

General Order No. 94-35

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS

NOV 28 1994

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS**

DAVID J. MALAND, CLERK

BY
DEPUTY

Jane Alvarez

ORDER ADOPTING SUPPLEMENT TO THE COURTS' EEO PLAN

This court has adopted an Equal Employment Opportunity Plan and Discrimination Complaint Procedure in accordance with the Model Plan promulgated by the Judicial Conference of the United States. At the direction of the Fifth Circuit Judicial Council, the attached "Supplement to the Courts' EEO Plan" is hereby adopted. The supplement provides a specific procedure for the processing of complaints of sexual harassment. Copies of the supplement are to be given to all judges and court employees and, upon request, to members of the public.

Signed this 21st day of November, 1994.

FOR THE COURT:

Richard A. Schell
RICHARD A. SCHELL
Chief Judge

**SUPPLEMENT TO THE COURTS' EEO PLAN
COMPLAINTS OF SEXUAL HARASSMENT**

I. Policy

The court hereby reaffirms its policy against sexual harassment of any employee of the court. Sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

II. Complaint Procedures

Any aggrieved employee, or his or her representative, may file a complaint of sexual harassment. The complaint must be in writing, must allege all relevant facts constituting the basis for such complaint, and must specify the relief requested. The complaint must be filed within six months of a particular act or occurrence unless good cause is presented and accepted by the officer receiving the complaint.

A. Complaints Against Court Employees

A complaint against any court employee, other than a judge, shall be filed and processed in accordance with the standard Discrimination Complaint Procedure, Appendix 1 to the EEO Plan.

B. Complaints Against Judges

A complaint against a judge may be filed in accordance with the internal court procedure shown below, or filed as a judicial misconduct complaint pursuant to 28 U.S.C. 372(c), or both, at the discretion of the complainant.

1. Court Internal Procedure

If the subject of the complaint is a district, bankruptcy, or magistrate judge, the complaint may be filed with the chief district judge. If the subject of the complaint is a circuit judge, the complaint may be filed with the chief circuit judge. Upon receipt of the complaint, the chief judge:

- a. will make any investigation into the matter which he or she deems necessary;

- b. will consult with the involved parties and seek an informal resolution of the problem; and
- c. will prepare a report to the parties identifying the issues, describing his or her findings and recommendation, explaining what resolutions, if any, will be undertaken.

2. Judicial Misconduct Complaint under § 372(c)

Any person complaining of sexual harassment by a judge may file a complaint of judicial misconduct pursuant to 28 U.S.C. § 372(c). Complaints under this procedure shall be filed in accordance with the Rules Governing Complaints of Judicial Misconduct or Disability, promulgated by the Judicial Council of the Fifth Circuit (April 15, 1993). Copies of these rules may be obtained from the Clerk, U.S. Court of Appeals for the Fifth Circuit.

It should be noted that two procedures are available for filing a complaint of sexual harassment against a judge. Complainants may pursue the designated internal court procedure, and/or file a complaint under § 372(c).