

TABLE OF CONTENTS

PREFACE.....	i
CHAPTER ONE: THE EEO PROCESS: WHAT IT IS & HOW IT WORKS.....	1
I WHAT IS THE EEOC?	1
A. THE COMMISSIONERS.....	2
1. The District Offices.....	3
2. The Office of Federal Programs.....	3
3. The Office of Field Programs	4
II. WHAT LAWS DOES THE EEOC ENFORCE?.....	4
A. TITLE VII OF THE 1964 CIVIL RIGHTS ACT	4
1. Civil Rights Act of 1991	5
B. THE REHABILITATION ACT OF 1973.....	5
1. The Americans with Disabilities Act	6
C. THE AGE DISCRIMINATION IN EMPLOYMENT ACT.....	6
D. EQUAL PAY ACT	7
E. RETALIATION OR REPRISAL.....	8
III. HOW THE FEDERAL SECTOR EEO PROCESS WORKS.....	8
IV. THE INITIAL PROCESS BEFORE YOUR AGENCY.....	9
A. PRECOMPLAINT OR INFORMAL COUNSELING	10
1. Alternative Dispute Resolution	11
B. FILING THE FORMAL COMPLAINT.....	12
C. ACKNOWLEDGMENT OF THE COMPLAINT	12
D. ACCEPTANCE OR DISMISSAL OF COMPLAINT	12
1. If Your Complaint is Accepted.....	13
2. If Your Complaint is Dismissed	13
3. If Your Complaint is Partially Accepted and Partially Dismissed	14
E. INVESTIGATION OF THE COMPLAINT	14
V. THE INITIAL PROCESS BEFORE THE EEOC.....	15
A. HEARING ON THE COMPLAINT.....	15
1. Acknowledgment and Order	16
2. Discovery.....	16
3. Summary Judgment	16
4. Hearings	16
5. Decisions	17
VI. FINAL PROCESSING AT YOUR AGENCY.....	18
A. IF YOUR CASE WAS DECIDED BY AN ADMINISTRATIVE JUDGE.....	18

B.	IF YOUR CASE WAS DECIDED BY THE AGENCY	18
VII.	FINAL PROCESSING AT THE EEOC	19
A.	IF YOUR AGENCY FILES AN APPEAL	19
1.	Your Response	20
2.	Your Own Appeal	20
B.	IF YOU WISH TO APPEAL	21
C.	DECISIONS OF OFO	21
D.	REQUESTS FOR RECONSIDERATION.....	21
VIII.	THE END OF THE PROCESS—ANY QUESTIONS?.....	22

CHAPTER TWO: PRECOMPLAINT OR INFORMAL COUNSELING23

I.	WHERE TO BEGIN?	23
II.	IS IT TOO LATE, ALREADY?.....	24
A.	WHAT IF I MAKE A HOSTILE ENVIRONMENT CLAIM?	25
B.	WHAT IF I MAKE A REASONABLE ACCOMMODATION CLAIM?.....	25
III.	WHAT IF IT'S TOO LATE, ALREADY?	26
A.	BUT I DIDN'T KNOW THE TIME PERIOD.....	26
B.	BUT I DIDN'T KNOW IT WAS DISCRIMINATORY	27
C.	BUT THE DOG ATE MY HOMEWORK.....	28
D.	WOULD YOU BELIEVE?.....	28
IV.	THE INITIAL INTERVIEW WITH THE COUNSELOR	29
A.	WHO IS THIS EEO COUNSELOR, ANYWAY?	29
B.	WHAT IS THE ROLE OF THE COUNSELOR?.....	29
C.	WHAT SHOULD I DO TO GET READY?	30
1.	Be Prepared to Talk Timeliness	30
2.	Who, What, When, Where, How?.....	31
3.	Should I Bring Dessert?.....	32
4.	What Do I Tell My Boss?.....	32
5.	The Moon, the Stars and the Sun	34
D.	WHAT WILL HAPPEN AT THE INTERVIEW?.....	35
1.	Just What Are My Rights?	35
2.	Do I Need to Fill Out Forms?.....	36
3.	How Much Information Should I Give?	36
4.	Can't We Just Settle This Thing?	37
5.	Will We Meet Again?.....	37
V.	WHAT WILL THE COUNSELOR DO NEXT?	37
A.	WILL THE COUNSELOR SPEAK TO WITNESSES?	38
B.	WHAT WILL THE COUNSELOR DO TO SETTLE THE COMPLAINT?	38
VI.	HOW DOES COUNSELING END?	38
VII.	THE NOTICE OF FINAL INTERVIEW	38
A.	WHAT WILL HAPPEN AT THE FINAL INTERVIEW?	39
B.	WHAT HAPPENS WHEN I GET THE NOTICE?.....	39

VIII.	WAIT A MINUTE! WHAT ABOUT ADR?.....	39
A.	WHAT SHOULD I DO IF THE AGENCY OFFERS ADR?.....	40
CHAPTER THREE: FILING THE FORMAL COMPLAINT		41
I.	WHAT GOES INTO A FORMAL COMPLAINT?.....	41
A.	WHO ARE YOU?.....	42
B.	WHO ARE THEY?.....	42
C.	WHAT DID THEY DO AND WHY?.....	43
D.	PUT YOUR "JOHN HANCOCK" ON THE LINE.....	44
E.	WHAT ABOUT THE NUMBER ON THE NOTICE?.....	44
II.	HOW MUCH POSTAGE WILL I NEED?.....	45
III.	DO I NEED TO SEND A COPY TO ANYONE ELSE?.....	45
CHAPTER FOUR: ACKNOWLEDGING THE FORMAL COMPLAINT		47
I.	IS ANYBODY OUT THERE?.....	47
II.	WHAT SHOULD I DO?.....	48
III.	CAN I CHANGE MY COMPLAINT NOW?.....	48
A.	THEY'RE DOING IT AGAIN.....	48
B.	THEY'VE DONE SOMETHING ENTIRELY DIFFERENT.....	50
C.	CAN I ADD A NEW BASIS OF DISCRIMINATION?.....	51
CHAPTER FIVE: ACCEPTANCE AND DISMISSAL		53
I.	ACCEPTING THE COMPLAINT.....	53
A.	DID I JUST WIN?.....	53
B.	THAT'S NOT WHAT I SAID.....	53
C.	IS THERE MORE?.....	54
II.	DISMISSING THE COMPLAINT.....	54
A.	FAILING TO STATE A CLAIM.....	55
1.	What is an Aggrieved Individual?.....	55
2.	What is Personal Harm?.....	56
3.	Why the Harm?.....	57
4.	We've Already Done This.....	57
B.	YOU MISSED THE DEADLINE.....	58
C.	YOU TOOK THE CASE TO COURT.....	58
D.	YOU FILED A GRIEVANCE OR MSPB APPEAL.....	58
E.	WE'VE CHANGED OUR MIND.....	59
F.	WE MAY CHANGE OUR MIND.....	60
G.	YOU'VE DISAPPEARED.....	60
H.	YOU HAVEN'T COOPERATED.....	61
I.	YOU CAN'T COMPLAINT OVER A COMPLAINT.....	61
J.	BUT SOMETIMES, THE AGENCY CAN.....	62

CHAPTER SIX: INVESTIGATING THE COMPLAINT63

- I. WHAT’S TAKING SO LONG63
- II. SO, WHAT’S THE AGENCY SUPPOSED TO DO NOW?64
 - A. WHO IS THIS INVESTIGATOR?.....65
- III. PREPARING FOR THE INVESTIGATION65
- IV. WHAT WILL THE INVESTIGATOR DO?66
 - A. THE INVESTIGATIVE INTERVIEW66
 - 1. Should I Bring Documents?68
 - 2. What About Witnesses?68
 - 3. Can Anyone Come With Me?.....68
 - 4. Will We Ever Meet Again?68
 - B. INVESTIGATIVE INTERROGATORIES69
 - C. FACT-FINDING CONFERENCES70
- V. THE REPORT OF INVESTIGATION.....70
 - A. NOTICE OF RIGHT TO A HEARING71
 - B. WHERE DO I GO FROM HERE?.....72
 - 1. Has Anyone Seen that White Flag?72
 - 2. Let the Agency Decide73
 - 3. Let the Judge Sort it Out75
 - 4. See You in Court.....75
- VI. HOW LONG SHOULD I WAIT?.....76

CHAPTER SEVEN: THE PREHEARING PROCESS77

- I. IT AIN’T PERSONAL77
- II. AND NOW, A WORD ABOUT THE JUDGE79
 - A. CAN I TALK TO THE JUDGE?80
- III. A LITTLE LIGHT READING80
- IV. THE PREHEARING PROCESS81
 - A. WHAT? MORE ACKNOWLEDGMENTS?81
 - 1. Ack! A Supplemental Order83
 - 2. What Are These New Numbers?.....83
 - B. PREHEARING MOTION PRACTICE.....83
 - 1. Can I Use a Form?84
 - 2. Case Caption84
 - 3. By Any Other Name85
 - 4. What I Really, Really Want.....85
 - 5. Let’s Agree to Disagree.....85
 - 6. And That’s a Fact.....86
 - 7. I Want It Because...86
 - 8. Say it Again, Sam87
 - 9. Filing and Service of Papers.....87
 - 10. Proposed Orders.....88
 - C. RESPONDING TO MOTIONS88

V.	DISCOVERY	89
A.	FIRST, A FEW BASICS.....	90
1.	Who Do I Send It To?	90
2.	What about the Judge?.....	90
3.	What about the ROI?	91
4.	Can I Ask for Anything?	91
5.	How Long Do I Have?.....	91
B.	WHAT DOES IT LOOK LIKE?	92
1.	Is Assembly Required?.....	92
2.	Certificate of Service	92
C.	PAPER DISCOVERY TOOLS.....	92
1.	Requests for Production of Documents.....	93
2.	Written Interrogatories	94
3.	Requests for Admissions.....	94
D.	DEPOSITIONS	95
1.	Who Can I Depose?.....	95
2.	Isn't this Expensive?	96
3.	Notice of Deposition	98
4.	Operators Are Standing By	99
5.	What about My Friends?.....	99
6.	What Do I Do at a Deposition?	100
E.	RESPONDING TO DISCOVERY	102
1.	Medical Examinations	103
VI.	MOTIONS TO COMPEL DISCOVERY	104
VII.	MOTIONS FOR SANCTIONS	105
VIII.	MOTIONS FOR DISMISSAL AND SUMMARY JUDGMENT.....	106
A.	DISMISSAL, OR SO WHAT?.....	106
1.	Failure to State a Claim.....	107
2.	<i>Sua Sponte</i> Dismissal	107
3.	Partial Dismissal	108
B.	SUMMARY JUDGMENT	108
C.	WHAT IF I DON'T HAVE DISCOVERY?	109
D.	AGAIN WITH THE <i>SUA SPONTE</i>	110
IX.	PREHEARING SUBMISSIONS.....	110
A.	WITNESS LIST.....	110
X.	PREHEARING CONFERENCES.....	111
	CHAPTER EIGHT: THE HEARING.....	113
I.	LET'S GET ORGANIZED!.....	113
A.	THEM GOOD, OL' HIGH SCHOOL DAYS.....	114
B.	PLEADING FILES	114
C.	REPORT OF INVESTIGATION	114
D.	HEARING NOTEBOOK.....	115
1.	Your List of Witnesses	116

2.	The Agency’s Witness List.....	116
3.	The Prehearing Order	116
4.	Opening Statement Notes	116
5.	Your Witness Questions	117
6.	Cross Examination Notes.....	117
7.	The List of Exhibits.....	118
8.	Closing Statement Notes.....	118
E.	THE EXHIBIT BOOKS.....	119
II.	BE PREPARED.....	119
III.	BIFURCATED HEARINGS. ARE THEY CONTAGIOUS?.....	120
IV.	ALMOST THERE.....	120
A.	PROPER ATTIRE	120
B.	CAN I GET YOU A TAXI?.....	121
C.	SHOULD I BRING MY LUNCH?.....	121
V.	THE HEARING	122
A.	THE ROLE OF THE JUDGE.....	122
B.	OPENING THE RECORD.....	123
C.	OPENING STATEMENTS	124
1.	Objections.....	125
D.	DIRECT EXAMINATION OF WITNESSES	125
1.	Do I Have to Question Myself?	127
2.	What Do I Do with All These Documents?.....	127
3.	I Don’t Recall	129
4.	Can I Skip the Bad Parts?	130
5.	But This Witness Doesn’t Even Like Me.....	130
E.	CROSS EXAMINATION OF WITNESSES.....	131
1.	Where You Lead, I Will Follow	132
2.	What Do I Do with All These Depositions?.....	132
F.	DOES THIS EVER END?	133
G.	CLOSING STATEMENTS	133
VI.	A TIME FOR DECISIONS	134
CHAPTER NINE: SETTLEMENT.....		135
I.	PREPARING TO SETTLE	136
II.	JUDGES AND SETTLEMENT	138
A.	SETTLEMENT AND THE PRESIDING JUDGE	138
B.	SETTLEMENT JUDGES	139
C.	MEDIATION.....	140
III.	SETTLEMENT AGREEMENTS.....	141
A.	ORAL AGREEMENTS.....	141
B.	WRITTEN AGREEMENTS	142
1.	Say What You Mean	142
2.	Knowing and Voluntary	142
3.	Specify the Terms	143

4.	Terms of Art.....	143
5.	What if the Agency Doesn't Do What it Said?	144
6.	Signing the Agreement.....	144

CHAPTER TEN: EEOC APPEALS.....145

I.	HOW DO I DO THIS?.....	145
A.	FINAL AGENCY DECISIONS.....	145
B.	FINAL AGENCY ACTIONS.....	146
II.	WHAT IS THE EEOC LOOKING AT?	147
A.	ERRORS OF LAW.....	147
B.	ERRORS OF FACT.....	147
1.	Decisions by Administrative Judges	147
2.	Final Agency Decisions	148
III.	SO, WHAT SHOULD I SAY?.....	148
A.	LEGAL RESOURCES	149
B.	BRIEF FORM.....	150
IV.	REQUESTS FOR RECONSIDERATION	151
V.	BUT, THERE IS AN END	151