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**Directive #01-21**  
**[Supersedes Directive #05-04]**

**To: Hon. Carmen Messano**  
**Assignment Judges**  
**Hon. Joseph M. Andresini**  
**AOC Directors and Assistant Directors**  
**Clerks of Court**  
**Trial Court Administrators**  
**EEO Officers**

**From: Glenn A. Grant, J.A.D.**



**Subj: EEO Complaint Procedures Manual - Revised**

**Date: January 6, 2021**

This promulgates a revised Judiciary *EEO Complaint Procedures Manual* (Manual), as approved by the Supreme Court. Effective immediately, this revised Manual, a copy of which is attached, replaces the version of the Manual that was promulgated in 2004 by Directive #05-04.

The revised Manual represents a comprehensive reworking of the 2004 Manual. The procedures have been rewritten in clear plain language so that employees and members of the public can more readily understand their rights and obligations with respect to the handling of discrimination and harassment complaints. In terms of more substantive revisions, the Manual:

- Clarifies that managers and supervisors can file complaints on behalf of employees;
- Defines the scope of vicinage EEO inquiries and central office formal investigations;

- Establishes a clear process for appeals from vicinage EEO/AA Officer determinations;
- Designates the Chief Judiciary EEO/AA Officer as the individual to issue determinations in formal investigations;
- Provides additional information on the purpose and timing of remedial action; and
- Assigns responsibility to the EEO/AA Officers to monitor possible trends.

Please ensure that all Court Executives and supervisory staff in your area of responsibility, including professional supervisors and support staff supervisors, are aware of the revised Manual and this promulgating directive. The Manual is posted on the EEO page of the InfoNet at: <http://intranet.njcourts.gov/foremployees/#eoo>.

Questions concerning the Manual or the procedures set forth therein may be directed to Chief Judiciary EEO/AA Officer Tonya Hopson by email at [Tonya.Hopson@njcourts.gov](mailto:Tonya.Hopson@njcourts.gov) or by phone at (609) 815-2915.

attachment

c: Chief Justice Stuart Rabner  
Hon. Jack M. Sabatino  
Hon. Mala Sundar  
Steven D. Bonville, Chief of Staff  
Meryl G. Nadler, Counsel to the Administrative Director  
Tonya Hopson, Chief Judiciary EEO/AA Officer  
Kimberly Douglas, Judiciary Affirmative Action Officer

# **EEO COMPLAINT PROCEDURES MANUAL**

## **Reporting and Handling Complaints of Discrimination or Harassment in the New Jersey Judiciary**



**Promulgated by Directive #01-21 (January 6, 2021)  
As Approved by the Supreme Court**

**EEO COMPLAINT PROCEDURES MANUAL**  
**Reporting and Handling Complaints of Discrimination**  
**or Harassment in the Judiciary**

The Chief Justice and Supreme Court of New Jersey promulgated the New Jersey Judiciary's *Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination* ("EEO Policy Statement") to ensure equal opportunity for all Judiciary employees including judges, and applicants for employment, and to ensure that all court users, volunteers, attorneys, litigants, witnesses or others who come into contact with the court system are treated in a non-discriminatory manner with civility, dignity, and respect. All who serve in the Judicial Branch are responsible for implementing the EEO *Policy Statement*.

This Manual is a mechanism to implement the principles of the EEO/AA *Master Plan* and EEO *Policy Statement* by providing guidance for the investigation of discrimination or harassment complaints and the prompt remediation of any violations that may be found.

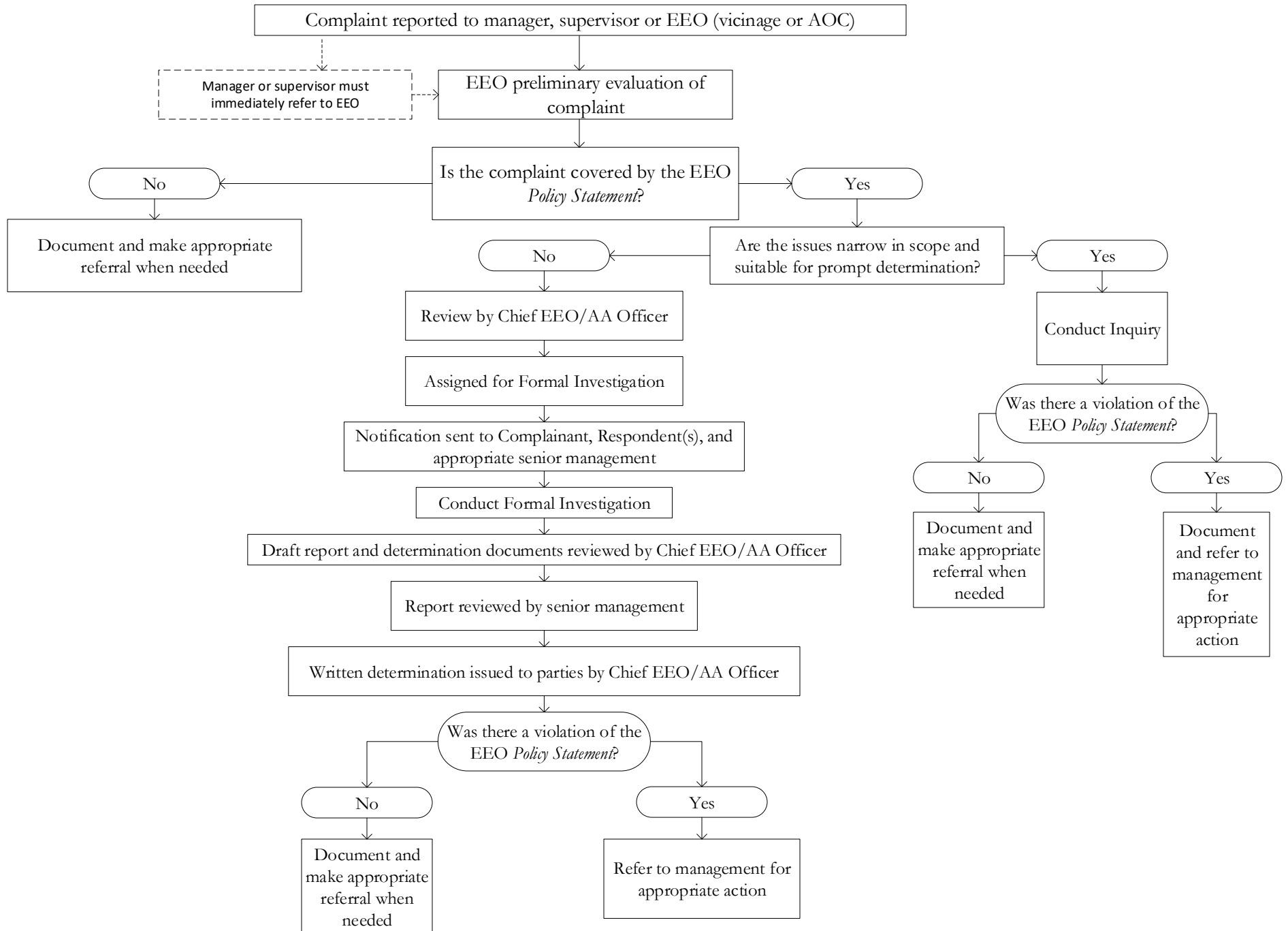
These procedures are intended to provide general guidance for processing discrimination or harassment complaints under most circumstances. However, if circumstances so necessitate, the Judiciary may deviate from these procedures in the investigation and handling of such complaints.

The procedures outlined in this Manual supersede any other EEO complaint procedures that were in use prior to its approval.

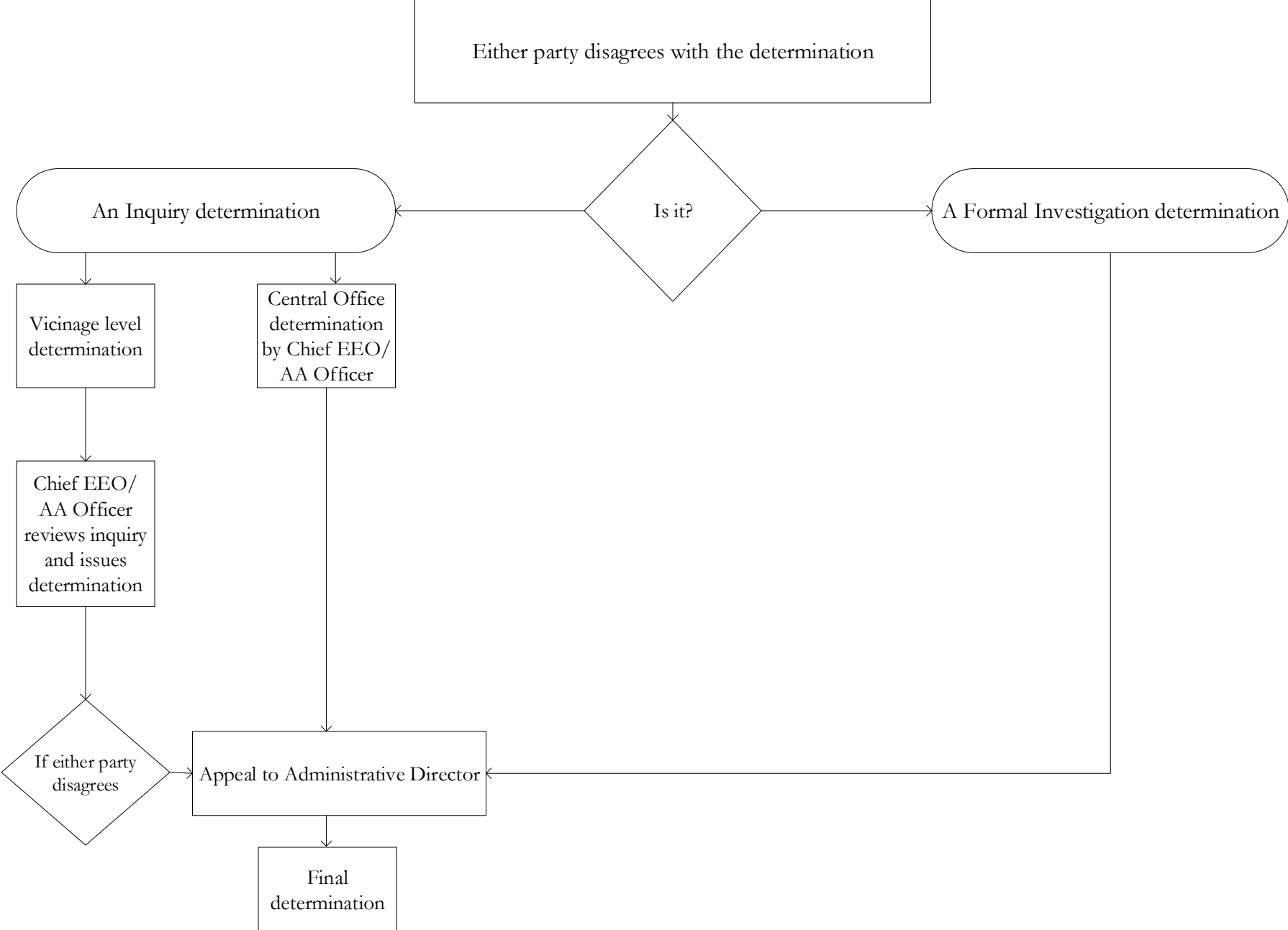
**FOR FURTHER INFORMATION CONTACT**

**Chief Judiciary EEO/AA Officer**  
**Equal Employment Opportunity/Affirmative Action Unit**  
**Administrative Office of the Courts**  
**PO Box 037**  
**Trenton, NJ 08625**  
**(609) 815-2915**

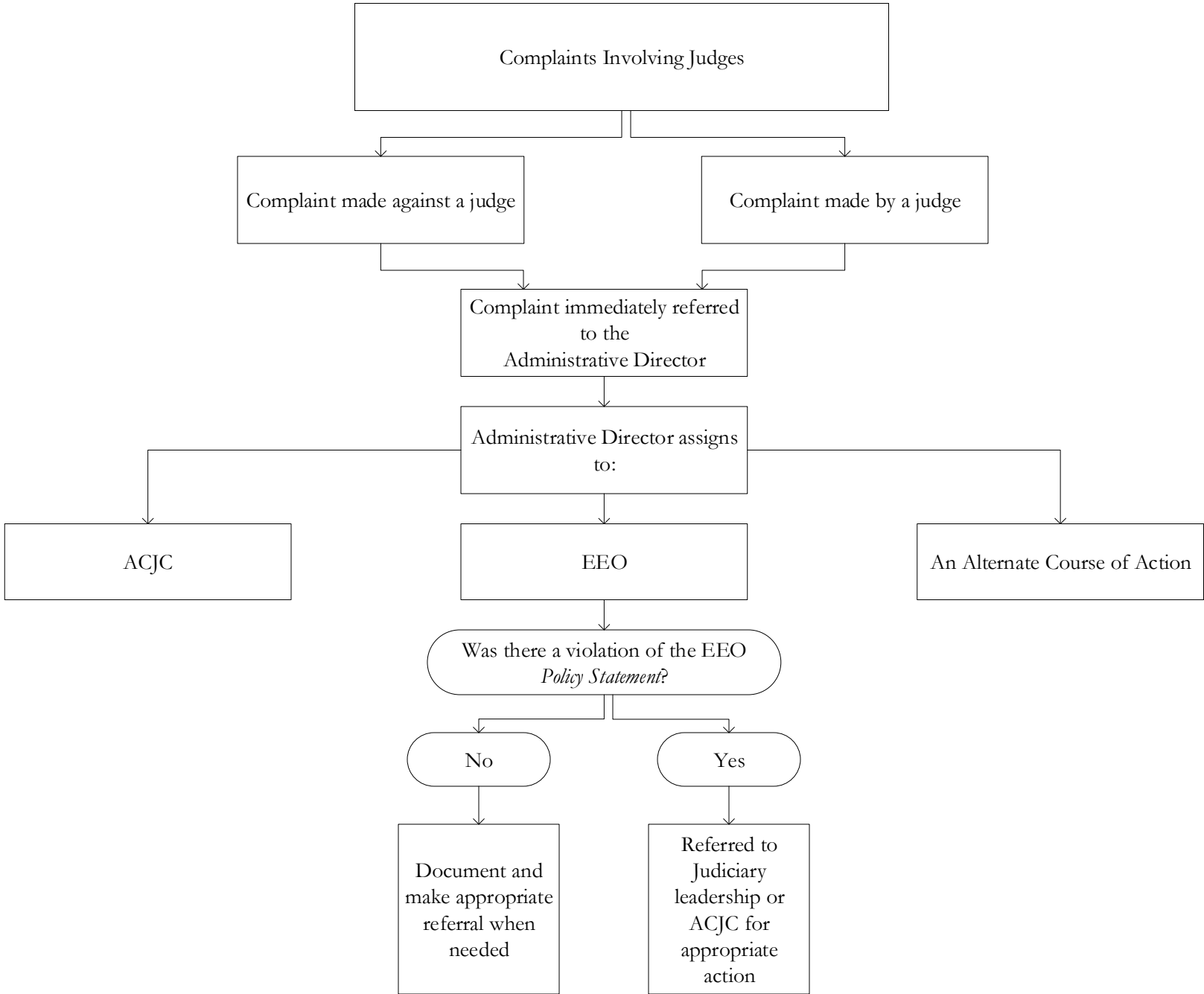
## EEO Complaint Procedures Flow Chart- Part I- Complaint to Determination



EEO Complaint Procedures Flow Chart- Part II- Appeals



**EEO Complaint Procedures Flow Chart- Judges**



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# NEW JERSEY JUDICIARY

## PROCEDURES FOR REPORTING AND HANDLING COMPLAINTS OF DISCRIMINATION OR HARASSMENT IN THE JUDICIARY<sup>1</sup>

### I. POLICY

The New Jersey Judiciary's *Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination* ("EEO Policy Statement") prohibits discrimination or harassment of its employees and members of the public, based on any of the protected categories enumerated in the New Jersey Law Against Discrimination provisions related to employment and public accommodation.

The EEO *Policy Statement* also protects employees and members of the public from retaliation for asserting their rights under the policy. The EEO *Policy Statement* can be found on the Judiciary's website.

### II. TERMS AND DEFINITIONS (as used in this Manual)

Administrative Office of the Courts (AOC) – Those areas of the Central Office under the supervision of the Administrative Director of the Courts.

Appointing Authority – The person having formal power of appointment or removal. See N.J.A.C. 4A:1-1.3. For vicinage employees, the Assignment Judge is the appointing authority. For most positions in the Central Office, the Administrative Director is the appointing authority.

Central Office – The offices including the Administrative Office of the Courts; the offices of the Clerks of the Supreme Court, Appellate Division and Superior Court and the Tax Court Administrator, the Office of Attorney Ethics, the Office of Board Counsel, Disciplinary Review Board, Lawyers Fund for Client Protection; and related units.

Chief Judiciary EEO/AA Officer – The position established by the New Jersey Judiciary's *Equal Employment Opportunity/Affirmative Action Master Plan* to expand, implement, and administer the statewide equal employment and affirmative action program for the court system. The Chief Judiciary EEO/AA Officer also manages and executes the EEO/AA duties for the Central Office.

Complainant – A person who reports discrimination or harassment invoking the Judiciary's *Policy Statement on Equal Employment Opportunity, Affirmative Action, and Anti-Discrimination*.

Complaint – An allegation of discrimination or harassment invoking the Judiciary's *Policy Statement on Equal Employment Opportunity, Affirmative Action, and Anti-Discrimination*.

Employee – Any person employed by the New Jersey Judiciary, including justices, judges, executives, managers, supervisors and all other members of the Judiciary workforce, including interns and volunteers.

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<sup>1</sup> These procedures are intended to provide general guidance for processing discrimination or harassment complaints under most circumstances. If circumstances so necessitate, however, the Judiciary may deviate from these procedures in the investigation and handling of such complaints.

EEO/AA Officer – A court executive appointed to manage and execute EEO/AA duties in a vicinage. The Chief Judiciary EEO/AA Officer, or designee, performs this role in the Central Office.

EEO Investigator – Staff investigators within the AOC EEO/AA Unit and/or contractors appointed by the Chief Judiciary EEO/AA Officer to conduct investigations into complaints.

EEO Policy Statement – The New Jersey Judiciary’s *Policy Statement on Equal Employment Opportunity, Affirmative Action and Anti-Discrimination*.

Remedial Action – Corrective actions taken by management to address discrimination or harassment that may have occurred.

Respondent – An individual against whom a complaint or allegation of discrimination or harassment has been made.

Retaliation – An adverse action taken against a person because they complained about discrimination or harassment, reported a complaint, or assisted in the investigation of a discrimination or harassment complaint.

Senior Manager – In the vicinages the senior managers are the Assignment Judge and the Trial Court Administrator. In the Central Office, senior manager refers to: Administrative Director of the Courts; Chief of Staff or AOC Directors; Clerks of the Supreme Court, Appellate Division, or Superior Court; or Administrator of the Tax Court. For purposes of these procedures, the Clerk of the Supreme Court will function as the senior manager for the Office of Disciplinary Review Board, the Office of Attorney Ethics, and the Lawyers Fund for Client Protection.

### III. RESPONSIBILITY FOR IMPLEMENTATION

#### A. All Judiciary Employees

The EEO *Complaint Procedures* mandate the full cooperation of all Judiciary employees. Employees are required to answer any questions posed to them throughout the course of an inquiry or formal investigation. An employee’s failure to cooperate may subject the employee to disciplinary action up to and including termination.

#### B. Chief Judiciary Equal Employment Opportunity/Affirmative Action Officer

The Chief Judiciary EEO/AA Officer is responsible for reviewing all discrimination and harassment complaints, overseeing the investigation process, evaluating trends, monitoring compliance and making recommendations for policy changes.

The Chief Judiciary EEO/AA Officer ensures that the EEO *Complaint Procedures* are implemented statewide by providing policy direction and guidance to vicinage EEO/AA Officers and EEO Investigators.

#### C. Appointing Authority

The appointing authority and their designees have an obligation to establish and maintain a workplace environment that is free from discrimination or harassment. To that end, each appointing authority shall appoint a qualified EEO/AA Officer to

perform the functions specified herein.

D. Managers and Supervisors

Managers and supervisors are expected to be receptive and responsive to all complaints of discrimination or harassment.

Discrimination or harassment complaints may be brought to any manager or supervisor of the Judiciary at any time, orally or in writing. Managers and supervisors who receive such complaints must immediately report them to the EEO/AA Officer and, if warranted, should take interim remedial action.

While individuals may report complaints of discrimination or harassment to managers or supervisors, they also have a right to report complaints directly to the vicinage EEO/AA Officer or the Chief Judiciary EEO/AA Officer at any time.

Managers and supervisors must maintain the confidentiality of EEO matters to the greatest extent possible. Additional information on the confidentiality of EEO matters can be found in Section XI.

E. Vicinage EEO/AA Officers and EEO Investigators

EEO/AA Officers and EEO Investigators are charged with receiving, investigating and addressing EEO complaints and must maintain confidentiality to the greatest extent possible in all cases. Additional information on the confidentiality of EEO matters can be found in Section XI.

As they are impartial and neutral fact finders, EEO/AA Officers and EEO Investigators must recuse themselves from participation in a case when there is a conflict of interest.

EEO/AA Officers must retain all relevant case materials related to EEO complaints for 10 years after disposition of the case is issued. EEO/AA Officers will also keep a record of all concerns reported to EEO/AA that do not invoke the EEO *Policy Statement*. For tracking purposes, this information will be reported to the Chief Judiciary EEO/AA Officer in the AOC on a quarterly basis. The Chief Judiciary EEO/AA Officer will establish the format for recording this information.

EEO/AA Officers and EEO Investigators will be trained on receiving and investigating allegations of discrimination or harassment pursuant to these procedures.

#### IV. **REPORTING AND EVALUATING COMPLAINTS**<sup>2</sup>

A. **Who May Report a Complaint**

A complaint may be reported by any Judiciary employee, applicant for employment, court user, volunteer, attorney, litigant, witness, vendor, contractor, or other person who comes into contact with the court system who believes that a violation of the EEO *Policy Statement* has occurred.

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<sup>2</sup> The procedures described here cover discrimination or harassment complaints occurring within a vicinage or the Central Office against Judiciary staff. Complaints may also be made against Judiciary vendors, contractors, suppliers, etc., or may involve more than one vicinage or office. Questions concerning such complaints should be discussed with the Chief Judiciary EEO/AA Officer, who will provide guidance as to the proper procedures to follow.

Individuals also have the right to contact federal and state civil rights agencies.

## B. How to Report a Complaint

1. While individuals may report complaints of discrimination or harassment to any manager or supervisor, they also have a right to report complaints directly to the vicinage EEO/AA Officer or the Chief Judiciary EEO/AA Officer at any time. Complaints may be made orally or in writing.
2. The EEO/AA Officer or EEO Investigator will ensure that clear and concise information is obtained from the Complainant to allow for proper evaluation of the complaint. This information should include a description of the alleged discriminatory or harassing activity, including dates, locations, and parties involved; the alleged protected category that forms the basis for the complaint; any harm sustained; and the specific relief (i.e. remedial action) requested.

While there is no required format for complaints, to facilitate the handling of a complaint, the Judiciary has established a *Report of Discrimination, Sexual Harassment, Retaliation Complaint Form* which is available on the Judiciary's website or by contacting the vicinage EEO/AA Officer or Chief Judiciary EEO/AA Officer. The EEO/AA Officer or EEO Investigator may fill out the complaint form on the Complainant's behalf, but must ensure that the Complainant has the opportunity to review and provide changes or clarification.

**NOTE:** It is important to distinguish between the *complaint* and *evidence in support of the complaint*. A copy of the complaint may be provided to the individual(s) against whom the complaint is directed. Accordingly, the names of substantiating witnesses and other supporting evidence should not normally be included in the body of the complaint.

However, the EEO/AA Officer or EEO Investigator providing assistance should obtain from the Complainant the names of witnesses and other supporting evidence (such as documents) that may be considered during the investigation but that will not be disclosed to the other parties to the complaint.

## C. Time for Reporting a Complaint

1. A complaint may be reported at any time, but individuals are encouraged to report a complaint as soon as possible after the alleged misconduct. The prompt reporting of complaints ensures that witnesses' memories and other evidence is fresh and facilitates prompt remedial action.
2. While there is no time limit for reporting complaints under these procedures, the Judiciary may conclude that investigation into allegations of discrimination reported after a period of time, that would render any remedy meaningless, is unwarranted.
3. Complainants should be aware that complaints filed with state (New Jersey Division on Civil Rights) and federal (Equal Employment Opportunity Commission) agencies do have firm time limits. Opting to use the Judiciary's

*EEO Complaint Procedures* does not stop those time periods from running.

D. Preliminary Evaluation

The EEO/AA Officer or EEO Investigator will conduct a preliminary evaluation to determine whether the matter is one encompassed by the *EEO Policy Statement*. In this preliminary stage, the EEO/AA Officer should seek to understand the exact nature of the Complainant's concerns and explore steps that can be taken by management or the parties to resolve the matter as expeditiously as possible. As a result of this preliminary evaluation, the matter may take one of several paths:

1. **Determination that the matter is not covered by the *EEO Policy Statement*** – If the preliminary evaluation establishes that the matter is not covered by the *EEO Policy Statement*, then the EEO/AA Officer will notify the Complainant in writing. If the Complainant raises an issue that may be remedied by some other Judiciary policy or office, then the EEO/AA Officer will make an appropriate referral.
2. **Clear evidence establishes an *EEO Policy Statement* violation** – If the matter is covered by the *EEO Policy Statement* and the preliminary evaluation shows that there is clear evidence that establishes a violation, and there is no need for further investigation, then the EEO/AA Officer will consult with management to ensure that any necessary and appropriate remedial action is taken immediately. The purpose is to provide prompt relief for any meritorious complaint.
3. **Inquiry** – If the matter is covered by the *EEO Policy Statement* and the preliminary evaluation shows that the matter is narrow in scope, suitable for prompt determination, and requires limited additional fact finding, then the EEO/AA Officer or EEO Investigator will conduct an inquiry into the complaint. The EEO/AA Officer or EEO Investigator will seek to conduct the inquiry with minimal disruption to the workplace.
4. **Referral for formal investigation** – If the matter is covered by the *EEO Policy Statement* but is not suitable for prompt determination (i.e. the issues presented are complex and/or involve multiple parties and witnesses), then the complaint will be referred to the Chief Judiciary EEO/AA Officer for formal investigation.

These resolution efforts or referrals must be completed within 10 working days unless otherwise authorized by the Chief Judiciary EEO/AA Officer.

**NOTE:** If a Complainant decides not to pursue a complaint, then the EEO/AA Officer will confirm that fact in writing to the Complainant.

It should be noted that the Judiciary is committed to the elimination of discrimination and harassment. Accordingly, even if the Complainant does not wish to proceed with the complaint, the Judiciary may decide to conduct an investigation and take steps to remedy any discrimination or harassment that may have occurred.

When necessary, to remedy discrimination or harassment that has come to light, the EEO/AA Officer or other manager or supervisor may report a complaint on the Complainant's behalf.

In every case, the EEO/AA Officer will provide the Complainant with information concerning their rights under the EEO *Policy Statement*, and the right to file a complaint with State or Federal civil rights agencies.

## V. EEO COMPLAINT PROCEDURES – INQUIRY

### A. Scope of Inquiry

When complaints of discrimination or harassment are narrow in scope and require limited fact finding, then the EEO/AA Officer or EEO Investigator will conduct an inquiry into the matter. The goal of an inquiry is to promptly determine if a violation of the EEO *Policy Statement* has occurred with minimal disruption to the workplace, so that any necessary remedial measures can be implemented without undue delay. Therefore, an inquiry must be completed within 10 working days unless otherwise authorized by the Chief Judiciary EEO/AA Officer.

### B. Collection of Evidence and Documentation

During an inquiry, the collection and evaluation of relevant evidence may include, but is not limited to:

- Interviewing one or both parties, and any witnesses;
- Site inspections;
- Collecting documentary evidence (e.g. files, emails, text messages, social media posts).

After interviewing one or both parties, and any witnesses, the EEO/AA Officer or EEO Investigator will memorialize the relevant facts in the form of a summary or statement. The EEO/AA Officer or EEO Investigator will provide the summary or statement to the appropriate party for review, changes or clarification, and acknowledgement.

### C. Determination, Referrals and Remedial Action

The EEO/AA Officer or EEO Investigator will review the evidence collected during the inquiry to determine if there has been a violation of the EEO *Policy Statement* or if the matter needs to be referred for formal investigation or other management action.

- 1. Violation of the EEO *Policy Statement*** – In every instance where the evidence supports a violation of the EEO *Policy Statement*, the EEO/AA Officer or EEO Investigator will refer the matter in writing to management for appropriate remedial action. The referral should lay out the basis for the complaint, summarize the evidence collected, and provide the determination based on that evidence.

The EEO/AA Officer or EEO Investigator may provide recommendations and assist management with non-disciplinary corrective measures. These may include coaching, training, or other measures related to ensuring appropriate behavior in the workplace. The EEO/AA Officer or EEO Investigator will memorialize these corrective measures and seek acknowledgment from the Respondent(s) or other

individuals who participated.

2. **No violation of the EEO Policy Statement** – The matter may still be referred by the EEO/AA Officer or EEO Investigator to management for remediation under a different policy, where appropriate.
3. **Formal investigation is warranted** – If the fact finding reveals that the scope of the matter is broader than initially assessed, then the matter may need to be referred for formal investigation. This determination will be made in consultation with the Chief Judiciary EEO/AA Officer.

**NOTE:** The EEO/AA Officer will notify the Complainant in writing of the determination in every instance, and will notify the Respondent(s) in writing if interviewed.

#### D. Appeal of Inquiry Determination

If either the Complainant or Respondent(s) are not satisfied with the inquiry determination, they may request a review of the findings within 15 working days from the date of the inquiry determination.

1. **Review of vicinage inquiry determination** – The Complainant or Respondent(s) may request that the Chief Judiciary EEO/AA Officer review a vicinage level inquiry determination. The vicinage EEO/AA Officer will provide the Chief Judiciary EEO/AA Officer with a copy of the complete inquiry file. The Chief Judiciary EEO/AA Officer will issue a determination within 30 working days of the date of the appeal.
2. **Appeal of Chief Judiciary EEO/AA Officer's inquiry determination** – If the Complainant or Respondent(s) are not satisfied with the Chief Judiciary EEO/AA Officer's determination regarding a vicinage or Central Office inquiry, then they may file a written appeal with the Administrative Director of the Courts within 15 working days of the date of that determination. Additional information on filing an appeal with the Administrative Director of the Courts can be found in Section IX.
3. **Final Decision** – For all appeals, the decision of the Administrative Director of the Courts will be final.

## VI. EEO COMPLAINT PROCEDURES – FORMAL INVESTIGATION

### A. Scope of Formal Investigation

When complaints of discrimination or harassment involve complex issues and/or involve multiple parties and witnesses, then the complaint will be referred to the Chief Judiciary EEO/AA Officer for formal investigation by an EEO Investigator.

The scope of a formal investigation should be limited to the allegations of the complaint. In the event the investigation reveals allegations not encompassed by the original complaint, the Chief EEO/AA Officer will determine whether the new allegations should be treated as a new complaint. If the investigation reveals matters that do not fall under the *EEO Policy Statement*, then appropriate referrals will be

made.

B. Notification of Formal Investigation

The Chief Judiciary EEO/AA Officer will notify the Complainant and Respondent(s) of the opening of a formal investigation. The notifications will include the basis of the complaint; the name of the EEO Investigator assigned to the case; and notice that retaliation is prohibited. Complainant's notification will also include their right to contact external civil rights agencies.

For vicinage complaints, a copy of the notifications will be sent to the Assignment Judge; Chief of Staff; Trial Court Administrator; vicinage EEO/AA Officer; and the EEO Investigator. For Central Office complaints, a copy of the notifications will be sent to the Presiding Judge for Administration of the Appellate Division or Presiding Judge of the Tax Court; Chief of Staff; Director or Clerk of Court; and the EEO Investigator. The notifications should enclose a copy of the complaint.

C. Collection of Evidence and Documentation

1. Interviewing Complainant

The Complainant will generally be the first individual interviewed in order to document the full scope of the complaint. The Complainant will be expected to identify all instances of improper conduct, witnesses, and reasons why the Complainant believes the conduct is occurring.

The EEO Investigator should obtain specific facts pertinent to the allegations, including dates, places and witnesses. The Complainant's statement should not simply repeat the contents of the complaint, but should be self-contained and provide specific details in support of the complaint.

2. Interviewing Respondent(s)

The Respondent(s) should be interviewed in the same manner as a Complainant and be given a full opportunity to provide testimony, evidence, and identify witnesses or other individuals with relevant information.

3. Interviewing Witnesses

The EEO Investigator will interview ancillary and corroborating witnesses. It is the responsibility of the EEO Investigator to exhaust all lines of pertinent inquiry.

4. Statements and Documentary Evidence

The EEO Investigator will draft a statement, in the first person, for the review and approval of the Complainant, Respondent(s), and each witness interviewed. The statement will include notifications regarding confidentiality, the parties' rights to be represented, and the prohibition against retaliation (See Sections XI; XII; XIII).

The statement should be presented to the party or witness for review at the conclusion of the interview or as soon thereafter as practicable. The party or witness should be given the opportunity to make any necessary changes prior to signing or acknowledging their statement, and a copy of the statement should be provided to the party or witness.

Supplemental interviews and statements may be necessary if the investigation discloses additional pertinent information that was not known at the time of the initial interviews.

Copies of relevant documentary evidence will also be collected and assembled.

D. Keeping the Parties Advised

The EEO Investigator should periodically advise the Complainant, Respondent(s), and senior manager as to the progress and timing of the formal investigation.

E. Formal Investigation Report

Within 100 working days of notification to the parties that a formal investigation has been opened, the EEO Investigator shall issue a written report.

The formal investigation report will include:

- **Procedural History** – date of complaint; protected categories invoked; names and titles of individuals interviewed as part of the investigation; and relief sought.
- **Relevant Facts, Evidence and Analysis** – by allegation.
- **Conclusion as to EEO Policy Statement violation and Recommendations**
- **Exhibits**

F. Final Determination<sup>3</sup>

Upon completion of the investigation, the Chief Judiciary EEO/AA Officer will forward the investigation report and supporting evidence to the Assignment Judge/Trial Court Administrator or Central Office senior manager or designee for review. The Assignment Judge/Trial Court Administrator or Central Office senior manager will have 15 working days to review and provide feedback as to the determination.

After the review is complete, the Chief Judiciary EEO/AA Officer will provide written notification to the Complainant and Respondent(s) as to the final determination. A copy of the final determination will also be sent to: the Assignment Judge and Trial Court Administrator; Chief of Staff; Central Office Director or Clerk of Court; vicinage EEO/AA Officer; and EEO Investigator.

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<sup>3</sup> In the event the complaint is filed against a judge, the final determination will be made by the Administrative Director.

The determination letter should include the following:

- A synopsis of the complaint;
- Whether the allegations made were substantiated or not;
- Whether the substantiated behavior violated the EEO *Policy Statement*;
- Sufficient detail to show the basis for the determination, while protecting the confidentiality of witnesses;
- A statement that appropriate action will be taken, if applicable; and
- The parties' right to appeal the determination with the Administrative Director. (See Section IX).

If a violation is found to have occurred, the Assignment Judge/Trial Court Administrator or Central Office senior manager shall determine the appropriate corrective measures to promptly remedy the violation. Additional information on remedial action can be found in Section X.

## **VII. COMPLAINTS INVOLVING JUDGES**

The EEO *Complaint Procedures* may be used or adapted when complaints of discrimination or harassment are made against judges. Such complaints will be immediately reported to the Administrative Director of the Courts as well as to the Assignment Judge, Presiding Judge for Administration of the Appellate Division, or Presiding Judge of the Tax Court.

Complaints of discrimination or harassment made by judges may be reported to the Chief Justice, Administrative Director, Assignment Judge, Presiding Judge for Administration of the Appellate Division, Presiding Judge of the Tax Court, or Chief Judiciary EEO/AA Officer.

In each case, the Administrative Director will determine whether to refer the complaint for investigation according to these procedures, to refer it to the Advisory Committee on Judicial Conduct, to proceed with a combination of these two procedures, or to follow some other appropriate course. These procedures do not in any way diminish the disciplinary authority of the Advisory Committee on Judicial Conduct over any judge in appropriate circumstances.

In all cases involving judges, the final determination will be issued by the Administrative Director, whose decision will be final.

## **VIII. COMPLAINTS INVOLVING MUNICIPAL COURTS**

The complaint and investigation procedures set forth in this Manual are not applicable to the Municipal Courts. The responsibility to investigate alleged discrimination or harassment in the Municipal Courts and take appropriate remedial action rests with the municipal officials.

However, the Administrative Director may make the investigation procedures and staff described in this Manual available to a municipality. These procedures do not in any way diminish the disciplinary authority of the Advisory Committee on Judicial Conduct over any municipal judge in appropriate circumstances.

## **IX. APPEAL TO THE ADMINISTRATIVE DIRECTOR**

If either the Complainant or Respondent(s) are not satisfied with the determination, they may file a written appeal with the Administrative Director within 15 working days of the date of the determination, with a copy of the appeal provided simultaneously to the Chief Judiciary

EEO/AA Officer.

The individual filing the appeal must set forth the reasons for the appeal and any evidence available to support the appeal. Upon receipt of the appeal, the Chief Judiciary EEO/AA Officer will notify all individuals who received the original determination letter. The Chief Judiciary EEO/AA Officer will then provide the Administrative Director with a copy of the complete investigative file.

The Administrative Director will issue a determination as to the merits of the appeal within 30 working days of receipt of the complete investigative file, with copies to the individuals who received the original determination. If needed, the Administrative Director may also designate the Chief Judiciary EEO/AA Officer, vicinage EEO/AA Officer, EEO Investigator, or another person to obtain additional information before issuing a determination on the appeal.

## **X. REMEDIAL ACTION**

Remedial (or corrective) action may be taken by management to address possible discrimination or harassment and ensure inappropriate conduct does not occur or continue. It may also be used to correct harm sustained by individuals due to inappropriate conduct.

Remedial action may be applied or modified at any stage of the complaint process, or after complaint determinations are finalized, as appropriate. Both non-disciplinary and disciplinary actions may be taken. Any actions should be done in consultation with Counsel's office and EEO.

The type of remedial action applied to a situation, or the amount or level of any discipline imposed, is confidential and ordinarily will not be disclosed to the Complainant. These management decisions are also not subject to appeal under Section IX.

## **XI. CONFIDENTIALITY**

### **A. During the Inquiry or Formal Investigation**

All complaints will be handled, to the greatest extent possible, in a manner that will protect the privacy interests of those involved and avoid unnecessary disruption in the workplace.

While confidentiality is maintained to the greatest extent possible, during the course of an inquiry or a formal investigation it may be necessary to discuss the allegations of the complaint with the Respondent(s), as well as other persons who may have relevant knowledge.

**NOTE:** This confidentiality provision should not be applied in a manner that impedes prompt action to remedy problems. If, during a pending inquiry or formal investigation, managers or supervisors become aware of discriminatory or improper behavior or the unfair application of Judiciary policies or procedures, appropriate corrective action should not be delayed.

B. Inquiry or Formal Investigation File

The full inquiry or formal investigation file—including witness names; summaries or statements; the formal investigation report; and/or any documents in support of the inquiry or formal investigation determination—is considered confidential, and as a general rule will not be released to anyone.

However, information or documents contained in the inquiry or formal investigation file may be subject to disclosure if required by policy or law when it is requested during a disciplinary hearing or litigation. To protect witnesses, employees and the complaint process, evidentiary material should not be released without authorization from Counsel to the Administrative Director.

**XII. RIGHT TO BE REPRESENTED**

The Complainant and Respondent(s) have the right to be accompanied throughout the process at their own expense by an attorney, union representative, or another person of their choice. The EEO/AA Officer or EEO Investigator will inform the parties of this right. A Complainant or Respondent(s) who chooses to be represented will be provided a reasonable amount of time to obtain representation.

Notwithstanding this option, it is the responsibility of the individual being interviewed to answer any questions posed to them throughout the course of an inquiry or formal investigation.

**XIII. PROHIBITION AGAINST RETALIATION**

Retaliation in any form by anyone who serves in the Judiciary against any person who complains about discrimination or harassment, files a complaint, or who assists in the investigation of such complaints is prohibited. A charge of retaliation may be raised at any stage of the investigation or may form the basis of a new complaint. Retaliation against anyone who avails themselves of these complaint procedures is prohibited even where the original complaint is found to lack merit. Appropriate action will be taken against individuals who are found to have retaliated against a Complainant or against any individual who testifies or otherwise assists in the investigation of a complaint.

**XIV. MONITORING**

The Chief Judiciary EEO/AA Officer or vicinage EEO/AA Officer will follow-up with the parties to a complaint for a reasonable period of time to ensure compliance with the EEO *Policy Statement* is maintained.

The Chief Judiciary EEO/AA Officer or vicinage EEO/AA Officer will also monitor complaints to identify possible trends and determine if additional remedial action is needed.