ORGANIZATION

A. Implementation

The Court shall implement the Equal Employment Opportunity Program as specified in this Plan. On behalf of the Court, the Chief Judge will submit modifications in the Plan for Circuit Council approval.

B. Heads of Court Support Units

The heads of each Court support unit shall take reasonable steps to insure that vacancies are publicly announced to attract candidates who represent the makeup of persons available in the qualified labor market and that all hiring decisions are based solely on job-related factors. They must also see that the skills, abilities and potential of each employee are identified and developed and that all employees are given equal opportunity

for promotions through cross-training, reassignments, job restructuring, special assignments, and outside job-related training.

C. Judges and Supervisors

Judges and Supervisors, as the respective heads of their work units, must apply equal employment practices and policies. This includes giving employees the opportunity to demonstrate their skills and, where those abilities exceed general performance standards, to be recommended for personnel actions and awards recognizing such achievements. It also requires providing training programs which enable employees to develop their job skills fully.

D. Equal Employment Opportunity Coordinator, Clerk of Court

The Clerk, upon appointment from the Chief Judge, will act as the Equal Employment Opportunity Coordinator. This person will be responsible for collecting, analyzing, and consolidating the statistical data and statements prepared by each Court unit. The Coordinator will then prepare an annual report for the Chief Judge and the Administrative Office describing the Court's achievements in providing equal employment opportunity. Based upon this evaluation and report, the Coordinator will recommend modifications in the Plan to the Court. The Coordinator will also seek to informally resolve discrimination complaints and will provide EEO information to the public upon direction from the Chief Judge.

IV. PERSONNEL PRACTICES

A. Recruitment

Each Court unit will seek qualified applicants who reflect the makeup of all such persons in the relevant labor market. Each unit will use adequate means to publicize vacancies to all segments of the relevant labor market.

The relevant labor market for purposes of this Plan shall be defined as, at the minimum, the geographic area within the District of Idaho. For purposes of comparison, the demographic profile of the labor force in the State of Idaho will be extracted from either a pamphlet entitled "Affirmative Action Statistics 1980"¹ or from the data supplied by the 1980 Census and the Bureau of Labor Statistics. The District of Idaho will also utilize the "Directory of Minority, Female, Older Worker and Handicap Contacts for Idaho" in order to achieve the equal opportunity provisions of this Plan.

(a) Law Clerks and Judges' Secretaries

(1) Law Clerks are and for many years have been hired, usually annually, from among persons graduating or who have recently graduated from law schools throughout the country. The existence of these openings is well known among law schools, students, and graduates. It is the practice of the judges to hire persons with outstanding records of academic and other achievements, regardless of race, sex, color, national origin, religion, age, or personal handicap. It is therefore deemed unnecessary, for the purposes of this Plan, to give any further notice of openings.

(2) Secretaries to Judges normally serve in career-type positions in which openings rarely occur. Newly appointed judges generally bring with them the secretary they employed before appointment. Subject to these limitations, it is the policy of the Court, when a vacancy occurs in the position of secretary for a sitting judge, to give public notice of the vacancy in accordance with this Plan.

B. Public Notice of Vacancies

Subject to statutes and regulations governing the filling of positions in particular units of the Court, and subject to the specific provisions of this Plan, each unit shall take reasonable steps to give public notice of any vacancy within the labor market from which qualified applicants may reasonably be expected.

C. Hiring

Each Court unit will attempt to hire qualified applicants so as to reflect the makeup of all such persons in the relevant labor market. Each Court unit will make its hiring decisions strictly upon an evaluation of a person's qualifications and ability to perform the duties of the positions satisfactorily. However, no Court unit will employ selection criteria that disproportionately exclude minorities and women unless such criteria are job-related. Hiring of the best qualified person shall be deemed a selection based on job-related criteria.

D. Promotions

Each Court unit will promote employees according to their experience, training, and demonstrated ability to perform duties at a higher level. However, no Court unit will employ promotion criteria that disproportionately exclude minorities and women unless such criteria are job-related.

E. Advancement

Each Court unit will seek to improve the skills and abilities of the employees through cross-training, job restructuring, assignments, continuing education, and through other opportunities which may be available through the Administrative Office of the United States Courts or the training section of the Federal Judicial Center. Each Court unit will attempt to make these opportunities available to all interested employees regardless of their race, sex, color, national origin, religion, age, or physical handicap.

F. Discrimination-Free Workplace

Each Court unit will provide a discrimination-free workplace to its employees and applicants. No Court unit will tolerate verbal, physical, or other harassment, or discrimination in hiring or in terms or conditions of employment, on the basis of race, sex, religion, refusal of sexual favors, color, national origin, age, or handicap.

G. Discrimination Complaints

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

V. EVALUATIONS

Each Court unit will prepare a written report for the EEO Coordinator describing its efforts to provide equal employment opportunities in:

a) Recruitment. Each Court unit will describe briefly efforts made to bring a fair cross-section of the available labor market into its applicant pool, including a description of the employment sources used (e.g., state employment office, schools, and organizations, etc.). Each unit will also explain the methods it uses to publicize vacancies.

b) Hiring. Each Court unit will identify where its recruitment efforts resulted in the hiring of a cross-section of the pool available and will, if known, explain those instances where members of the cross-section did not accept employment with the Court when it was offered.

c) Promotions. Each Court unit will briefly describe promotional opportunities which occurred and will provide an analysis of the distribution of promotions, including a description of those persons who were promoted to supervisory positions.

d) Advancement. Each Court unit will describe what efforts were made to improve the skills and abilities of employees through cross-training, job restructuring, assignments, continuing education, and through other opportunities which may be available through the Administrative Office of the United States Courts or the training branch of the Federal Judicial Center. This report will compare the race, sex, color, national origin, religion, age, and any handicap of the personnel involved.

In addition, this evaluation should include information on factors inhibiting achievement of EEO objectives such as no vacancies, minimal numbers of qualified applicants in the relevant labor market, all persons in the unit having received all relevant training, and, if appropriate, the job-relatedness of selection and promotion criteria. This report will also include a breakdown according to the race, sex, color, national origin, religion, age, and handicap of the Court's personnel involved on forms to be provided by the Administrative Office of the United States Courts. The report will cover personnel actions occurring in the year ending June 30 and will be submitted to the EEO Coordinator by July 14 of each year.

VI. OBJECTIVES

Each Court unit will develop annually its own objectives which reflect those improvements needed in recruitment, hiring, promotions, and advancements, and will prepare a specific plan for the EEO Coordinator explaining how those objectives will be achieved.

VII. ANNUAL REPORT

The EEO Coordinator will prepare for the Court's approval an annual report for the year ending June 30, consolidating the data and statements received from each Court unit. The report will include tables to be provided by the Administrative Office of the United States Courts, consolidating the information provided by each Court unit. It will also describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will explain factors inhibiting achievement of equal employment opportunity objectives. Upon approval of the Court, this report will be submitted by the Chief Judge to the Administrative Office of the United States Courts by August 1 of each year.

APPENDIX 1

DISCRIMINATION COMPLAINT PROCEDURES

I. SCOPE OF COVERAGE

All applicants for Court positions and all Court personnel may seek timely redress of discrimination complaints through these procedures. These procedures, however, are not intended to be a replacement for the working relationship which must exist between supervisors and employees nor are they intended to interfere in the administrative processes of the Courts.

II. DEFINITION

A discrimination complaint is any allegation that a person has been denied employment, promotion, or advancement, or has been affected in any other condition of employment because of his or her race, sex, color, national origin, refusal of sexual favors, religion, age, or handicap. It does not include complaints relating to other dissatisfactions in a person's conditions of employment which are commonly known as grievances.

III. RIGHTS OF PERSONNEL

A. Retaliation

Every complainant has the right to be free from retaliation, coercion, or interference because of the good faith exercise of any of the rights under this Plan.

B. Representation

Every complainant and every person against whom a complaint has been filed has the right to be represented by a person of his or her choice at every stage of the proceedings. Any representative who is a Court employee may accept such responsibilities if it will not interfere with his or her Court duties.

C. Notice

Every person against whom a complaint has been timely filed has the right to have notice of the charges filed against him or her. All persons have the right to reasonable notice of any hearing conducted on a complaint.

D. Preparation

All Court employees involved in a complaint procedure may use a reasonable amount of official time to prepare their case so long as it does not interfere with the performance of their Court duties.

IV. PROCEDURES

A. Initiation of a Complaint

1. Any applicant or Court employee who feels that he or she has been discriminated against on the basis of race, sex, color, national origin, religion, age, or handicap must first timely present and discuss the problem with the Equal Employment Opportunity Coordinator, who will attempt to resolve the problem before a formal complaint is made. In the event the Coordinator

has a conflict of interest with the complainant, the Chief Judge shall appoint an alternate to serve for the disposition of the complaint.

2. If the EEO Coordinator or the designated official is unable to resolve an applicant's discrimination problem, the complainant or his/her representative may file a timely discrimination complaint with the Chief Judge and the EEO Coordinator. The complaint must be in writing, must allege all relevant facts constituting the basis of such complaint, and must be accompanied by a copy of the EEO Coordinator's report.

B. Informal Procedures

Upon receipt of a complaint, or upon notification of a problem involving discrimination, the EEO Coordinator will:

1. Immediately schedule an appointed time for discussing the problem.
2. Take notes setting forth the alleged facts.
3. Prepare a dated statement listing the alleged facts as presented by the party.
4. Have the party read and sign the statement if he/she agrees the problem is correctly stated.
5. Consult with the parties involved and seek to informally resolve the problem.
6. Prepare a statement of the corrective actions, if any, that will be undertaken or a statement describing the failure to receive any indications that corrective actions are deemed appropriate and secure signature of the party involved as to the correctness of the statement.
7. Present the responding statement to the applicant or Court employee. If the problem is resolved, have complainant sign his/her acceptance. If the problem is not resolved, advise complainant of his/her right to file a formal complaint.
8. Immediately send copies of both statements to the parties involved.

C. Formal Procedures

1. Filing. If either the complainant or the person against whom the complaint has been filed objects to the proposed informal resolution, a written complaint may be filed with the Chief Judge and the EEO Coordinator. Complainant must include with the written complaint a copy of the statement drafted by the EEO Coordinator.

If the complainant desires a formal hearing, he/she must request one in writing. The request must be included in the written complaint. Failure to include such a request will operate as a waiver of the right to a formal hearing.

2. Review. Upon receipt of a complaint, the EEO Coordinator, upon request from the Chief Judge, may:

- make any investigation into the matter which he/she and the Chief Judge deem necessary;
- consult with the parties;
- obtain affidavits and interview witnesses, if necessary,
- prepare a report identifying the issues, describing the results of any investigation and submitting same to the Chief Judge with a recommendation as to hearing or disposition.

Upon receipt of the EEO Coordinator's report and recommendations, the Chief Judge will:

- issue a final decision on the merits if it is found that no hearing is necessary; or
- appoint a three-member review board panel, designate a member as Chair, and set a date for review of the complaint and scheduling of a hearing. If the complaint is directed toward the Chief Judge, the next most senior active Judge shall serve in lieu of the Chief Judge for purposes described hereafter.

The Review Board Panel may consist of any active or senior Judge of the Court or any employee of this Court. If the formal complaint is directed toward a Judge of this Court, the Review Board Panel shall be comprised of three individuals from outside the Court.

3. Hearing. If a hearing is held, each party will have the right to representation. Both the complainant and the party named in the complaint, or his/her representative, may produce, examine, and cross-examine witnesses and submit evidence, written or oral. The panel chair shall preside at the hearing which is to be held before the full panel. The rules of evidence applicable in trials need not be observed, but the panel chair may exclude irrelevant or unduly cumulative testimony and evidence. The panel chair may exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The hearing will not be open to the public unless the employee seeking review or the person against whom the complaint is filed so requests. Other employees are to be made available to participate in the hearing when requested by the Panel.

The Review Board Panel shall issue a final decision containing findings and conclusions (copies to the Chief Judge, or his/her designated representative, the EEO Coordinator, and all parties).

D. Deadlines

1. All informal requests for discussion with the EEO Coordinator must be made within ten (10) days of the date the complainant becomes or reasonably should have become aware of the particular act or occurrence that gave rise to the complaint.

2. Within ten (10) days of the date a request for an informal conference is made, the EEO Coordinator shall submit a completed statement to the respective parties for their acceptance or rejection.

3. All formal complaints and any request for review hearings must be submitted within five (5) days after receipt of the EEO Coordinator's statement.

4. The EEO Coordinator shall transmit his/her report and recommendations to the Chief Judge within five (5) days after receipt of the formal complaint.

5. Within fifteen (15) days after receipt of the formal complaint, the Chief Judge shall:

- a. issue a final decision if no hearing is held; or
- b. appoint a review board panel which must in turn set a date for commencement of hearing that is within twenty (20) days from the filing of the formal complaint and request for hearing.

6. The Review Board Panel shall issue its decision within fifteen (15) days after the close of the formal hearing.

7. The Chief Judge may extend any deadline for good cause.

V. RECORDS

All papers, files, and reports will be filed with the EEO Coordinator at the conclusion of any informal or formal proceeding. These are not public records and the papers, files, or reports relating to a complaint will not be filed in any employee's personnel folder.

VI. REPORT

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

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

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

This report will remain in the Court and will be made available for examination.

VII. NOTICE

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