

# **REGIONAL ATTORNEYS' MANUAL**



## **PART 1 ADMINISTRATIVE AND SUPPORT INFORMATION**

**OFFICE OF  
GENERAL COUNSEL**



**APRIL 2005**



# REGIONAL ATTORNEYS' MANUAL

## PART 1. ADMINISTRATIVE AND SUPPORT INFORMATION

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# **REGIONAL ATTORNEYS' MANUAL**



## **PART 1 ADMINISTRATIVE AND SUPPORT INFORMATION**

### **SECTION I**

#### **OGC ADMINISTRATIVE POLICIES AND PROCEDURES**



**SECTION I**

**OGC ADMINISTRATIVE POLICIES AND PROCEDURES**

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**A. OFFICE SYSTEMS**

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**A. OFFICE SYSTEMS**

1. Enforcement Unit Support and Assistance

a. Generally

Legal units should have standard procedures for responding to enforcement unit requests for advice and assistance and processing administrative matters (e.g., written requests for legal opinions, cause reviews, reviews of letters of determinations, reviews of proposed settlement and conciliation agreements, subpoena reviews, determinations on petitions to revoke or modify subpoenas, and defending subpoenas of records and staff). The procedures should include processing times agreed upon by the Regional Attorney and Office Director.

b. Recording Administrative Assignments

The legal unit should keep records of documents received from the enforcement unit requiring legal unit action, and should include at least the following information: date of receipt, type of assignment, legal unit staff member assigned and assignment date, and date of return to the enforcement unit. Use the "administrative cases" entry in the Commission's Integrated Mission System (IMS) regarding the following matters: Cause Review (pre-LOD), Subpoena Review, Draft Subpoena Determination, and Freedom of Information Act (FOIA).

c. Ongoing Advice and Assistance to Enforcement Unit Staff

Regional Attorneys should ensure that attorney staff are available to respond to questions or other requests for immediate assistance from enforcement unit staff. Although an attorney is always free to suggest that an investigator consult his or her supervisor about a question presented to the attorney, there should be no requirements that investigative staff follow any chain of authority or fulfill any other formal conditions before talking to an attorney. Attorneys should be completely accessible to investigators and the Regional Attorney is responsible for establishing an office environment in which investigators are comfortable in approaching attorneys informally on any kind of matter.



d. Subpoena Reviews

These administrative assignments are discussed separately because while they often can be performed quickly, they are sometimes processed under the same timeframes as more complex assignments such as cause reviews and preparation of subpoena enforcement actions, thus unnecessarily delaying investigations. Proposed subpoenas should normally be reviewed and returned to the enforcement unit within a few days of receipt in the legal unit. Legal units should consider having supervisors review proposed subpoenas themselves rather than incurring the administrative delays involved in assigning them to attorneys.

Nothing in this subsection should be read to minimize the importance of careful review of proposed subpoenas, ensuring that issuance of the subpoena is appropriate and that it is worded clearly and requests only relevant information.

2. Support of Enforcement Unit Work in Offices without Permanent Legal Staff

Offices without permanent legal unit staff should be visited by one or more attorneys at least once a month, and every effort should be made to make more frequent trips. Visits should be scheduled sufficiently in advance to enable enforcement staff to plan what to present to the attorney, and should be of sufficient duration to provide all necessary assistance. Attorneys should be formally assigned to the support of staff in these offices and substitutes should be designated on days when the assigned attorneys are not available. Names and telephone numbers of assigned attorneys and substitutes should be provided to enforcement unit staff. Whether or not legal staff are stationed in an office, investigators should be encouraged to contact assigned attorneys frequently and informally. Legal unit timeframes for processing administrative matters received from enforcement unit staff are the same regardless of whether the enforcement unit has permanent legal staff (see subsection 1.a. above).

3. Review of Attorney Work

Review of trial attorney work by a supervisor is essential to the consistent production of quality legal work. This includes review of matters such as preparation for depositions and negotiations, all written work other than routine correspondence, and preparation for all hearings and trials. Such review must be performed regardless of the ability of the trial attorney. The objective is not simply to ensure that legal work is



performed competently (which is required by professional ethical rules, see ABA Model Rules of Professional Conduct 1.1 (requiring competent representation) and 5.1 (holding legal managers and supervisors responsible for their staffs' compliance with the rules of professional conduct)), but that it is of the highest quality that the combined efforts of the legal unit staff can produce. Where legal work is performed by a supervisory trial attorney it should be reviewed by the Regional Attorney or another supervisory trial attorney.

4. Managing Attorneys in Offices without Supervisory Staff

Where attorneys are stationed in offices without supervisory staff, procedures must be established to ensure the same degree of review of their legal work that occurs for attorneys stationed in field legal units with onsite management. In addition, for each suit on which such an attorney is lead counsel, a complete set of the litigation and correspondence files described in subsection 9. below should be maintained in the legal unit where the Regional Attorney is stationed as well as in the office where the attorney is stationed.

5. Discovery Plans

A written discovery plan should be prepared prior to the filing of each suit. No particular format is required, but the plan should contain the following information: the elements of proof required for each claim, the evidence necessary to establish each element, the expected sources of the evidence, and the order (and to the extent possible the timing) in which through discovery or other means the evidence will be obtained. The plan should be modified as necessary as the litigation progresses.

6. Case Conferences

Regional Attorneys are required to conduct quarterly conferences on each case in litigation and to ensure that timely reports of the conferences are prepared. Copies of the reports should be submitted to the legal unit's Litigation Management Services (LMS) liaison by the 15<sup>th</sup> of the first month of each quarter. At the case conference, the Regional Attorney should meet with the assigned supervisory trial attorney and trial attorney(s) and discuss what has occurred in the case since the last conference and what activities are planned for the upcoming months. This is also a good time to ensure that the case files are complete and the indexes up to date. The Regional



Attorney should of course be involved in litigation planning on an ongoing basis, with the case conference being only one of many discussions he or she will have on each active case during the quarter. The requirement that formal case conferences be held has two purposes: first, to insure that at least once a quarter a structured meeting is held on each case, at which the merits of the case are carefully evaluated, litigation strategies are explored, and future activities are planned and scheduled; and second, through the reports of the conferences, to provide an accessible source of information for other agency staff on the course of the litigation.

The Regional Attorney will decide which of the participants is to prepare the report of the conference, but the Regional Attorney is responsible for the quality and uniformity of the unit's reports. A recommended format for the report is provided in the appendix to this subsection. The body of the report should contain the following information: a brief description of what the case is about (this should consist of more than just a conclusory statement of the claims; it should set out the principal facts on which the claims are based); significant activities by each party since the last report; an assessment of the merits of the case in view of the discovery conducted thus far; anticipated proof problems, procedural issues, and similar matters warranting comment; schedules set by the court for discovery and other pretrial and trial matters; the state of settlement negotiations, including an appraisal of the prospects for settlement; and projected future litigation activities. Future activities should be described with as much specificity as possible and dates provided for when each activity is expected to take place. The report should be easily understandable by a third party.

#### 7. Case Status Sheets

For each case in litigation, a document should be maintained that records chronologically every court filing, every discovery request and response, and all other significant litigation activities such as court orders of any kind and court conferences and hearings. Litigation related activities such as communications with claimants and opposing counsel and office strategy meetings should be recorded on case conference reports rather than on case status sheets, which are meant to serve as an easy to follow record of formal litigation activities. Case status sheets should be submitted quarterly to your LMS liaison together with the case conference reports.



8. Mail

All mail should be reviewed by a supervisor and distributed to the attorney assigned to the matter as early as possible on the date of receipt. Although copies of litigation-related mail must be made for the office's litigation filing system, this must not delay distribution to the assigned attorney. If necessary to avoid delays in distribution, one copy of the document can be made immediately following supervisory review, with additional copying and the filing itself taking place later. Distribution to the assigned attorney should not be delayed if the supervisor will not be able to review the document immediately or if the supervisor's review will take more than a few minutes. In either of these situations, the assigned attorney should be given a copy of the document prior to supervisory review.

With the ever-increasing reliance on electronic communications today, communications that used to be mailed or faxed are now likely to be sent only by e-mail. Such e-mails are considered Commission "records" subject to EEOC Order 201.001, *Records Management*. Recipients of litigation-related e-mails should print copies of them for filing in the office's litigation filing system. (See discussion in *Manual* Part 1, section I.B., *Records Management: File Creation, Maintenance, and Disposition*, at subsection 3.b.) Like delays in distributing regular mail, delays in distributing e-mail - especially e-mail that contains critical information or a deadline - should also be avoided. If an attorney is away from the office and will not be checking e-mail, the supervisor should have a contingency plan for screening the attorney's e-mail for critical and time-sensitive communications.

9. Litigation Filing System

Legal units should maintain court documents and discovery materials centrally in clearly marked and indexed binders. Legal units should maintain litigation related correspondence in separate centrally located files. Centralized files should not be removed from the office, and attorneys should generally work from copies of documents rather than the centrally maintained files.

Litigation files and litigation related correspondence files are considered Commission "records," subject to EEOC Order 201.001, *Records Management*. The *Order* sets forth procedures for creating, maintaining, retiring, and preserving litigation and other records. (See discussion in this Part of the *Manual*, section I.B., *Records Management: File Creation, Maintenance, and Disposition*, at subsection 4.a.)





10. Processing of Freedom of Information Act Requests

FOIA requests should be logged into IMS on the date of receipt and processed within the regulatory time limits. These time limits must be strictly followed. FOIA request files are Commission "records" that must be created, maintained, retired, and eventually destroyed as set forth in EEOC Order 201.001, *Records Management*. (See discussion in this Part of the *Manual*, section I.B., *Records Management: File Creation, Maintenance, and Disposition* at subsection 4.b.)

11. Library

A legal unit staff member should be assigned responsibility for filing library materials and keeping the library in order. All library materials should be filed within a week of receipt.



APPENDIX

CASE CONFERENCE REPORT

CASE NAME:

ISSUES:

CASE NUMBER:

CLASS OR INDIVIDUAL:

COURT:

JURY OR BENCH TRIAL:

DATE COMPLAINT FILED:

ATTORNEY:

JUDGE:

SUPERVISOR:

MAGISTRATE:

DEFENDANT'S ATTORNEY:

STATUTE:

DATE OF REPORT:

BASIS:

DATE OF LAST REPORT:

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BRIEF DESCRIPTION OF CASE:

REPORT:

PLAN:

COMMENTS:



B. RECORDS MANAGEMENT: FILE CREATION, MAINTENANCE, AND DISPOSITION

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**B. RECORDS MANAGEMENT: FILE CREATION,  
MAINTENANCE, AND DISPOSITION**

EEOC Order 201.001, *Records Management*, dated December 3, 2003, sets forth procedures governing the creation and receipt, maintenance and use, as well as preservation or destruction of EEOC records. Subsection 1 sets forth the authority for EEOC's records management program. Subsection 2 defines "record" and subsections 3 and 4 explain requirements for creation, maintenance, preservation, or destruction of various types of OGC records. Subsections 5 and 6 summarize procedures for transmitting records to and retrieving records from a Federal Records Center (FRC). Subsection 7 gives procedures for transmitting records to the Washington National Archives. Subsection 8 sets forth the penalties for unauthorized destruction of federal records. Finally, subsection 9 has links to related information on the Internet.

1. Authority

Authority for the EEOC's records management program derives from the Federal Records Act and from regulations promulgated thereunder.

a. National Archives and Records Administration

In an amendment to the Federal Records Act, Pub. L. 98-497, Congress created the National Archives and Records Administration (NARA) and in so doing transferred responsibility for preservation and management of federal government records to NARA from the General Service Administration's National Archives and Records Service. [44 U.S.C. § 2102](#). Congress charged NARA with promulgating "standards, procedures, and guidelines" to assist federal agencies in their records management and disposition practices. [44 U.S.C. § 2904](#) (a), (b), and (c)(1). NARA's regulations are codified at 36 C.F.R. Chapter XII. [Part 1220](#) of the regulations concern records management programs by federal agencies. NARA has also promulgated extensive [General Records Schedules](#), available on NARA's Web page. *General Records Schedules* provide disposal authorization for temporary administrative records common to several or all agencies of the federal government.



- b. Office of the Chief Financial Officer and Administrative Services (OCFO/AS)

The Federal Records Act also spells out federal agencies' duties to "establish and maintain an active, continuing program for the economical and efficient management of the records of the agency." [44 U.S.C. § 3102](#). The Office of the Chief Financial Officer and Administrative Services (OCFO/AS) is responsible for administering the EEOC's records management program. Under this authority, the EEOC's Chief Financial Officer issued revised EEOC Order 201.001, *Records Management*, on December 3, 2003. The revised *Order* responds to NARA's directive that EEOC preserve significant records for historical purposes.<sup>1</sup> The *Order* also reflects the new reality that many Commission "records" are now electronic.

## 2. What Are Records?

The Federal Records Act and its implementing regulations define "record" and "nonrecord material," as well as "permanent record." Since the definitions are not enumerated in EEOC's *Records Management Order*, they are set forth below:

- a. Record

The Federal Records Act defines "record" at [44 U.S.C. 3301](#) to include:

all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government or because of the informational value of data in them. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved

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<sup>1</sup> The revised *Order* replaces Order 201.001, *EEOC Records Disposition Program*, dated June 17, 1980, EEOC's *Interim Guidance on Records Retention*, issued in April 1997, and EEOC Order 201.001, *Disposition of Personal Papers and Official Records*, dated April 15, 1991.



only for convenience of reference, and stocks of publications and of processed documents are not included.

b. Nonrecord Materials

NARA's regulations, at [36 C.F.R. § 1220.14](#), define "nonrecord materials" as:

those Federally owned informational materials that do not meet the statutory definition of records (44 U.S.C. 3301) or that have been excluded from coverage by the definition. Excluded materials are extra copies of documents kept only for reference, stocks of publications and processed documents, and library or museum materials intended solely for reference or exhibit.

c. Permanent Record

NARA's regulations, at [36 C.F.R. § 1220.14](#), define "permanent record" as:

any Federal record that has been determined by NARA to have sufficient value to warrant its preservation in the National Archives of the United States. Permanent records include all records accessioned by NARA into the National Archives of the United States and later increments of the same records, and those for which the disposition is permanent on [[Standard Form 115](#)<sup>2</sup>], Request for Records Disposition Authority, approved by NARA on or after May 14, 1973.

After a specified period of time, all permanent records are transferred to NARA for permanent retention. The EEOC's *Records Management* Order classifies litigation files as permanent records.

d. Temporary Record

While not defined in NARA's regulations, materials that are classified as records but not as permanent records are temporary records. After a specified period of time, all temporary records are to be destroyed. The EEOC's *Records Management* Order classifies most of OGC's administrative and other files as temporary records.

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<sup>2</sup> For more information on Standard Form 115 (SF 115), see subsection 4, *infra*. For a copy of SF 115, see appendix 4, hereto.



3. Records Management Requirements

EEOC's *Records Management Order* sets forth some general records management requirements applicable to all headquarters and field offices. These are summarized briefly below.

a. General Requirements

EEOC's *Records Management Order* sets forth some general records management requirements applicable to all headquarters and field offices. One is that offices are to maintain all files on a calendar year basis (except for litigation and charge files and some financial and accounting records). *Order* at 3. When files are deemed "inactive" (see subsection 4, below), offices are to move them to a separate file drawer, shelf, or cabinet for storage until it is time to destroy them. *Order* at 3. The *Order* requires offices to annually inventory their files and report the volume of records held, disposed of, or retired to OCFO/AS.<sup>3</sup> *Order* at 4.

b. Electronic Records

The *Records Management Order* has instructions for electronic records that are subject to the Order. They are to be printed in hard copy and stored using the procedures summarized above, copied to a network share drive for backup and storage, stored on CDs or other electronic media format, or "[s]tored as data within an EEOC information system (database, document management system) which automates EEOC's record retention policies and schedules." *Order* at 4.

c. Personal Papers

The *Order* also has instructions regarding personal papers. Personal papers are not "records" covered by the Federal Records Act. Personal papers are to be maintained in an employee's office and filed separately from Commission records. When the same document contains both private matters and Commission business,

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<sup>3</sup> The *Order* states that offices must report the results of their annual inventory of files to OCFO/AS using EEOC Form 163, *Annual Summary of Records Holding*. *Order* at 4. According to OCFO/AS, EEOC Form 163 is now obsolete, due to a change in procedures. The revised process for annual reviews will ensure the proper disposal of agency records.





extract or copy the portion of the file that relates to Commission business and store it with other Commission records. Extra copies of Commission records kept for reference are not personal papers. Employees may keep extra copies of documents that they drafted, reviewed, or acted upon, unless doing so will diminish the official records of the Commission or violate confidentiality. *Order* at 8.

#### 4. Rules for Types of Records

Appendix A to EEOC Order 201.001, *Matrix by Office of Primary Responsibility for Commission Program Records, Including Administrative Records Common to All Offices* (appendix A to the *Order*), “establishes individual office records management responsibility on a record-by-record basis among the headquarters and their subordinate field offices.” *Order* at 5. In other words, appendix A to the *Order* sets forth requirements for each EEOC office governing the creation and receipt of records, their maintenance and use, the length of time that particular records may be stored at EEOC, disposal authority, and retirement of temporary and permanent records. Offices may recommend changes to their responsibilities under the *Order* by submitting a justification memorandum along with a [Standard Form 115 \(SF 115\)](#), *Request for Records Disposition Authority*, to OCFO/AS. *Order* at 9. (See appendix 4, hereto, for a copy of SF 115).

For the purposes of this discussion, the OGC files enumerated in appendix A to the *Order* have been categorized as litigation files, Freedom of Information Act (FOIA) files, and administrative and other files. Each type is described below.

##### a. Litigation Files

OGC-HQ and the Regional Attorneys are responsible for 3 categories of litigation files. They are general litigation files, EEOC defendant case files, and EEOC plaintiff case files. These files are described in more detail in appendix 1 to this section of the *Manual* and in the *EEOC's Records Management Order*, at A-7 through A-9.

##### (1) Creating and Maintaining Litigation Files

OGC is responsible for creating and maintaining the Commission's general litigation file, which is to be arranged by issue or subject matter. Each field office litigation program as well as Systemic Litigation in OGC-HQ is responsible for creating and maintaining EEOC plaintiff case files, while OGC Internal Litigation bears responsibility for setting up and maintaining EEOC defendant case files. EEOC plaintiff



and defendant case files are to consist of one (or more) folder for each case, organized alphabetically by defendant name. (*Order* at A-8 - A-9).

(2) Retaining and Permanently Storing Inactive Litigation Files

All OGC litigation file folders are subject to the same retention and storage requirements. For the first year after the final court or Commission action in a case, its folders are to remain with the active files. Thereafter, the case is considered inactive and its folders may be moved to locked filing cabinets specifically designated for the Commission's closed files. Alternatively, OGC may move them to a Federal Records Center (FRC) with concurrence of OCFO/AS. Two years after the final action in the case, OGC should transfer all of the folders to NARA (through OCFO/AS) for permanent storage.

b. Freedom of Information Act Files

Appendix A to the *Records Management* Order describes 4 categories of FOIA files. While one category is in the exclusive domain of the Office of Legal Counsel (OLC), Regional Attorneys as well as OLC are responsible for maintaining and disposing of FOIA files in the 3 remaining categories: FOIA requests file, FOIA control file, and FOIA administrative file. These files are described in more detail in appendix 2 to this section of the *Manual* and in the EEOC's *Records Management* Order at A-14 through A-15.

(1) Creating and Maintaining FOIA Files

Each folder in the FOIA requests file consists of the original request for information under FOIA, a copy of the reply thereto, and all related supporting files, including copies of withheld or redacted records. The FOIA control file is a master list of FOIA requests that the office has handled. The FOIA administrative file consists of records related to implementation of FOIA. The EEOC's *Records Management* Order explains what documents should be stored in each type of FOIA file, but does not give particulars about how the files are to be organized.

(2) Retaining and Destroying Inactive FOIA Files

Requirements for retention and destruction of FOIA files vary depending upon the type of file. The EEOC *Order* requires offices to destroy FOIA requests files 2 years after the Commission's reply if: (a) the Commission granted access to all documents requested, (b) the documents did not exist, (c) the requester's descriptions were



inadequate, or (d) the requester failed to pay reproduction costs. On the other hand, if the Commission denied the request and the requester did not file an appeal, OGC may not destroy the documents until 6 years after the Commission's reply. OGC should destroy the FOIA control file 6 years after the date of last entry or 6 years after the final action by the Commission. Finally, OGC should destroy any records in the FOIA administrative file that are 2 years old.

c. Administrative Files and Other Materials

Appendix A to the EEOC's *Records Management* Order lists 8 broad categories of administrative files and other materials that OGC-HQ and the Regional Attorneys are responsible for. These are: (i) general correspondence files; (ii) office administrative files; (iii) schedules of daily activities; (iv) suspension (or "tickler") files; (v) transitory files; (vi) tracking and control records; (vii) finding aids (or indexes) for records authorized for destruction by NARA; and (viii) electronic mail and word processing system copies. These materials are described in more detail in appendix 3 to this section of the *Manual* and in the EEOC's *Records Management* Order at A-6 and A-140 through A-143.

(1) Creating and Maintaining Administrative Files

OGC's general correspondence files should contain all of the original incoming communications and initialed record copies of outgoing and interoffice correspondence arising from the functions for which OGC exists. Material in this file is to be arranged chronologically and alphabetically by issue and subject matter. The general correspondence files do not include material that is part of an official case file. In contrast to the general correspondence files, OGC's administrative files should consist of copies of records created and received by OGC relating to its internal administration or housekeeping activities instead of the functions for which it exists. Examples of OGC's administrative files include files regarding travel, training, budget reports, supply requests, staffing records, and facsimile machine logs. For details on creating and maintaining additional OGC files, see appendix 3 to this section of the *Manual* and the *Order* at A-6 and A-140 through A-143.

(2) Retaining and Destroying Inactive Administrative Files

OGC's general correspondence and administrative files can be destroyed after 3 years and after 2 years, respectively. For the first year, the files must remain with OGC's active files. After the first year, OGC may destroy all unofficial files and copies that are no longer needed for reference and may move the record file folders to locked



filing cabinets specifically designated for OGC's closed files. Alternatively, with concurrence of OCFO/AS, OGC may move the general correspondence and administrative files to a FRC until their respective destruction dates. Schedules of daily activities and tracking and control records are also scheduled to be destroyed after 2 years. Electronic copies of records may be deleted from hard disks and network drives 180 days after the record was produced. Transitory files may be destroyed after 3 months. Records in the suspense (or "tickler") file may be destroyed as soon as the action to which the record relates has been taken. Finally, finding aids for records that have been sent to NARA pending destruction may be destroyed when the related records are destroyed.

5. Transferring Records to Federal Records Center

NARA operates FRCs nationwide. According to the EEOC's *Records Management Order*, use of these FRCs play an important role in records management by save space and equipment costs. *Order* at 6. The *Order* directs offices to select files for transfer if: "(1) they are no longer needed to carry out day-to-day office operations and (2) they are ineligible for destruction for at least three (3) years from the date of transfer." *Order* at 6.

After selecting appropriate files for transfer, the legal unit should prepare a [Standard Form 135 \(SF 135\)](#), *Records Transmittal and Receipt*, and if necessary, a continuation sheet, [SF 135-A](#). (Copies of SF 135 and 135-A are attached in appendices 5 and 6 to this subsection). The forms will serve as a packing list and to will be used to control the location and disposition of the files at the FRC.

a. Washington National Records Center

Offices served by the Washington National Records Center, located in Suitland, Maryland, are to forward all copies of the SF 135 to OCFO/AS. OCFO/AS will assign and record accession numbers on all copies of the SF 135 and will return them to the submitting office. The transferring office will then send the original and 2 copies of the SF 135 to the Washington National Records Center. These forms should arrive 2 or more weeks before the records shipment date. The Records Center approves the transfer by returning 2 copies of the SF 135 to the transferring office. Headquarters offices are to notify OCFO/AS to make arrangements to transfer the files to the Washington National Records Center. Non-HQ transferring offices must ship the records (by the lowest cost shipping method possible) to the Records Center within 30



days or will be required to resubmit the paperwork. Offices must also forward an annotated copy of the SF 35 to OCFO/AS for filing. *Order* at 6-7.

b. Field Federal Records Centers

Offices served by 1 of the FRCs in the field are to forward a copy (not the original) of the SF 135 to OCFO/AS. OCFO/AS will review the SF 135 to determine whether the proposed records transfer is appropriate and will notify the office by telephone or e-mail of acceptance or rejection of the request. The transferring office will then send the original and 2 copies of the SF 135 to the FRC. These forms should arrive 2 or more weeks before the records shipment date. The FRC will approve the transfer by recording the accession numbers on the forms and returning 2 copies of the SF 135 to the transferring office. The transferring office then must ship the records (by the lowest cost shipping method possible) to the FRC within 30 days or it will be required to resubmit the paperwork. It must also forward an annotated copy of each SF 135 to OCFO/AS for filing. *Order* at 7.

For information on what kind of boxes to use for storage, how to pack, label and seal the boxes, and for more information on shipping the records, see the *Order* at 7.

6. Retrieving Records from a Federal Records Center

To retrieve records from a FRC, the requesting office should complete an [Optional Form 11 \(OF 11\)](#), *Reference Request - Federal Records Center*, identifying the records requested by accession number. (A copy of OF 11 is attached as appendix 7). Requests from HQ offices must be sent to the FRC through OCFO/AS. Field offices may send requests directly to the FRC storing the records, but must send a copy to OCFO/AS for review and approval. *Order* at 8.

7. Transfer of Records to National Archives

All litigation records, as well as other Commission records of permanent historical or archival value, must be transferred to the National Archives. To initiate the transfer, the transferring office must prepare a [Standard Form 258 \(SF 258\)](#), *Agreement to Transfer Records to the National Archives of the United States*, and forward the form to OCFO/AS for review, approval, and further instructions. *Order* at 8. (For a copy of SF 258, see appendix 8).



8. Damage to or Unauthorized Destruction of Records

“The maximum penalty for the willful and unlawful destruction, damage, or alienation of Federal records is [a] \$2,000 fine, 3 years in prison, or both (18 U.S.C. 2071).” *Order* at 10.

9. Web Resources

Title	Description and Web Address
Form 11	Text of Optional Form 11 (OF 11), <i>Reference Request - Federal Records Center</i> , on: <ul style="list-style-type: none"><li>• NARA’s Web site in pdf <a href="http://www.archives.gov/records_center_program/of_11.pdf">http://www.archives.gov/records_center_program/of_11.pdf</a></li><li>• General Services Administration’s (GSA’s) Web site in Accessible FormNet Version and pdf <a href="http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL">http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL</a></li></ul>
Form 115	Standard Form 115 (SF 115), <i>Request for Disposition Authority</i> on NARA’s Web site: <ul style="list-style-type: none"><li>• text in pdf <a href="http://www.archives.gov/records_management/pdf/sf115.pdf">http://www.archives.gov/records_management/pdf/sf115.pdf</a></li><li>• instructions in html <a href="http://www.archives.gov/records_management/policy_and_guidance/standard_form_115.html">http://www.archives.gov/records_management/policy_and_guidance/standard_form_115.html</a></li></ul>



Title	Description and Web Address
Form 135 and Form 135a	<p>Standard Forms 135 (SF 135) and SF 135a, <i>Records Transmittal and Receipt</i> and continuation sheet</p> <ul style="list-style-type: none"> <li>SF 135 on NARA's Web site in microsoft word and in pdf, with instructions for the Federal Records Centers and for Washington National Record Center <a href="http://www.archives.gov/records_center_program/forms/sf_135_intro.html">http://www.archives.gov/records_center_program/forms/sf_135_intro.html</a></li> <li>SF 135 and 135a on GSA's Web site in pdf, Accessible FormNet Version, and FormFlow version 1.1 <a href="http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL">http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL</a></li> </ul>
Form 258	<p>Text of Standard Form 258, <i>Agreement to Transfer Records to the National Archives of the United States</i></p> <ul style="list-style-type: none"> <li>on NARA's Web site in pdf <a href="http://www.archives.gov/records_center_program/sf_258.pdf">http://www.archives.gov/records_center_program/sf_258.pdf</a></li> <li>on GSA's Web site in pdf, Accessible FormNet Version, and FormFlow version 1.1 <a href="http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL">http://www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=ALL</a></li> </ul>
<a href="#">General Records Schedules</a>	<p>Schedules for retention, preservation, and destruction of documents on National Archives and Records Administration's Web page <a href="http://ardor.nara.gov/grs/index.html">http://ardor.nara.gov/grs/index.html</a></p>
<a href="#">GSA Forms Library</a>	<p>GSA Forms Library - main Web page for GSA Forms Library. Has links to Standard, Optional, and GSA Forms, including OF 11, SF 115, SF 135, and SF 258 <a href="http://www.gsa.gov/Portal/gsa/ep/formsWelcome.do?pageTypeId=8199&amp;channelId=-13253">http://www.gsa.gov/Portal/gsa/ep/formsWelcome.do?pageTypeId=8199&amp;channelId=-13253</a></p>
<a href="#">Law on Records Management by Federal Agencies</a>	<p>Law on records management by federal agencies on NARA's Web site <a href="http://www.archives.gov/about_us/basic_laws_and_authorities/federal_agencies.html">http://www.archives.gov/about_us/basic_laws_and_authorities/federal_agencies.html</a></p>



Title	Description and Web Address
<a href="#">NARA</a>	Main Web page of NARA - contains information on management and disposition of federal records <a href="http://www.archives.gov/welcome/index.html">http://www.archives.gov/welcome/index.html</a>
<a href="#">NARA Electronic Forms and Resources</a>	NARA's Web page for electronic forms and resources related to records management, including OF 11, SF 135, and SF 258 <a href="http://www.archives.gov/records_center_program/forms/forms.html">http://www.archives.gov/records_center_program/forms/forms.html</a>
<a href="#">NARA Law</a>	Law establishing NARA on NARA's Web site <a href="http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html">http://www.archives.gov/about_us/basic_laws_and_authorities/nara.html</a>
<a href="#">NARA Records Center Program</a>	NARA's main Web page for Records Center program <a href="http://www.archives.gov/records_center_program/index.html">http://www.archives.gov/records_center_program/index.html</a>
<a href="#">NARA Records Management</a>	NARA's main Web page for records management information <a href="http://www.archives.gov/records_management/index.html">http://www.archives.gov/records_management/index.html</a>
<a href="#">NARA Regulations</a>	NARA regulations on NARA's Web site <a href="http://www.archives.gov/about_us/regulations/regulations.html">http://www.archives.gov/about_us/regulations/regulations.html</a>





APPENDIX 1

OGC LITIGATION FILES  
(PERMANENT RECORDS)

Description	Maintenance and Contents	Disposition
General Litigation Files <i>(Order at A-7)</i>	A litigation folder containing the official record copy of litigation records for each case. [OGC] initiates or coordinates. Arranged by issue/subject.	<b>Retain for 1 year</b> in office after final court or Commission action in the case, at which time files are considered inactive. After 1 <sup>st</sup> year, record copies of the files may be stored elsewhere in agency in locked storage or sent to a federal storage facility. <b>2 years</b> after final action in case, OGC transfers all folders to NARA (through OCFO/AS) for <b>permanent storage</b> .
EEOC Defendant Case File <i>(Order at A-8)</i>	Folders containing the official record copy of all the litigation records for all cases where the Commission is the defendant and is represented by OGC (OGC-HQ Internal Litigation). Arranged alphabetically by defendant's name.	
EEOC Plaintiff Case File <i>(Order at A-9)</i>	Folders containing the official record copy of all the litigation records for all cases where the Commission is the plaintiff and is represented by OGC (OGC-HQ Systemic Litigation and OGC field litigation). Arranged alphabetically by defendant's name.	



APPENDIX 2

OGC FOIA FILES  
(TEMPORARY RECORDS)

Description	Maintenance and Contents	Disposition
FOIA Requests File <i>(Order at A-14)</i>	The original requests for information under FOIA, a copy of the reply thereto, and all related supporting files, including copies of withheld or redacted records.	<b>Destroy 2 years</b> after Commission's reply if Commission granted access to all documents requested, the documents did not exist, the descriptions were inadequate, or the requester failed to pay reproduction costs. <b>Destroy 6 years</b> after Commission's reply if Commission denied the requested and the requester did not appeal. For FOIA appeals see <i>Order at A-14 - A-15</i> .
FOIA Control File <i>(Order at A-15)</i>	Registers and similar records listing date, nature, and purpose of request and name and address of requester.	<b>Destroy 6 years</b> after date of last entry or <b>6 years</b> after final action by Commission.
FOIA Administrative File <i>(Order at A-15)</i>	Records of the Commission relating to its implementation of the FOIA, including notices, memoranda, routine correspondence, and related records.	<b>Destroy</b> when file is <b>2 years</b> old.



APPENDIX 3

OGC ADMINISTRATIVE AND OTHER FILES  
(TEMPORARY RECORDS)

Description	Maintenance and Contents	Disposition
General Correspondence Files <i>(Order at A-6)</i>	All of the original incoming communications and initialed record copies of outgoing and interoffice correspondence arising from the functions for which the Office of General Counsel exists. The file does not include material that is part of an official case file, or materials arising from OGC's internal administration or housekeeping activities. Arranged chronologically and alphabetically by issue/subject.	<b>Retain for 1 year</b> in office, then destroy all unofficial files and copies when no longer needed for reference. After 1 <sup>st</sup> year, record copies of the files may be stored elsewhere in agency in locked storage or sent to a federal storage facility. <b>Destroy</b> when files are <b>3 years</b> old.
Office Administrative Files <i>(Order at A-140)</i>	Copies of records created and received by the office related to the internal administration or housekeeping activities of the office rather than the functions for which it exists. Examples include files regarding travel, training, budget reports, supply requests, staffing records, and facsimile machine logs. Excludes any reports or other materials that do not serve as unique documentation of the programs or functions of the office.	<b>Retain for 1 year</b> in office, then destroy all unofficial files and copies when no longer needed for reference. After 1 <sup>st</sup> year, record copies of the files may be stored elsewhere in agency in locked storage or sent to a federal storage facility. <b>Destroy</b> when files are <b>2 years</b> old.



Description	Maintenance and Contents	Disposition
Schedules of Daily Activities  (Order at A-141)	Calendars, appointment books, schedules, logs, diaries, and other records documenting meetings, appointments, telephone calls, trips, visits, and other activities by office managers, supervisors, and employees while serving in a personal capacity. Excludes personal materials.	<b>Retain for 1 year</b> in office, then destroy all unofficial files and copies when no longer needed for reference. After 1 <sup>st</sup> year, record copies of the files may be stored elsewhere in agency in locked storage or sent to a federal storage facility. <b>Destroy</b> when files are <b>2 years</b> old.
Tracking and Control Records  (Order at A-143)	Logs, registers, and other records used to control or document the status of correspondence, reports, or other records authorized for destruction by NARA.	<b>Retain</b> until <b>2 years</b> old or until <b>2 years</b> after the last entry, whichever is applicable, then <b>destroy</b> .
Electronic Mail and Word Processing System Copies  (Order at A-143)	Electronic copies of records created on electronic mail and word processing systems and used solely to generate a recordkeeping copy.	<b>Delete</b> electronic copies from hard disks, network drives, shared network drives, etc., <b>180 days</b> after recordkeeping copy was produced if not of further administrative value.
Transitory Files  (Order at A-142)	Documents of short-term interest which have no documentary or evidential value. Examples include notices of holidays or bond campaigns.	<b>Destroy after 3 months.</b>



Description	Maintenance and Contents	Disposition
Suspense Files <i>(Order at A-142)</i>	Notices or other reminders for office that an action is required by the office on a given date or that a reply to an action is expected and, if not received, should be traced on a given day. Arranged in chronological order.	<b>Destroy</b> records relating to action after action has been taken, as long as suspense copy is a duplicate.
Finding Aids (Or Indexes) <i>(Order at A-143)</i>	Indexes, lists, registers, and other finding aids used only to provide access to records authorized for destruction by NARA.	<b>Destroy</b> when related records are destroyed.



APPENDIX 4

STANDARD FORM 115:  
REQUEST FOR RECORDS DISPOSITION AUTHORITY

<b>REQUEST FOR RECORDS DISPOSITION AUTHORITY</b>		LEAVE BLANK (NARA use only)	
To: NATIONAL ARCHIVES & RECORDS ADMINISTRATION 8601 ADELPHI ROAD, COLLEGE PARK, MD 20740-6001		JOB NUMBER	
1. FROM (Agency or establishment)		Date Received	
2. MAJOR SUB DIVISION		NOTIFICATION TO AGENCY	
3. MINOR SUBDIVISION		In accordance with the provisions of 44 U.S.C 3303a, the disposition request, including amendments is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10.	
4. NAME OF PERSON WITH WHOM TO CONFER	5. TELEPHONE	DATE	ARCHIVIST OF THE UNITED STATES
<p>6. <b>AGENCY CERTIFICATION</b></p> <p>I hereby certify that I am authorized to act for this agency in matters pertaining to the disposition of its records and that the records proposed for disposal on the attached _____ page(s) are not needed now for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies,</p> <p style="text-align: center;"> <input type="checkbox"/> is not required                      <input type="checkbox"/> is attached; or                      <input type="checkbox"/> has been requested. </p>			
DATE	SIGNATURE OF AGENCY REPRESENTATIVE	TITLE	
7. ITEM NO.	8. DESCRIPTION OF ITEM AND PROPOSED DISPOSITION	9. GRS OR SUPERSEDED JOB CITATION	10. ACTION TAKEN (NARA USE ONLY)
	See attached sheets		



**APPENDIX 5**

**STANDARD FORM 135:  
RECORDS TRANSMITTAL AND RECEIPT**



**RECORDS TRANSMITTAL AND RECEIPT**

Complete and send original and two copies of this form to the appropriate Federal Records Center for approval prior to shipment of records. See specific instructions on reverse.

PAGE  
1

OF  
PAGES

1. TO *(Complete the address for the records center serving your area as shown in 36 CFR 1228.150.)*

**Federal Records Center**

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2. AGENCY TRANSFER AUTHORIZATION

TRANSFERRING AGENCY OFFICIAL <i>(Signature and Title)</i>	DATE
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3. AGENCY CONTACT

TRANSFERRING AGENCY LIAISON OFFICIAL *(Name, office and telephone No.)*

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4. RECORDS CENTER RECEIPT

RECORDS RECEIVED BY <i>(Signature and Title)</i>	DATE
--	------

5. FROM *(Enter the name and complete mailing address of the office retiring the records. The signed receipt of this form will be sent to this address)*

Fold Line

6. **RECORDS DATA**

ACCESSION NUMBER			VOLUME <i>(cu. ft.)</i>	AGENCY BOX NUMBERS	SERIES DESCRIPTION <i>(With inclusive dates of records)</i>	RESTRIC- TION	DISPOSAL AUTHORITY <i>(Schedule and item number)</i>	DISPOSAL DATE	COMPLETED BY RECORDS CENTER			
RG	FY	NUMBER							LOCATION	SHELF PLAN	CONT. TYPE	AUTO. DISP.
<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>	<i>(e)</i>	<i>(f)</i>	<i>(g)</i>	<i>(h)</i>	<i>(i)</i>	<i>(j)</i>	<i>(k)</i>	<i>(l)</i>	<i>(m)</i>

## INSTRUCTIONS FOR COMPLETION OF STANDARD FORM 135

### FOR COMPLETION BY THE TRANSFERRING AGENCY

Items 1, 2, 3, and 5 are self-explanatory. Specific instructions for item 6 are as follows:

*Col.* **Accession Number.** A separate accession number is required for each series of records listed on the form. A series consists of records having the same disposal authority and disposal date that are transferred together to the records center. The accession number is entered in three parts, consisting of:

- (a) The NARA record group number assigned to the records of the agency making the transfer;
- (b) The last two digits of the current fiscal year; and
- (c) A four digit sequential number obtained in advance from the records center. (Arrangements may be made with the center to have these numbers assigned by the agency records officer or other official.)
- (d) **Volume.** Enter the volume in cubic feet of each series of records being transferred.
- (e) **Agency Box Numbers.** Show the inclusive box numbers for each series of records being transferred. The agency shall number each carton sequentially as follows: 1 of 25, 2 of 25, 3 of 25, etc. (Each new series of records should begin with carton number 1.) To facilitate control of the records and future reference service, the agency also shall mark each container with the assigned accession number prior to shipment.
- (f) **Series Description.** Describe the records in sufficient detail to allow the records center to check for proper application of the disposal schedule. Inclusive dates of the records should be indicated. Show the organizational component that created the records when it is other than that shown in item 5.
- (g) **Restriction.** Enter one of the following codes to show a restriction on use of the records. Restrictions other than (or in addition to) security classifications, such as limiting access to certain agency officials, are to be specified by a statement in the Series Description column (f).

### Code

### Restrictions

Q	Q security classification
T	Top Secret security classification
S	Secret security classification
C	Confidential security classification
R	Restricted use - witnessed disposal not required (specify in column (f))
W	Restricted use - witnessed disposal required (specify in column (f))
N	No restrictions.

- (h) **Disposal Authority.** For each series of records, cite the agency schedule and specific item number authorizing disposal. Cite the NARA disposal job and item number if it has not been incorporated into an updated agency schedule.
- (i) **Disposal Date.** Applying the disposal authority previously cited in column (h), enter the month and year in which the records may be destroyed.

### FOR COMPLETION BY THE RECORDS CENTER

Item 4 is self-explanatory. Specific instructions for item 6 are as follows:

*Col.*

- (j) **Location.** The records center annotates the shelf location of the first carton for each series of records.
- (k) **Shelving Plan.** The records center enters the appropriate code from Chap. 7-10e, HB, Records Center Operations (NAR P 1864.1A), to reflect the shelving system.
- (l) **Container Type.** The records center enters the appropriate code from Chap. 7-10h, NAR P 1864.1A, to reflect the type of container in which the records are retired.
- (m) **Automatic Disposal.** The records center enters either *Y* (yes) to indicate automatic disposal applies or *N* (no) indicating that the agency wishes to receive disposal concurrence notice prior to destruction of the records. Automatic disposal is applied only when previously agreed upon by the agency.

Use Standard Form 135-A, Records Transmittal and Receipt Continuation, when additional space is required for listing records data.



**APPENDIX 6**

**STANDARD FORM 135-A:  
RECORDS TRANSMITTAL AND RECEIPT  
(CONTINUATION)**

ACCESSION NUMBER			VOLUME <i>(cu. ft.)</i>	AGENCY BOX NUMBERS	SERIES DESCRIPTION <i>(With inclusive dates of records)</i>	RESTRIC- TION	DISPOSAL AUTHORITY <i>(Schedule and item number)</i>	DISPOSAL DATE	COMPLETED BY RECORDS CENTER			
RG	FY	NUMBER							LOCATION	SHELF PLAN	CONT. TYPE	AUTO. DISP.
<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>	<i>(e)</i>	<i>(f)</i>	<i>(g)</i>	<i>(h)</i>	<i>(i)</i>	<i>(j)</i>	<i>(k)</i>	<i>(l)</i>	<i>(m)</i>



**APPENDIX 7**

**OPTIONAL FORM 11:**  
**REFERENCE REQUEST - FEDERAL RECORDS CENTERS**

**REFERENCE REQUEST - FEDERAL RECORDS CENTERS**

**NOTE: Use a separate form for each request.**

**SECTION I - TO BE COMPLETED BY REQUESTING AGENCY**

ACCESSION NO.	AGENCY BOX NUMBER	RECORDS CENTER LOCATION NUMBER
	OF	

DESCRIPTION OF RECORD(S) OR INFORMATION REQUESTED

BOX

FOLDER (include file number and title)

REMARKS

NATURE OF SERVICE

- FURNISHED COPY OF RECORD(S) ONLY  
  PERMANENT WITHDRAWAL  
  TEMPORARY LOAN OF RECORD(S)  
  REVIEW  
  OTHER (Specify)

**SECTION II--FOR USE BY RECORDS CENTER**

- RECORDS NOT IN CENTER CUSTODY  
  RECORDS DESTROYED  
 WRONG ACCESSION NUMBER - PLEASE RECHECK  
 WRONG BOX NUMBER - PLEASE RECHECK  
 WRONG CENTER LOCATION - PLEASE RECHECK  
 ADDITIONAL INFORMATION REQUIRED TO IDENTIFY RECORDS REQUESTED  
 MISSING (Neither record(s), information nor charge card found in container(s) specified)  
 RECORDS PREVIOUSLY CHARGED OUT TO (Name, agency and date):

REMARKS

**SAMPLE ONLY**

DATE	SERVICE	TIME REQUIRED	SEARCHER'S INITIALS

**SECTION III--FOR USE BY RECORDS CENTER**

NAME OF REQUESTER	TELEPHONE NO. <input type="checkbox"/> FTS	DATE	<b>RECEIPT OF RECORDS</b>
-------------------	--	------	---------------------------

NAME AND ADDRESS OF AGENCY

(Include street address, building, room no., and ZIP Code)



(In Washington, D.C. area also include STOP number)

Requester please sign, date and return this form, for file item(s) listed above, *ONLY* if the block to right has been checked by the Records Center.

SIGNATURE	DATE
-----------	------

**REFERENCE REQUEST - FEDERAL RECORDS CENTERS**

**NOTE: Use a separate form for each request.**

**SECTION I - TO BE COMPLETED BY REQUESTING AGENCY**

ACCESSION NO.	AGENCY BOX NUMBER	RECORDS CENTER LOCATION NUMBER
	OF	

DESCRIPTION OF RECORD(S) OR INFORMATION REQUESTED

BOX

FOLDER (include file number and title)

REMARKS

**NATURE OF SERVICE**

- FURNISHED COPY OF RECORD(S) ONLY  
  PERMANENT WITHDRAWAL  
  TEMPORARY LOAN OF RECORD(S)  
  REVIEW  
  OTHER (Specify)

**SECTION II--FOR USE BY RECORDS CENTER**

- RECORDS NOT IN CENTER CUSTODY  
  RECORDS DESTROYED  
 WRONG ACCESSION NUMBER - PLEASE RECHECK  
 WRONG BOX NUMBER - PLEASE RECHECK  
 WRONG CENTER LOCATION - PLEASE RECHECK  
 ADDITIONAL INFORMATION REQUIRED TO IDENTIFY RECORDS REQUESTED  
 MISSING (Neither record(s), information nor charge card found in container(s) specified)  
 RECORDS PREVIOUSLY CHARGED OUT TO (Name, agency and date):

REMARKS

**SAMPLE ONLY**

DATE	SERVICE	TIME REQUIRED	SEARCHER'S INITIALS

**SECTION III--FOR USE BY RECORDS CENTER**

NAME OF REQUESTER	TELEPHONE NO. <input type="checkbox"/> FTS	DATE	<b>RECEIPT OF RECORDS</b>
NAME AND ADDRESS OF AGENCY			

NAME AND ADDRESS OF AGENCY

(Include street address, building, room no., and ZIP Code)



(In Washington, D.C. area also include STOP number)

Requester please sign, date and return this form, for file item(s) listed above, *ONLY* if the block to right has been checked by the Records Center.

SIGNATURE	DATE
-----------	------

**REFERENCE REQUEST - FEDERAL RECORDS CENTERS**

**NOTE: Use a separate form for each request.**

**SECTION I - TO BE COMPLETED BY REQUESTING AGENCY**

ACCESSION NO.	AGENCY BOX NUMBER	RECORDS CENTER LOCATION NUMBER
	OF	

DESCRIPTION OF RECORD(S) OR INFORMATION REQUESTED

BOX

FOLDER (include file number and title)

REMARKS

**NATURE OF SERVICE**

- FURNISHED COPY OF RECORD(S) ONLY  
  PERMANENT WITHDRAWAL  
  TEMPORARY LOAN OF RECORD(S)  
  REVIEW  
  OTHER (Specify)

**SECTION II--FOR USE BY RECORDS CENTER**

- RECORDS NOT IN CENTER CUSTODY  
  RECORDS DESTROYED  
 WRONG ACCESSION NUMBER - PLEASE RECHECK  
 WRONG BOX NUMBER - PLEASE RECHECK  
 WRONG CENTER LOCATION - PLEASE RECHECK  
 ADDITIONAL INFORMATION REQUIRED TO IDENTIFY RECORDS REQUESTED  
 MISSING (Neither record(s), information nor charge card found in container(s) specified)  
 RECORDS PREVIOUSLY CHARGED OUT TO (Name, agency and date):

REMARKS

**SAMPLE ONLY**

DATE	SERVICE	TIME REQUIRED	SEARCHER'S INITIALS

**SECTION III--FOR USE BY RECORDS CENTER**

NAME OF REQUESTER	TELEPHONE NO. <input type="checkbox"/> FTS	DATE	<b>RECEIPT OF RECORDS</b>
NAME AND ADDRESS OF AGENCY (Include street address, building, room no., and ZIP Code)			

Requester please sign, date and return this form, for file item(s) listed above, *ONLY* if the block to right has been checked by the Records Center.

SIGNATURE	DATE
-----------	------

(In Washington, D.C. area also include STOP number)





**APPENDIX 8**

**STANDARD FORM 258:**  
**AGREEMENT TO TRANSFER RECORDS**  
**TO THE NATIONAL ARCHIVES OF THE UNITED STATES**

**AGREEMENT TO TRANSFER RECORDS TO  
THE NATIONAL ARCHIVES OF THE UNITED STATES**

1. INTERIM CONTROL NO. (NARA Use Only)

**TERMS OF AGREEMENT**

The records described below and on the attached \_\_\_\_\_ pages are deposited in the National Archives of the United States in accordance with 44 U.S.C. 2107. The transferring agency certifies that any restrictions on the use of these records are in conformance with the requirements of 5 U.S.C. 552.

In accordance with 44 U.S.C. 2108, custody of these records becomes the responsibility of the Archivist of the United States at the time of transfer of the records. It is agreed that these records will be administered in accordance with the provisions of 44 U.S.C. Chapter 21, 36 CFR XII, 36 CFR Part 1256 and such other rules and regulations as may be prescribed by the Archivist of the United States (the Archivist). Unless specified and justified below, no restrictions of the

use of these records will be imposed other than the general and specific restrictions on the use of records in the National Archives of the United States that have been published in 36 CFR Part 1256 or in the *Guide to the National Archives of the United States*. The Archivist may destroy, donate, or otherwise dispose of any containers, duplicate copies, unused forms, blank stationery, nonarchival printed or processed material, or other nonrecord material in any manner authorized by law or regulation. Without further consent, the Archivist may destroy deteriorating or damaged documents after they have been copies in a form that retains all of the information in the original document. The Archivist will use the General Records Schedule and any applicable records disposition schedule (SF 115) of the transferring agency to dispose of nonarchival materials contained in this deposit.

<p>2A. AGENCY APPROVAL</p> <p>Signature _____ Date _____</p>	<p>3A. NARA APPROVAL</p> <p>Signature _____ Date _____</p>
<p>2B. NAME, TITLE, MAILING ADDRESS</p>	<p>3B. NAME, TITLE, MAILING ADDRESS</p>

**RECORDS INFORMATION**

<p>4A. RECORDS SERIES TITLE</p>											
<p>4B. DATE SPAN OF SERIES</p>	<p align="right"><i>(Attach any additional description.)</i></p>										
<p>5A. AGENCY OR ESTABLISHMENT</p>	<p>9. PHYSICAL FORMS</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> Paper Documents</td> <td><input type="checkbox"/> Posters</td> </tr> <tr> <td><input type="checkbox"/> Paper Publications</td> <td><input type="checkbox"/> Maps and Charts</td> </tr> <tr> <td><input type="checkbox"/> Microfilm/Microfiche</td> <td><input type="checkbox"/> Arch / Eng Drawings</td> </tr> <tr> <td><input type="checkbox"/> Electronic Records</td> <td><input type="checkbox"/> Motion / sound / Video</td> </tr> <tr> <td><input type="checkbox"/> Photographs</td> <td><input type="checkbox"/> Other (specify): _____</td> </tr> </table>	<input type="checkbox"/> Paper Documents	<input type="checkbox"/> Posters	<input type="checkbox"/> Paper Publications	<input type="checkbox"/> Maps and Charts	<input type="checkbox"/> Microfilm/Microfiche	<input type="checkbox"/> Arch / Eng Drawings	<input type="checkbox"/> Electronic Records	<input type="checkbox"/> Motion / sound / Video	<input type="checkbox"/> Photographs	<input type="checkbox"/> Other (specify): _____
<input type="checkbox"/> Paper Documents	<input type="checkbox"/> Posters										
<input type="checkbox"/> Paper Publications	<input type="checkbox"/> Maps and Charts										
<input type="checkbox"/> Microfilm/Microfiche	<input type="checkbox"/> Arch / Eng Drawings										
<input type="checkbox"/> Electronic Records	<input type="checkbox"/> Motion / sound / Video										
<input type="checkbox"/> Photographs	<input type="checkbox"/> Other (specify): _____										
<p>5B. AGENCY MAJOR SUBDIVISION</p>	<p>10. VOLUME: _____ (Cu. _____ Ft. _____) CONTAINERS: _____ Cu. Mtr. _____ Ft. _____ ) Number _____ Type _____</p>										
<p>5C. AGENCY MINOR SUBDIVISION</p>	<p>11. DATE RECORDS ELIGIBLE FOR TRANSFER TO THE ARCHIVES</p>										
<p>5D. UNIT THAT CREATED RECORD</p>	<p>12. ARE RECORDS FULLY AVAILABLE FOR PUBLIC USE?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If no, attach limits on use and justification.)</i></p>										
<p>5E. AGENCY PERSON WITH WHOM TO CONFER ABOUT THE RECORDS Name _____ Telephone Number ( _____ ) _____</p>	<p>13. ARE RECORDS SUBJECT TO THE PRIVACY ACT?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO <i>(If yes, cite Agency system Number and Federal Register volume and page number of most recent notice and attach a copy of this notice.)</i></p>										
<p>6. DISPOSITION AUTHORITY:</p>	<p>14. ATTACHMENTS</p> <table style="width:100%;"> <tr> <td><input type="checkbox"/> Agency Manual Excerpt</td> <td><input type="checkbox"/> Listing of Records Transferred</td> </tr> <tr> <td><input type="checkbox"/> Additional Description</td> <td><input type="checkbox"/> NA form 14097 or Equivalent</td> </tr> <tr> <td><input type="checkbox"/> Privacy Act Notice</td> <td><input type="checkbox"/> Microform Inspection Report</td> </tr> <tr> <td><input type="checkbox"/> Other (specify): _____</td> <td><input type="checkbox"/> SF(s) 135</td> </tr> </table>	<input type="checkbox"/> Agency Manual Excerpt	<input type="checkbox"/> Listing of Records Transferred	<input type="checkbox"/> Additional Description	<input type="checkbox"/> NA form 14097 or Equivalent	<input type="checkbox"/> Privacy Act Notice	<input type="checkbox"/> Microform Inspection Report	<input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> SF(s) 135		
<input type="checkbox"/> Agency Manual Excerpt	<input type="checkbox"/> Listing of Records Transferred										
<input type="checkbox"/> Additional Description	<input type="checkbox"/> NA form 14097 or Equivalent										
<input type="checkbox"/> Privacy Act Notice	<input type="checkbox"/> Microform Inspection Report										
<input type="checkbox"/> Other (specify): _____	<input type="checkbox"/> SF(s) 135										
<p>7. IS SECURITY CLASSIFIED INFORMATION PRESENT? <input type="checkbox"/> NO <input type="checkbox"/> YES</p> <p>LEVEL: <input type="checkbox"/> Confidential <input type="checkbox"/> Secret <input type="checkbox"/> Top Secret</p> <p>SPECIAL MARKINGS: <input type="checkbox"/> RD/FRD <input type="checkbox"/> SCI <input type="checkbox"/> NATO</p> <p><input type="checkbox"/> Other _____</p> <p>INFORMATION STATUS: <input type="checkbox"/> Segregated <input type="checkbox"/> Declassified</p>	<p>8. CURRENT LOCATION OF RECORDS</p> <p>_____ Agency (Complete 8A only)</p> <p>_____ Federal Records Center (Complete 8B only)</p>										
<p>8A. ADDRESS</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p>8B. FRC ACCESSION NUMBER      CONTAINER NUMBER(S)      FRC LOCATION</p>										

**NARA PROVIDES**

<p>15. SHIPPING INSTRUCTIONS TO AGENCIES/REMARKS REGARDING DISPOSITION</p>	<p>RG</p>
<p>16. RECORDS ACCEPTED INTO THE NATIONAL ARCHIVES OF THE UNITED STATES</p> <p>Signature _____ Date _____</p>	<p>17. NATIONAL ARCHIVES ACCESSION NO.</p>

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

SF 258 (9/95)  
Prescribed by NARA 36 CFR 1226

## INSTRUCTIONS

**GENERAL:** This form may be initiated by the transferring agency or the National Archives and Records Administration (NARA). Prepare a separate SF 258 for each series or SF 115 item being transferred.

**WHEN INITIATED BY AN AGENCY:** The agency completes blocks 2 and 4 through 14 using the instructions below. Block 2 must be signed and dated. Send the original to the appropriate address 60 days before the records are to be transferred to the National Archives.

**WHEN INITIATED BY NARA:** NARA completes blocks 1 and 4 through 14 and sends the original to the transferring agency's records officer. The agency completes block 2, completes or corrects blocks 4 through 14. Block 2 must be signed and dated. The agency sends the original to the appropriate address 60 days before the records are to be transferred to the National Archives.

**MAILING ADDRESS:** Mail the completed form to either the address below or the appropriate National Archives regional archives.

Accessions Control Staff (NN-E)  
Office of the National Archives  
National Archives and Records Administration  
8601 Adelphi Road  
College Park, MD 20740-6001

If you do not know the address of the appropriate regional archives, telephone the Accessions Control Staff at 301-713-6655.

\* \* \* \*

1. **INTERIM CONTROL NUMBER:** *Leave blank.* NARA will fill in.

2. **AGENCY APPROVAL:** The agency records officer having the delegated authority to transfer the records with NARA should sign and date the form here (2A) and provide his/her name, title and mailing address (2B).

3. **NARA APPROVAL:** When a proposal to transfer records to the National Archives of the United States is approved, the appropriate NARA official completes 3A and 3B.

**4A/B. RECORDS SERIES TITLE/DATE SPAN OF SERIES:** The information provided should include a records series title, a statement of how the records are arranged, dates of coverage, and sufficient detail to describe the body of records being transferred. If access to the records is gained or facilitated through an index, box list, or other finding aid, include it with the records being transferred. Indicate the appropriate disposition authority number if the index is scheduled separately. If the records are in a Federal records Center (FRC) attach each applicable SF 135, Records Transmittal and Receipt. For electronic records, describe any related documentation.

5. Fully identify the unit (5D) that created or organized the records. Usually this is not the agency's records management office. Place the creating unit within its organization hierarchy (5A-5C). For example, the responsible unit is a branch (5D), within a division (minor subdivision) (5C), within an office (major subdivision) (5B), and within the agency or major component of a department (5A). Block 5A should be the official or legal name of the agency or bureau as published in the *U.S. Government Manual*. In block 5E include the name and telephone number (including the area code) of a person who should be contacted if NARA has any questions about the records. If the originating agency no longer exists, provide the name of the contact person at the successor agency.

6. **DISPOSITION AUTHORITY:** This citation must be included. It can be either the item number assigned to the records within a records disposition schedule (SF 115) approved by NARA or the item number assigned to the records within an agency records disposition manual based on a NARA-approved SF 115. If the agency manual number is used, attach a copy of the pertinent pages from the agency manual.

7. **IS SECURITY CLASSIFIED INFORMATION PRESENT?** If the records contain security classified information, check "Yes" and indicate the highest level of classification present. Indicate any additional applicable national security special access restrictions (e.g., Sensitive Compartmented Information - SCI or North Atlantic Treaty Organization - NATO). Restricted Data and Formerly Restricted Data - RD/FRD - refers to information subject to the Atomic Energy Act of 1954. Check "Segregated" to indicate that security classified records have been segregated from unclassified records or information subject to special access restrictions has been segregated from other classified information. Check "Declassified" to indicate whether any records have been declassified, and provide both the authority for declassification and a description of the declassified records.

8. **CURRENT LOCATION OF RECORDS.** Check the appropriate box for the current location of the records. If the records currently are in a Federal records center, complete 8B. If the records are located in the transferring agency or other location, complete 8A.

8A. For records located in the transferring agency or other location, provide a complete address.

8B. For records located in a Federal records center, name the center, provide the FRC accession number and container number(s), and the FRC location.

9. **PHYSICAL FORM(S):** Check all the boxes that apply to the records included in the transfer.

10. **VOLUME:** Include both the cubic feet of the records and the number and type of containers holding the records. For example:

Cu. ft. 15; Number 15; Type FRC boxes.

Provide separate volume figures for each physical type of records, continuing on a separate sheet as necessary.

11. **DATE RECORDS ELIGIBLE FOR TRANSFER TO THE ARCHIVES:** Indicate the date the records are eligible for deposit in the National Archives. This date is determined by the disposition instructions for each item in the approved SF 115 or agency manual.

12. **ARE THE RECORDS FULLY AVAILABLE FOR PUBLIC USE?** If the records are exempt from release pursuant to the FOIA, 5 U.S.C. 552(b)(91)-(9) and (c)(1)-(3), this must be fully justified. List all exemptions that apply. If exemption (b)(1) is cited, complete block 7 accordingly. If (b)(3) is cited, include the full citation for the relevant statute. If the records are subject to copyright, identify affected items and the copyright holder.

13. **ARE THESE RECORDS SUBJECT TO THE PRIVACY ACT?** The National Archives is required to notify the public, through the *Federal Register*, when it takes custody of records subject to the provisions of the Privacy Act, 5 U.S.C. 552a. The originating agency should use this block to indicate whether the records covered by this SF 258 are part of a Privacy Act "system of records" and include a citation to an a copy of the Privacy Act notice published by the agency for the system. NARA will use the transferring agency's notice to inform the public, through the *Federal Register*, that the records have been transferred to the National Archives and that no further modification of them is possible.

14. **ATTACHMENTS:** Check the appropriate box(es) and indicate the attachment(s) being submitted with this form.

15. **SHIPPING INSTRUCTIONS TO AGENCIES/REMARKS REGARDING DISPOSITION:** NARA uses this space to provide shipping instructions relating to transfers.

16. **RECORDS ACCEPTED INTO THE NATIONAL ARCHIVES OF THE UNITED STATES:** The appropriate NARA representative signs block 16 after the records have been received at a NARA facility and NARA has confirmed that the records received are the records described in block 4. Transfers to NARA are not final until NARA has signed block 16. NARA sends the agency a copy of the completed form.

17. **NATIONAL ARCHIVES ACCESSION NO.:** NARA assigns this unique, permanent control number to each transfer of records.



**C. DISSEMINATION OF INFORMATION TO THE PUBLIC  
ABOUT CASES IN LITIGATION**

Contents

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2. Content of Discloseable Information Concerning Litigation .....	<a href="#">43</a>
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b. Quotes from EEOC Officials .....	<a href="#">44</a>
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**C. DISSEMINATION OF INFORMATION TO THE PUBLIC  
ABOUT CASES IN LITIGATION**

1. Introduction

Title VII prohibits disclosure to the public of charges filed with the EEOC, and of information obtained in the agency's investigation of charges, prior to the institution of a suit under Title VII involving such information. See 42 U.S.C. §§ 2000e-5(b), 2000e-8(e); 29 C.F.R. §1610.17(b), (c).<sup>1</sup> After a lawsuit has been filed, professional ethics rules impose limitations on publicity regarding the case. This portion of the Manual discusses the type of information discloseable during litigation and the procedures to follow in disseminating that information to various outside sources.

2. Content of Discloseable Information Concerning Litigation

a. Ethical Restrictions on Disclosures

American Bar Association Model Rule of Professional Conduct 3.6, Trial Publicity, addresses the type of information appropriate to disclose about a case in litigation. Center for Professional Responsibility, American Bar Association, Model Rules of Professional Conduct 83-86 (2004 ed.); see Center for Professional Responsibility, American Bar Association, Annotated Model Rules of Professional Conduct 373-79 (5<sup>th</sup> ed. 2003). In sum, the rule provides that a lawyer participating in litigation of a matter should refrain from making extrajudicial statements that the lawyer knows or reasonably should know will become public information and will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Comment [5] to Rule 3.6 lists subjects that are more likely than not to materially prejudice a proceeding, particularly where there will be a jury trial. These include: statements relating to the character, credibility, reputation, or criminal record of a party or witness; statements regarding the expected testimony of a party or witness; or information that is likely to be inadmissible as evidence and that if disclosed would create a substantial risk of prejudicing an impartial trial. Model Rule 3.6 expressly permits, notwithstanding possible prejudice, a statement of the claim or defense involved, information in a public

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<sup>1</sup> The ADA incorporates these Title VII provisions, and the Commission generally applies them to the ADEA and EPA.



record, the scheduling or result of any step in litigation, and requests for assistance in obtaining information.

The great majority of jurisdictions have adopted some version of the Model Rules of Professional Conduct. A few states have retained a version of the earlier and stricter Trial Publicity rule from the Model Code of Professional Responsibility, Disciplinary Rule 7-107(G), which prohibits extrajudicial statements, other than a quotation from or reference to public records, that could become public information and that relate to, among other matters, the following: evidence regarding the occurrence or transaction involved, the character or credibility of a party, the lawyer's opinion regarding the merits or defenses of a party, or "[a]ny other matter reasonably likely to interfere with a fair trial of the action." Center for Professional Responsibility, American Bar Association, Model Code of Professional Responsibility and Code of Judicial Conduct 77 (1986). Thus, in these jurisdictions press releases about new case filings should contain only information contained in the complaint or elsewhere in the public record.

The above ethical rules apply to both written and oral comments about a case. EEOC attorneys should be familiar with the rules applicable in the jurisdictions in which they litigate.<sup>2</sup> When in doubt, consult with the Associate General Counsel, Litigation Management Services (LMS), or your LMS liaison before making any statements.

b. Quotes from EEOC Officials

If you would like to include a quote from the Chair in a press release (whether on a new case being filed or a lawsuit resolution), contact the Office of Communications and Legislative Affairs (OCLA) or the Chair's office for assistance and/or approval prior to issuance. You should allow at least 2 business days to obtain an approved quote. Similarly, if you would like a quote from the General Counsel, contact your LMS liaison.

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<sup>2</sup> Also keep in mind that a court could apply stricter standards to government attorneys. See Restatement (Third) of the Law Governing Lawyers § 109 cmt. e (2000) ("Lawyers who serve as prosecutors or otherwise as government lawyers have significantly diminished free-expression rights to comment publicly on matters in which they are officially involved as advocates. Accordingly, prohibitions against pretrial and trial comment by such lawyers can be more extensive.")



c. **Media Statements Regarding Victims of Discrimination**

Give appropriate attention to the privacy concerns of the charging party and other victims of the alleged discriminatory conduct when drafting a press release, particularly in sexual harassment, disability, or other cases where the conduct or the victim's condition could cause the public to view the victim unfavorably. Unless you have the express consent of the individual, do not include the name or other personally identifying characteristics of a victim of discrimination in a press release.

3. **Requests for Information from Outside Sources**

Below are the procedures that OGC headquarters and field legal unit employees are to follow in handling inquiries from members of Congress, congressional staff including staff of congressional agencies (except the General Accounting Office, inquiries from which always should be referred to the agency point of contact), reporters and other media professionals, and the general public, including interest group representatives. In all situations, if a matter appears particularly sensitive during your conversation with an outside source, you should discuss it with the Office Director and inform the Associate General Counsel, LMS, or your LMS liaison, and OCLA.

a. **Congressional Inquiries**

Routine congressional and White House inquiries received by field offices – e.g., questions about a case in litigation or the agency's procedures – should be handled directly by the office. Be sure to inform the Office Director about such inquiries and the legal unit's responses. Other inquiries, whether by telephone or mail, should be referred to OCLA's Legislative Affairs Staff. Phone calls that OCLA should respond to may be handled either by transferring the call to 202-663-4900 or by taking a message, including the caller's name, office, phone number, and nature of the call, and relaying it to the Legislative Affairs Staff Director.

If in regard to an inquiry made or referred to OCLA, congressional staff need to speak directly with personnel in OGC-HQ or a field legal unit, OCLA will contact the Deputy General Counsel or the Regional Attorney of the field office involved about the inquiry.



b. Media Inquiries

The above procedures for responding to congressional inquiries should be followed with respect to inquiries from news reporters or other media representatives, except that OCLA referrals should be to OCLA's Communications Staff. All contact with national media sources, e.g., The New York Times, The Washington Post, The Wall Street Journal, Time, Business Week, and nationally broadcast television and radio news and news magazine programs, should be coordinated with OCLA's Communications Staff. Set out below are guidelines for OGC staff in responding to media inquiries:

(1) If a media inquiry has been forwarded to you for response, before calling the media representative, find out, if possible:

- (a) the nature of the issues to be discussed, and
- (b) the extent of any prior contact with Commission personnel concerning the subject matter of the interview.

(2) If there is a basis for expecting that an interview or media contact may cover a particularly sensitive or controversial subject, OGC personnel may request that an OCLA representative sit in during the interview or participate by telephone to take notes and provide technical assistance. Generally, however, an interview will be conducted by the designated OGC representative who should take notes on the principal questions and the answers provided during the interview.

(3) Always return a reporter's call as soon as possible the same day. Even if you have no information, or insufficient time to respond in full that day, the courtesy of a call back to advise the reporter is necessary.

(4) Assume every conversation you have with a reporter or media representative is on the record and that anything you say may end up in the newspaper or the evening news. Ask the reporter to call back and read all quotes he or she intends to attribute to you before publication to ensure that you are quoted accurately.

(5) Be as accurate as possible in your responses. If you don't know the answer to a reporter's question, say so. If you can find out with reasonable effort, offer to call back. Remember to ask about the reporter's deadline, and meet it, if you promise to call back.





(6) Remember that all information about a charge in investigation must be kept confidential by statute. Even confirming that a charge has been filed violates this rule.

(7) If you believe you should not comment, don't. Reporters are often persistent in their attempts to gather information but don't let that influence you into commenting when you shouldn't.

(8) Reporters who cover EEOC often cover other news beats and thus may not be well informed about the Commission. Take time to explain processes and procedures to reporters when appropriate. A more accurate story could well be the result.

(9) Do not hesitate to call OGC-HQ or OCLA Communications Staff for any guidance or other assistance you feel is needed.

c. Inquiries from the Public

Attorneys may refer any phone call or letter requesting publicly disseminated publications and information to OCLA's Communications Staff for handling. Also, requests for statistics from the National Data Base should be forwarded to OCLA. However, in keeping with EEOC's Customer Service initiatives, simple requests from the general public may be processed more efficiently by the office that receives the request. Phone requests for EEOC public information documents (*e.g.*, posters, brochures, pamphlets) may be referred to the agency's Publications Distribution Center's (PDC) toll free number: 1-800-669-3362 or the TTY number for the hearing impaired, 1-800-800-3302. You may also refer callers to the agency's web site at [www.eeoc.gov](http://www.eeoc.gov) for a listing of all publications available through the PDC, many of which are on the web site.

Requesters seeking written legal interpretations from the Commission should be referred to the procedures in the Commission's regulations, 29 C.F.R. §§1601.91-93. An attorney responding verbally to a request for legal information, should begin by stating that she cannot give legal advice. It is appropriate to discuss the laws the Commission enforces and the agency's procedures and to refer individuals to specific cases that are part of the public record. Members of the public can also be referred to the [EEOC Web site](#), which contains the text of the statutes the agency enforces, agency regulations, policy guidance, press releases and much additional information about employment discrimination laws and the agency's enforcement activities.



4. Press Releases about New Case Filings

OCLA and OGC-HQ must receive advance notice when a lawsuit is about to be filed to enable staff to prepare for inquiries about the suit. Thus, at least 2 full days prior to filing suit, legal units should e-mail a draft press release to the Director of Communications in OCLA (or other contact person in that office) and to your LMS liaison, both of whom will verify receipt. OCLA or OGC will contact you if there are any questions or concerns about the content of the draft release. When the legal unit anticipates that a lawsuit will receive national attention or significant local publicity, you should notify OGC-HQ and OCLA as far in advance as possible of your intention to file suit.

To ensure that OCLA does not inadvertently publicize a case before it is filed, advance copies of press releases must be in the following format: (1) not on letterhead, (2) not dated, and (3) with “**DRAFT**” printed on the top of the press release. Only after suit is filed can OCLA include the press release in the daily News Clips and respond to inquiries from the public. Before the suit is filed, disclosure of information about the case is prohibited by statute. See 42 U.S.C. §§ 2000e-5(b), 2000e-8(e); 29 C.F.R. §1610.17(b), (c).

Once a suit is filed, a final version of the press release should be e-mailed to OCLA and your LMS liaison. To distinguish this press release from the advance notice release, it should be (1) on press release letterhead, and (2) dated (with the draft notation eliminated). OCLA will include this version in the Clips. Send the final press release to OCLA and OGC-HQ the same day that you issue the press release from your office.

5. Publicity about Suit Resolutions

It is not necessary to inform OGC-HQ and OCLA of every case resolution in advance. However, if the following circumstances apply, you must provide OGC-HQ and OCLA with as much advance notice as possible that the case is nearing resolution, and you should maintain contact until there is a date certain and the press release is issued:

- the settlement of a lawsuit is expected to involve significant monetary or injunctive relief;
- you anticipate a favorable jury verdict or court decision; or



- the resolution is likely to receive national or significant local attention due to the notoriety of the defendant, ongoing media interest in the lawsuit and/or issues involved, or other factors that may have spurred significant media scrutiny.

OGC authorization to finalize a suit does not in itself constitute this notice if the timing for finalizing the settlement is uncertain when OGC authorization is granted.

For those cases filed and resolved under Regional Attorney authority, notice of impending significant resolutions is especially important because OGC-HQ may not have had any advance notice that a settlement is about to occur. Notice that settlement negotiations are ongoing does not constitute notice that a case resolution is about to be finalized. Even when you do not have a date certain, as resolution approaches, e.g., when the parties have agreed in principle and the legal unit is preparing final settlement documents for the court's approval, bring the impending resolution to the attention of OGC-HQ and OCLA.

Before submitting settlement papers to the court for approval of a significant resolution, notify your LMS liaison and OCLA. Courts have sometimes approved a settlement virtually on the spot, taking the field office, OGC-HQ, and OCLA by surprise.

E-mail final press releases on all settlements and favorable court resolutions to your LMS liaison and OCLA the same day you issue the press release from your office.

## 6. Press Conferences

Field offices must obtain advanced approval for all press conferences from OGC-HQ and OCLA.

Use discretion in recommending press conferences; they should be held sparingly. In most cases, a press release and thorough followup with the media is the appropriate means for communicating "newsworthy" EEOC litigation activity. Press conferences should be reserved for cases that have significant public interest implications. Be sure the importance of the information to be announced rises to the level of the need for a press conference.

If you receive calls from Commissioners or other non-OGC headquarters personnel requesting participation in a press conference, please refer the call to the Office of the Chair, which will determine how the field office should proceed on the



matter. To facilitate coordination, please also notify the Associate General Counsel, LMS, of such calls.

Substantial advance notice of impending significant resolutions will of course facilitate the Commission's ability to conduct successful press conferences in those cases warranting high profile publicity.



**D. REPORTING TO OGC**

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#### D. REPORTING TO OGC

With the advent of EEOC's Integrated Mission System (IMS), legal unit reporting has been simplified. While legal units must still submit a few reports and documents to the Office of General Counsel headquarters (OGC-HQ), other reports will be automatically generated in IMS. Set out below are the required IMS entries as well as the reports and documents legal units are required to submit to OGC-HQ, the times of entry or submission, and the individuals (or position titles) to whom submissions should be sent. In designating a case as class or individual in IMS or on a report, treat as class **only** cases meeting the following criteria: (1) cases challenging a policy that applies to a group of similarly situated individuals; or (2) cases challenging a practice that affects a group of similarly situated individuals. The number of identified claimants in a case is not determinative of whether it should be considered class; for example, a case involving two or more individuals whose claims viewed together do not evince a policy or practice affecting similarly situated individuals should not be designated class, while a case challenging a policy applicable to a protected group should be treated as class even if no affected individuals have been identified.

##### 1. Filing Suit

a. Court-stamped complaint - Copy to Rodney Bynum, Director of Administrative and Technical Services Staff (ATSS) within 2 days of receipt from the court.

b. Entry into IMS of the "Complaint Filed" event, including a narrative description\* of the issues in the Note field, within 2 days of filing in court. (Appendix 1 to this section is a screen shot of the "Complaint Filed" screen.)

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\* The comments need only be one or two sentences for each claim, but should note the defendant's business, the charging party's (CP's) job, and the jobs at issue in hiring, promotion, and classification cases. If the allegations involve an "other" category, specify the race, national origin, religion, or disability. Also, additional information regarding disabilities may be necessary (e.g., the impairment and substantial limitation in record of and regarded as cases). In ADEA cases, the CP's age and class age groups should be included.



2. Remand from a Court of Appeals

Entry into IMS of the "Appellate Remand" event within 2 days of notice of the remand.

3. Trial Scheduled

Entry into IMS of the "Trial Date Set" event within 2 days of notice from the court.

4. Settlement

a. Consent decree or settlement agreement - Within 2 days of receipt from court, copy to Rodney Bynum, Director of ATSS, of court-stamped consent decrees upon execution by the court and of settlement agreements upon receipt of dated stipulation of dismissal or dismissal order, which should be submitted with the settlement agreement.

b. Entry into IMS of the resolution event, including a narrative description of the settlement, and the benefits received on the Benefits tab. (Appendix 2 to this section is a screen shot of the "Resolutions" screen.)

5. Trial

Report form 6, *Trials Conducted* - Within 2 business days of completion of a trial, e-mail report form 6 to Associate General Counsel, LMS, Associate General Counsel for Appellate Services, and Jerome Scanlan, Assistant General Counsel, LMS. (Appendix 3 to this subsection is a blank report form 6.)

6. Judgment

a. Court decision and judgment - Upon receipt from court, copy of the decision to Director of ATSS, Associate General Counsel, LMS, Associate General Counsel for Appellate Services, and Jerome Scanlan, Assistant General Counsel, LMS, and copy of the judgment when received to the same individuals.



b. Jury verdict - For jury verdicts, copy of the judgment upon receipt from the court to Rodney Bynum, Director of ATSS, the Associate General Counsel, LMS, and the Associate General Counsel for Appellate Services. Entry into IMS of the "Jury Verdict" event and the resolving event, Favorable Court Order or Unfavorable Court Order. (Appendix 2 to this section is a screen shot of the "Resolutions" screen.)

7. Case Conference Reports and Case Status Sheets

Case Conference Reports and Case Status Sheets - Submit case conference reports and case status sheets by either e-mail or regular mail to your Litigation Management Services (LMS) liaison by the 15th of the first month of each quarter.

8. 396 Reports

Legal portion of 396 report - E-mail legal unit portion of the 396 report, including staffing chart, to the Director of ATSS and Jerome Scanlan, Assistant General Counsel, LMS, at time of submission of entire report to the Office of Field Programs.





APPENDIX 1

IMS: COMPLAINT FILED

<b>Case ID</b>	
<b>Case Name</b>	
<b>Case Type</b>	<input type="checkbox"/> Class <input type="checkbox"/> Individual
<b>Litigation Type</b>	<input type="checkbox"/> Direct <input type="checkbox"/> Intervention <input type="checkbox"/> Agreement Enforcement <input type="checkbox"/> TRO <input type="checkbox"/> Subpoena <input type="checkbox"/> Recordkeeping <input type="checkbox"/> EEO Reporting
<b>Civil Action</b>	
<b>Court</b>	
<b>Date Filed</b>	
<b>Narrative</b> (see <a href="#">n.*</a> , <i>infra</i> )	



APPENDIX 2
IMS: RESOLUTIONS

Form with fields for Case ID, Case Name, Type (Consent Decree, Settlement Agreement, Favorable Order, Unfavorable Order), Date, Money (Back pay, Frontpay, Interest, Liquidated, Non-Pecuniary, Pecuniary, Punitive, Costs and Fees), Non-Monetary (New Hire, Promotion, Reinstatement/Recall, Policy Change, Training/Apprenticeship, Religious Accommodation, Seniority, Job Referral, Union Membership, Other Non-Monetary, EEO Notices, Reasonable Accommodation), and Narrative.



**APPENDIX 3**

**REPORT FORM 6 – TRIALS CONDUCTED**

Case name:

(a) civil action number:

(b) court and city:

(c) statute(s), bases, and issues:

(d) attorneys participating:

(e) dates on which trial took place and whether bench or jury:

(f) description of evidence presented by each party:

(g) date of decision or verdict (and judgment if applicable):

(h) outcome, including description of relief where applicable:



**E. AUTHORIZATION TO FILE MOTION FOR  
CONTEMPT, ATTORNEY'S FEES, OR SANCTIONS**

The Regional Attorney may not file a motion for contempt, attorney's fees, or sanctions against a party or its counsel without authorization from the Office of General Counsel's Sanctions Officer, who is the Associate General Counsel for Litigation Management Services (LMS). This requirement applies to EEOC motions under Fed. R. Civ. P. 11, and under other authority such as Fed. R. Civ. P. 26(g), 28 U.S.C. § 1927, or the court's inherent powers. First, the Regional Attorney should discuss the matter with his or her LMS liaison attorney. The Regional Attorney should then discuss the intended motion with the Sanctions Officer. The Sanctions Officer may require a memorandum outlining the nature of the abusive practices, including supporting case law or other authorities, and may require that the motion and memorandum be sent to him or her for approval prior to filing.

The Regional Attorney may file a motion for expenses or sanctions, other than contempt, under Fed. R. Civ. P. 37 without prior approval from the Sanctions Officer.



**F. NOTIFICATION REGARDING SANCTIONS  
OR FEES AGAINST EEOC**

1. Opposing Counsel's Intent to Seek Sanctions or Fees Against EEOC

The Regional Attorney must immediately notify the Sanctions Officer of the Office of General Counsel (OGC) if it receives a written communication (including by electronic mail) from opposing counsel indicating an intent to move for contempt, or to seek sanctions, expenses, or attorney's fees against the Commission or its attorneys under Rule 11, Fed. R. Civ. P., or other authority such as Fed. R. Civ. P. 26(g), 28 U.S.C. § 1927, or the court's inherent powers. OGC's Sanctions Officer is the Associate General Counsel, Litigation Management Services (LMS). The Regional Attorneys must first notify the OGC Sanctions Officer by telephone or e-mail and must then fax or e-mail the communication to the Sanctions Officer. Notice to the Sanctions Officer is not required for written communications indicating an intent to seek sanctions or expenses under Rule 37, Fed. R. Civ. P.

2. Opposing Counsel's Motion for Sanctions or Fees Against EEOC

The Regional Attorney must notify the OGC Sanctions Officer if opposing counsel files a motion for contempt, for sanctions, expenses, or attorney's fees under Fed. R. Civ. P. 11 or 26(g), 28 U.S.C. § 1927, or other authority, or for attorney's fees under 42 U.S.C. § 2000e-5(k) or the Equal Access to Justice Act. Notice to the Sanctions Officer is not required of motions for sanctions or expenses against EEOC under Fed. R. Civ. P. 37., but the office's LMS liaison attorney should be notified of motions seeking sanctions under Rule 37(b)(2), (c), or (d).

3. Court's Finding of Contempt or Sanctions Against EEOC and Awards of Attorney's Fees

When the court finds EEOC or one of its attorney's in contempt, sanctions EEOC or an attorney, or awards attorney's fees against the Commission or an attorney, the Regional Attorney must notify the OGC Sanctions Officer immediately by telephone or e-mail, and fax or e-mail a copy of the court order.

The Department of the Treasury is the federal agency responsible for paying attorney's fees and expenses assessed against the EEOC. Section I.G. of this Part of



**REGIONAL ATTORNEYS' MANUAL**

**PART 1, SECTION I.F.  
OGC NOTIFICATION  
RE: FEES AND SANCTIONS**

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*the Manual, Requesting Payment of Fees, Costs, and Sanctions Assessed Against EEOC, explains the process.*



**G. REQUESTING PAYMENT OF FEES, COSTS, AND  
SANCTIONS ASSESSED AGAINST EEOC**

The Commission must submit an application for payment to the Department of the Treasury, Financial Management Services (Treasury/FMS), when a court assesses attorney's fees, costs, or sanctions against it. Litigation Management Services (LMS) in OGC-HQ and the EEOC's Debt Collection Officer in the Office of the Chief Financial Officer and Administrative Services (OCFOAS) serve as intermediaries between the legal unit and Treasury/FMS. Here is the process:

1. Prepare Application Package and Submit to LMS

The first step the legal unit attorney must take to obtain payment of attorney's fees, costs, or sanctions assessed against the Commission is to prepare an application package requesting payment and send it to his or her LMS liaison for review. In order to ensure that payment is submitted and processed in a timely manner, the legal unit must provide the following information to LMS:

- brief summary of the case, including a statement that no appeal will be taken
- name and address of defendant
- tax id # (SSN or EIN) of the defendant (please note that FMS will make checks payable only to defendants, not their attorneys.)
- name and address of defendant's counsel
- name and address of recipient of the check

The legal unit should attach the following documents to the memorandum:

- copy of the complaint
- copy of the judgment, if applicable
- copy of any court order assessing fees, sanctions, or costs



- copy of bill of costs, if applicable
- copy of clerk of court assessment of costs, if applicable

2. Review by Litigation Management Services

The second step in obtaining payment of attorney's fees, costs, or sanctions assessed against the Commission is LMS review of the application package prepared by the legal unit. Once the package is complete, the LMS liaison will forward it to the EEOC's Debt Collection Officer.

3. Review by Debt Collection Officer and Submission to Treasury/FMS

The third step is review of the application package by the EEOC's Debt Collection Officer in OCFOAS's Financial Management Services. The Debt Collection Officer is responsible for reviewing and forwarding the legal unit's completed package to Treasury/FMS.

4. Processing by Treasury/FMS

Once the EEOC's Debt Collection Officer files the application for fees, costs, or sanctions with Treasury/FMS, the EEOC has little control over the process. FMS processing normally takes 4 to 6 weeks, but can take as long as several months. FMS will not issue a check if the package is incomplete; therefore, it is critical that all of the necessary information and documents be provided at the outset. If payment to opposing counsel is delayed, defendant may be awarded an interest payment on the initial award amount.

If you need additional information, please contact your LMS liaison.



# **REGIONAL ATTORNEYS' MANUAL**



## **PART 1 ADMINISTRATIVE AND SUPPORT INFORMATION**

**SECTION II**

**PERSONNEL**



**SECTION II**

**PERSONNEL**

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**A. STRUCTURE OF OFFICE OF GENERAL COUNSEL**

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**A. STRUCTURE OF OFFICE OF GENERAL COUNSEL**

1. Mission and Function Statement

The Equal Employment Opportunity Act of 1972 amended Title VII of the Civil Rights Act of 1964 (Title VII) to provide for a General Counsel, appointed by the President and confirmed by the Senate for a 4-year term, with responsibility for conducting the Commission's litigation program. Following transfer of enforcement functions from the U.S. Department of Labor to the Commission under a 1978 Presidential Reorganization Plan, the General Counsel was also given responsibility for conducting Commission litigation under the Equal Pay Act of 1963 (EPA) and the Age Discrimination in Employment Act of 1967 (ADEA). With the enactment of the Americans with Disabilities Act of 1990 (ADA), the General Counsel was given responsibility for conducting Commission litigation under the employment provisions of that statute (Title 1; effective July 1992).

The mission of EEOC's Office of General Counsel (OGC) is to conduct litigation on behalf of the Commission to obtain relief for victims of employment discrimination and to ensure compliance with the statutes that EEOC is charged with enforcing. Under Title VII and the ADA, the Commission can sue nongovernment employers with 15 or more employees. The Commission's suit authority under the ADEA (20 or more employees) and the EPA (no employee minimum) includes state and local governmental employers as well as private employers. Title VII, the ADA, and the ADEA also cover labor organizations and employment agencies, and the EPA prohibits labor organizations from attempting to cause an employer to violate the statute. OGC also represents the Commission on administrative claims and litigation brought by agency applicants and employees, and provides legal advice to the agency on employee-related matters.

2. Responsibilities of the General Counsel

The General Counsel is responsible for managing, coordinating, and directing the Commission's enforcement litigation program. He or she also provides overall guidance and management to all the components of OGC, including field office legal units. In directing the litigation program, the General Counsel is responsible for developing litigation strategies designed to attain maximum compliance with federal laws prohibiting discrimination in employment. The General Counsel recommends cases for litigation to the Commission and approves other cases for filing under



authority delegated to the General Counsel under the Commission's 1996 National Enforcement Plan. (The General Counsel has redelegated some of his delegated litigation authority to the Regional Attorneys in charge of the field legal units; see section IV. of Part 2 of the *Manual*.) The General Counsel also reports regularly to the Commission on litigation activities, including issues raised in litigation which may affect Commission policy, and advises the Chair and Commissioners on litigation strategy, agency policies, and other matters affecting the enforcement of the statutes within the Commission's authority.

3. Headquarters Program Areas and Functions

a. Deputy General Counsel

The Deputy General Counsel serves as the alter ego of the General Counsel and as such is charged with the daily operations of OGC. The Deputy is responsible for supervising and managing all programmatic and administrative functions of OGC, including overseeing the litigation program. OGC functions are carried out through the operational program and service areas described below, which report to or through the Deputy.

b. Litigation Management Services

Litigation Management Services (LMS) oversees and supports the Commission's court enforcement program in the Commission's field legal units. Also, in conjunction with the Office of Field Programs (OFP), LMS oversees the integration of field legal units into the investigative enforcement structure of the field offices.

LMS is directed by an Associate General Counsel. There are three Assistant General Counsels assigned to LMS for field oversight. Each Assistant General Counsel directs a staff of one or more attorneys and is responsible for the field office legal units within one of OGC's three geographic divisions, overseeing cases in litigation and the legal units' interaction with investigative enforcement units. The Assistant General Counsels' litigation oversight responsibilities include reviewing proposed suit filings under Regional Attorneys' redelegated litigation authority, providing advice and guidance on ongoing litigation, and, in complex cases, matters such as reviewing expert procurements and evaluating proposed settlements. Oversight of legal/enforcement interaction includes discussions with OFP staff and visits to field offices.



In addition to its oversight of field legal unit litigation and office operations, LMS provides ongoing support to the field's litigation activities. LMS staff members provide direct litigation assistance to field legal units as needed, draft guidance, develop training programs and materials, and maintain litigation materials on the Commission's internal Web site. LMS is also responsible for maintaining and updating the *Regional Attorneys' Manual*. LMS prepares and distributes a monthly report summarizing all court decisions on the merits, trials conducted, and significant settlements.

LMS also has an Assistant General Counsel for Technology who is responsible for providing technical guidance and oversight to OGC headquarters and field offices on the use of technology in litigation, the development of OGC's computer systems, and the operation of the Commission's Integrated Mission System. The Assistant General Counsel for Technology also serves as OGC's representative to the agency's Technology Steering Committee, consults with field staff on statistical and technical issues in litigation, and conducts field training on matters such as data analysis, statistics, and use of computers.

c. Internal Litigation Services

Internal Litigation Services (ILS), represents the Commission and its officials on administrative claims and litigation brought by applicants and Commission employees, and provides legal advice to the Commission and agency management on employee-related matters. ILS has two divisions, each under the direction of an Assistant General Counsel who reports to the Deputy General Counsel.

d. Litigation Advisory Services

Litigation Advisory Services (LAS) is headed by an Assistant General Counsel who reports to the Deputy General Counsel. LAS evaluates litigation proposals in cases that must be approved by the General Counsel or the Commission and drafts recommendations to the General Counsel for approval or submission to the Commission. LAS also represents OGC during Commission meetings on cases under consideration for litigation. In addition, LAS responds to Commissioner inquiries on cases under consideration for litigation, acting as OGC's liaison and contact point between the Commissioners and the field legal units. Lastly, LAS performs special assignments as requested by the General Counsel.



e. Appellate Services

Appellate Services is responsible for conducting all appellate litigation where the Commission is a party, and participates as OGC amicus curiae in both appellate and district court cases involving novel issues or developing areas of the law. Appellate Services also represents the Commission in the United States Supreme Court through the Solicitor General. (See Part 3, section V. of the *Manual* for a detailed description of Appellate Services' appeal procedures.)

In every case in which the EEOC receives an adverse judgment, Appellate Services submits a written analysis and recommendation to the General Counsel, who makes the decision on whether to appeal. In amicus cases, Appellate Services drafts a memorandum recommending Commission participation which, if approved by the General Counsel, is submitted to the Commission for authorization under a notice and hold procedure.

Appellate Services also makes recommendations, subject to General Counsel approval, to the Department of Justice in cases where the Department is defending other federal agencies on claims arising under the statutes the Commission enforces. In addition, Appellate Services reviews EEOC policy materials, such as proposed regulations and enforcement guidance drafted by the Office of Legal Counsel, prior to their issuance by the agency.

Appellate Services is directed by an Associate General Counsel. Appellate Services has three Assistant General Counsels, each of whom supervises a team of attorneys.

f. Research and Analytic Services

Research and Analytic Services (RAS) is headed by a Director who reports to the Deputy General Counsel. RAS is the major source inside the EEOC of expert and analytical services for cases in litigation, and also assists EEOC attorneys in obtaining expert services from outside the agency. (See Part 4, section I.B. of the *Manual* for a detailed description of services provided by RAS.) RAS has a professional staff with backgrounds in the social sciences, economics, statistics, and psychology who serve as testifying and consulting experts on cases in litigation. RAS also provides expert and analytic support to field staff investigating charges in the administrative process, and performs special research projects for other agency offices. Other important functions of RAS include providing expert and technical advice in implementing the Uniform Guidelines on Employee Selection Procedures (UGESP); creating EEO-1 databases



and making them available to headquarters and field staff; developing and maintaining special census files by geography, race/ethnicity and sex, and detailed occupations; developing labor market availability estimates; constructing large employer personnel data files and work history records by coding and converting paper records into computer files; and conducting statistical analyses of complex employment practices.

g. **Administrative and Technical Services Staff**

The Administrative and Technical Services Staff (ATSS) is headed by a Program Analysis Officer/Director, who reports to the Deputy General Counsel. ATSS provides administrative and technical services to all headquarters components of OGC. It acts as the liaison between OGC and the EEOC's service organizations such as the Office of the Chief Financial Officer and Administrative Services on financial concerns and the Office of Human Resources for personnel matters. ATSS is also responsible for preparing the OGC budget request to the Chair for the Office of Management and Budget and Congress as well as for handling various budget execution duties such as transferring funds to field offices and monitoring expenditures.

ATSS's technical unit maintains files on all OGC litigation and verifies data entered by field offices into the litigation component of the agency's Integrated Mission System. To enable OGC managers to assess various aspects of EEOC's nationwide litigation activity, ATSS prepares periodic and ad hoc reports and studies on the number and types of lawsuits filed and resolved as well as on the monetary and injunctive relief obtained through litigation. Additionally, ATSS provides litigation reports to the Office of Research, Information and Planning and responds to inquiries from OGC managers and other offices within EEOC. ATSS prepares responses to inquiries from Congress, other governmental agencies, and the media for information on Commission litigation. ATSS, through the Office of Legal Counsel, also prepares responses to Freedom of Information Act requests for litigation data.

4. **Field Legal Units**

Legal units are under the direction of Regional Attorneys, who report to the General Counsel through the Associate General Counsel for Litigation Management Services. Regional Attorneys manage staffs consisting of supervisory trial attorneys, trial attorneys, paralegals, and support personnel. Legal unit attorneys conduct Commission litigation in the geographic area covered by the field office and provide legal advice and other support to the field enforcement unit staff responsible for investigating charges of discrimination. Legal unit attorneys also participate in outreach





efforts, and in most offices the legal unit is responsible for responding to Freedom of Information Act requests.



**B. ATTORNEY PRACTICE AND ETHICAL ISSUES**

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**B. ATTORNEY PRACTICE AND ETHICAL ISSUES**

1. Commission Payment of Expenses for Bar Review Course, Bar Examination, and Court Admission

a. The Former Rule: Prohibition on Payment of Fees

Until December 2001, the Comptroller General of the United States had consistently held that a federal employee was responsible for obtaining the qualifications to perform his or her official duties, and if a license was required for that purpose, the employee was obligated to procure the license at his or her own expense. 22 Comp. Gen. 460 (1942) (court admission fees); 47 Comp. Gen. 116 (1967) (same); 61 Comp. Gen. 357, 359 (1982) (law school tuition, bar review course, court admission fees). The only exception was where another law expressly permitted payment.

b. Narrow Exception: Discretion to Pay Bar Review Course Fees

In 1976, the Comptroller General construed the Government Employees Training Act (GETA), 5 U.S.C. §§ 4101, et seq., to allow an agency to pay for bar review expenses in limited circumstances. GETA allows the head of an agency to use appropriated funds to pay all or part of the expenses of "training" that will "improve individual and organizational performance and assist in achieving the agency's mission and performance goals." *Id.* at 4101 (4). This includes payment or reimbursement of the employee for the tuition for a course, as well as travel, per diem, books, and other fees directly related to the training. *Id.* at 4109 (a)(2). In *Matter of Payment of Expenses for Bar Review Course, Bar Examination, and Court Admission*, B-187,525 (1976), 1976 WL 9595 (Comp Gen.) (unpublished opinion), the Comptroller General responded to an Interstate Commerce Commission (ICC) query regarding whether it could pay for the bar review course, bar exam, and court admission fees for an associate regional counsel. A newly adopted district court rule required that the attorney be admitted to the California bar. Because the attorney had already qualified for the position he was serving in (he was a member of another state's bar) and the agency had not changed the requirements for the job or reclassified it, the Comptroller General determined that "the costs of attending a bar review course are properly payable when the head of an agency determines, under [GETA], that members of his legal staff should take a bar review course." *Id.* at \*2. The Comptroller General determined that the agency could not pay for the attorney's bar exam fees or his court admission fees. *Id.* at \*2-\*3.



c. The New Rule: Discretion to Pay Bar Exam and Court Admission Fees

On December 28, 2001, Congress amended Title 5 of the U.S. Code (Government Organization and Employees) to give federal agencies discretion to pay the fees for bar exams and court admissions. The new Code section, entitled "payment of expenses to obtain professional credentials," states:

- (a) An agency may use appropriated funds or funds otherwise available to the agency to pay for - -
- (1) expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and
  - (2) examinations to obtain such credentials

5 U.S.C. § 5757(a).

In *Matter of Pension Benefit Guarantee Corp. – Court Admission Fees*, the Comptroller General recognized the change in the law, ruling

if the PBGC determines that payment of court admission fees is necessary to carry out its statutory mission and wishes to pay the fees pursuant to the discretion granted the agency under section 5757(a), our Office will not object to the PBGC using its appropriated funds to pay them.

B-289,219 (2002), 2002 WL 31478833 (Comp. Gen.) at \*2 (unpublished decision). The PBGC's 80 attorneys worked in Washington, D.C., but litigated ERISA cases throughout the country and had to pay a one-time admission fee to practice before each district court. The agency wanted to pay the court admission fees for its attorneys and successfully argued that the benefit of the multiple court admissions inured to PBGC rather than the individual attorneys.

d. EEOC's Policy Regarding Expenses for Necessary Professional Credentials

Ordinarily EEOC attorneys are responsible for the expenses of obtaining the professional credentials required to perform their official duties. Where special circumstances exist, EEOC will consider paying some or all of the expenses necessary for an attorney to obtain admission to a bar. One situation where EEOC might pay



such expenses is where an already licensed attorney agrees to seek admission to an additional state bar because the EEOC needs a licensed attorney in that jurisdiction.

2. Outside Practice of Law<sup>1</sup>

a. Introduction

\_\_\_\_\_ In 1992, the United States Office of Government Ethics (OGE) promulgated [Standards of Ethical Conduct for Employees of the Executive Branch](#) (*Standards of Ethical Conduct*), codified at 5 C.F.R. Part 2635. *Standards of Ethical Conduct* replaced many individual agency ethical conduct standards with uniform standards, while giving individual agencies authority to issue supplemental regulations where necessary. *Standards of Ethical Conduct* is based on *Principles of Ethical Conduct for Government Officers and Employees* contained in Executive Order 12674 (April 12, 1989), as modified by Executive Order 12731 (Oct. 17, 1990).

b. The Prohibition on Outside Employment

One of the enumerated principles both in the Executive Order and in [Standards of Ethical Conduct](#) is:

Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

5 C.F.R. § 2635.101(b)(10). *Standards of Ethical Conduct*, Subpart H, set forth detailed standards on the prohibition against engaging in outside employment and other activities that conflict with official duties. *Id.* at § 2635.801, et seq. Subpart H includes a number of examples.

EEOC has issued regulations, [Supplemental Standards of Ethical Conduct for Employees of the Equal Employment Opportunity Commission](#) (*Supplemental Standards*), at 5 C.F.R. Part 7201, supplementing OGE's regulations. EEOC's regulations specifically prohibit all employees, including attorneys, from "receiv[ing]

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<sup>1</sup> This guidance on the outside practice of law is drawn in part from a January 13, 1993, memorandum from OLC to all EEOC employees, *New Standards of Ethical Conduct for the Executive Branch*.



compensation for representational services, or the rendering of advice or analysis, regarding any equal employment law or its application.” *Id.* at § 7201.102 (b). The regulations also prohibit EEOC attorneys from outside employment with someone who is substantially affected by the employee’s performance of his or her official duties. *Id.* at § 7201.102 (a). In addition, employees generally are barred from outside involvement (whether paid or unpaid) with any matters pending at the EEOC or to which the EEOC or the Federal Government is a party. *Id.* at § 7201.102 (c). Two exceptions apply. First, an employee may provide behind-the-scenes help to an immediate family member in an EEOC matter or a matter in which the Federal government is a party. *Id.* Second, an employee also represent “another EEOC employee in an administrative equal employment opportunity complaint against EEOC.” *Id.* For both exceptions, the employee must receive prior approval and may not receive any compensation. *Id.*

c. The Requirement for Prior Approval

EEOC’s [Supplemental Standards](#) provide that before engaging in **any** outside employment, whether pay or unpaid, the employee “must obtain written approval from his or her Deputy Ethics Counselor or designee.” 5 C.F.R. § 7201.103 (a). The EEOC’s regulations define “employment” broadly to include paid and unpaid activities, such as serving as an officer or director, attorney, consultant, teacher, or speaker, or writing for publication. However, the regulations exempt most activities performed for nonprofit charitable organizations. *Id.* at § 7201.103 (d).

Employees must also obtain prior written approval of the Designated Agency Ethics Official or designee to engage in outside employment for pay, “the uncompensated practice of law,” or unpaid outside activity “that involves representation or the rendering of advice or analysis regarding any equal employment law, or serving as an officer or director of an organization whose activities are devoted substantially to equal employment opportunity matters.” 5 C.F.R. § 7201.103 (b).

The EEOC’s ethics officials are identified in subsection 4, below.



3. Recusal Obligations of an Attorney Whose Spouse is an Attorney Engaged in the Private Practice of Employment Law<sup>2</sup>
  - a. The Recusal Requirements

Generally, the attorney recusal requirements emanate from the criminal financial conflict of interest statute that applies to federal employees and from OGE's [Standards of Ethical Conduct](#) (discussed in subsection 2.a., above). The financial conflict of interest statute prohibits any federal employee from participating personally and substantially in any matter in which the employee or the employee's spouse has a financial interest, if the matter will have a direct and predictable effect on that interest. 18 U.S.C. § 208(a). OGE's [Standards of Ethical Conduct](#) contain a similar financial conflict of interest provision, 5 C.F.R. § 2635.401, and also, at 5 C.F.R. § 2635.502(a), contain a broader impartiality conflict of interest provision:

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter unless he has informed the agency designee of the appearance problem and received authorization from the agency designee . . .

Since EEOC attorneys have "covered relationships" with their spouses' employers and their spouses' clients, the [Standards of Ethical Conduct](#) provision require recusal under the following circumstances.

- EEOC attorneys must recuse themselves from any charge or lawsuit in which their spouse's law firm represents a party, regardless of whether the spouse is the attorney on the case.
- EEOC attorneys must recuse themselves from any case in which any client of the spouse is a party, whether or not the spouse's firm is representing the client in the EEOC case.

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<sup>2</sup> This guidance on recusal obligations is based on an Advisory Memorandum from OLC, dated December 22, 2000.



However, EEOC attorneys are not required to recuse themselves from cases involving a client of the spouse's firm (not the spouse's client), as long as the firm is not representing that client in the EEOC matter. If the EEOC attorney's spouse leaves the firm or no longer represents the client and does not plan to represent that client in the future, then the EEOC attorney's obligation to recuse himself or herself ends.

With respect to attorney referral programs, EEOC attorneys should not participate in decisions to add their spouses or their spouses' firms to a referral list or in decisions to refer charging parties to their spouses or their spouses' firms, unless the entire list is provided or referrals are made automatically and without the exercise of discretion.

b. Questions about Recusal

Should an employee have any questions about whether other circumstances might raise a question about his or her impartiality, the [Standards of Ethical Conduct](#) recommend seeking the assistance of the employee's supervisor, an agency ethics official, or the agency designee. 5 C.F.R. § 2635.502(a)(1). The EEOC's ethics officials are identified in subsection 4, immediately below.

4. EEOC Ethics Officials Who to Contact Regarding Ethics/Conflicts Issues

Designated Agency Ethics Official . . . . . Peggy R. Mastroianni  
Acting Legal Counsel

Alternate Designated Agency Ethics Official . . . Thomas J. Schlageter, Director  
Advice and External Litigation  
Division, OLC

Deputy Ethics Counselors

For all field legal unit employees . . . . . Office Directors

For OGC-HQ employees . . . . . James L. Lee  
Deputy General Counsel

Informal Advice . . . . . Liaison Attorneys  
Advice and External Litigation  
Division, OLC





5. Web Resources on Ethical Issues

Title	Description and Web Site Address
<a href="#"><u>Hatch Act for Federal Employees</u></a>	Discussion of restrictions on political activity by federal government employees under the Hatch Act, on the Web site of the U.S. Office of Special Counsel. <a href="http://www.osc.gov/hatchact.htm">http://www.osc.gov/hatchact.htm</a>
<a href="#"><u>Principles of Ethical Conduct for Government Officers and Employees, Executive Orders 12674 and 12731</u></a>	<i>Principles of Ethical Conduct for Government Officers and Employees</i> , Executive Order 12674 (1989), as amended by Executive Order 12731 (1990), on Web site of U.S. Office of Government Ethics (OGE). <a href="http://www.usoge.gov/pages/laws_regs_fedreg_stats/exec_orders.html">http://www.usoge.gov/pages/laws_regs_fedreg_stats/exec_orders.html</a>
<a href="#"><u>Standards of Ethical Conduct for Employees of the Executive Branch</u></a>	<i>Standards of Ethical Conduct for Employees of the Executive Branch</i> , at 5 C.F.R. Part 2635 - rules on gifts, conflicting financial interests, seeking other employment, and other issues. Indexed on OGE's Web site with section-by-section links to the regulations on the Web site of the Government Printing Office (GPO). <a href="http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html">http://www.usoge.gov/pages/laws_regs_fedreg_stats/oge_regs/5cfr2635.html</a>
<a href="#"><u>Supplemental Standards of Ethical Conduct, 5 C.F.R. Part 7201</u></a>	EEOC regulations, 5 C.F.R. Part 7201, <i>Supplemental Standards of Ethical Conduct for Employees of the Equal Employment Opportunity Commission</i> , on GPO's Web site. <a href="http://www.access.gpo.gov/nara/cfr/waisidx_02/5cfr7201_02.html">http://www.access.gpo.gov/nara/cfr/waisidx_02/5cfr7201_02.html</a>
<a href="#"><u>U.S. Code</u></a>	Current version of U.S. Code on GPO's Web site. <a href="http://www.gpoaccess.gov/uscode/index.html">http://www.gpoaccess.gov/uscode/index.html</a>

# **REGIONAL ATTORNEYS' MANUAL**



## **PART 1 ADMINISTRATIVE AND SUPPORT INFORMATION**

### **SECTION III**

#### **COMMISSION POLICIES**



**SECTION III**

**COMMISSION POLICIES**

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**A. INTRODUCTION TO  
COMMISSION POLICIES**

Over the years, the Commission has adopted various policies and procedures that have influenced the agency's litigation program. Some of the main policies currently in effect are summarized below.

1. Priority Charge Handling Procedures

In June 1995, the Commission adopted new Priority Charge Handling Procedures (PCHP) designed to give field personnel flexible procedures for processing charges, including discretion to decide the appropriate level of resources to be used for each charge, and permitting settlement in appropriate cases. PCHP requires field offices to classify charges into three categories: A charges include charges which fall within the national or local enforcement plan and other charges where further investigation will probably result in a cause finding; B charges include charges that initially appear to have some merit but will require additional evidence to determine whether continued investigation is likely to result in a cause finding and charges where it is not possible to make a judgment regarding the merits; and C charges are those in which the office has sufficient information to conclude that it is not likely that further investigation will result in a cause finding. A charges will receive priority treatment; B charges will be investigated as resources permit; and C charges will be dismissed.

2. National Enforcement Plan and Local Enforcement Plans

The Commission adopted the [National Enforcement Plan](#) (NEP) in February 1996 to identify priority issues and set out a plan for administrative enforcement and litigation of the laws within its jurisdiction. In the NEP, the Commission stated its commitment to "a three-pronged approach to eliminate discrimination in the workplace: (1) prevention through education and outreach; (2) the voluntary resolution of disputes; and (3) where voluntary resolution fails, strong and fair enforcement." The NEP established national enforcement priorities; set general parameters for the development of Local Enforcement Plans (LEPs) by field offices that tailor their priorities to the specific needs of the communities they serve; and delegated to the General Counsel authority for approving litigation of many types cases. (The NEP is set forth in section III.B. of this Part of the *Manual*).



3. Plans and Reports under the Government Performance and Results Act of 1993

The Commission has adopted other policies and procedures in response to Congressional enactment of the [Government Performance and Results Act of 1993](#) (GPRA), 31 U.S.C. 1101, et seq. GPRA requires agencies to prepare a strategic plan setting forth goals and objectives and to track progress toward meeting those goals and objectives in annual reports. The Commission's current [Strategic Plan](#) sets forth goals and objectives for performance for each year in the period FY 2004 through FY 2009. In addition to the five-year strategic plan, the Commission has adopted interim (annual) performance plans and has prepared annual reports on performance under the strategic plan. The Commission's [annual performance plans and reports](#) and other strategic planning documents are available on the EEOC's public Web site at <http://www.eeoc.gov>.

4. Five-Point Plan

The Five-Point Plan is the strategic framework through which the EEOC is to accomplish Chair Cari M. Dominguez's vision for the agency. The Five-Point Plan focuses on key, interrelated, program elements: "proactive prevention, proficient resolution, strategic enforcement and litigation, enhanced mediation and Alternative Dispute Resolution (ADR), and EEOC as a model workplace." It builds upon what EEOC has done to improve its operations and seeks to broaden the agency's reach through increased education, outreach, mediation, and strategic enforcement and litigation. (The Five-Point Plan is set forth in section III.C. of this Part of the *Manual*).

5. Web Resources

Title	Description and Web Address
<a href="#">EEOC Annual Performance Plans</a>	EEOC Annual Performance Plans - strategic plans for the Commission's performance under GPRA, on the EEOC's Web site. <a href="http://www.eeoc.gov/abouteeoc/plan/">http://www.eeoc.gov/abouteeoc/plan/</a>



Title	Description and Web Address
<a href="#">EEOC Annual Performance Reports</a>	EEOC Annual Performance Reports - annual reports on the Commission's performance under GPRA, by fiscal year, on EEOC's Web site. <a href="http://www.eeoc.gov/abouteeoc/plan/">http://www.eeoc.gov/abouteeoc/plan/</a>
<a href="#">Government Performance and Results Act of 1993</a>	Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1101, et seq., on U.S. House of Representatives' Web site. Requires agencies to prepare a strategic plan setting forth goals and objectives and to track progress toward meeting those goals and objectives in annual reports. <a href="http://uscode.house.gov/usc.htm">http://uscode.house.gov/usc.htm</a>
<a href="#">National Enforcement Plan</a>	Text of the Commission's National Enforcement Plan (Feb. 1996), on EEOC's Web site. <a href="http://www.eeoc.gov/abouteeoc/plan/nep.html">http://www.eeoc.gov/abouteeoc/plan/nep.html</a>
<a href="#">Planning and Strategic Reports</a>	The Commission's strategic plans, its reports on implementing those plans, and other reports, on EEOC's Web site. <a href="http://www.eeoc.gov/abouteeoc/plan/">http://www.eeoc.gov/abouteeoc/plan/</a>
<a href="#">Report of Charge Processing Task Force and Litigation Task Force</a>	Reports of the Commission's Priority Charge Handling Task Force and Litigation Task Force (March 1998), on EEOC's Web site. <a href="http://www.eeoc.gov/abouteeoc/task_reports/pch-lit.html">http://www.eeoc.gov/abouteeoc/task_reports/pch-lit.html</a>



**B. NATIONAL ENFORCEMENT PLAN\***

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\* This is a reproduction of the National Enforcement Plan, adopted by the Commission on February 8, 1996.



**B. NATIONAL ENFORCEMENT PLAN**

I. Introduction

In a motion unanimously adopted on April 19, 1995, the Commission directed the development, for its approval, of a National Enforcement Plan identifying priority issues and setting out a plan for administrative enforcement and litigation of the laws within its jurisdiction: Title VII of the Civil Rights Act of 1964 (Title VII), the Age Discrimination in Employment Act (ADEA), the Equal Pay Act (EPA), and the Americans With Disabilities Act (ADA). Also on April 19, 1995, the Chairman directed District Directors and Regional Attorneys in each field office to develop Local Enforcement Plans that will be consistent with the National Plan and that will tailor their priorities to the specific needs of the many different communities served by the Commission.

This motion was adopted at a special meeting convened on April 19, 1995, to consider recommended reforms to enforcement policies that had been established by the Commission over a decade ago. The recommendations had been developed by the Task Force on Charge Processing (Task Force) created by Chairman Gilbert F. Casellas and led by Vice Chairman Paul M. Igasaki which was charged with reviewing and analyzing the private sector charge processing system. More recently, partially as the result of the Commission's increased statutory responsibilities, the number of persons filing charges annually with the EEOC has risen from less than 64,000 in fiscal year 1991 to more than 95,000 in fiscal year 1995, a 49% increase. More funding to support additional staffing and other resources necessary to meet these new challenges has not been forthcoming.

The Task Force recognized that the Commission's effectiveness as a law enforcement agency had been reduced by the overwhelming increase in its inventory of individual charges of discrimination, by the lack of financial resources needed to address the increased workload, and by a failure to strategically utilize its resources to pursue its mission through vigorous investigation, conciliation, and litigation. In the 1980's, a number of enforcement processing and litigation policies based on principles of "full investigation and enforcement" were implemented.

The Task Force concluded that the policies and practices now prevented the agency from using its limited resources strategically to pursue its mission of eradicating workplace discrimination. To address this problem, it recommended the adoption of policies that would permit the agency to make the most prudent use of its resources to accomplish its mission. One of these recommendations was that the Commission





develop National and Local Enforcement Plans that prioritize issues of discrimination for Commission action.

Given the comprehensive scope of the National Enforcement Plan, the Commission consulted with a broad range of external and internal stakeholders. Through this process, the Commission sought and received recommendations from dozens of representatives of the employer, employee, labor, and civil rights communities at both the national and local levels. In addition, the then-Acting General Counsel and then-Acting Director of the Office of Program Operations (OPO) consulted with several District Directors and Regional Attorneys who, in turn, facilitated comments and suggestions from a wide range of EEOC staff, including union representatives.

Based upon this extensive consultative process and after its own careful consideration of the issues, the Commission adopts the following National Enforcement Plan (NEP), which will form the cornerstone of the Commission's efforts to achieve its statutory mission of eradicating discrimination from the workplace. The NEP recognizes that the Commission must use its limited resources more strategically to deter workplace discrimination, guide the development of the law, resolve disputes, and promote a work environment in which employment decisions are made on the basis of abilities, not on the basis of prejudice, stereotype and bigotry. The Commission also recognizes that regardless of resource issues, the development of this Plan is consistent with good management and reinventing government.

With this Plan, the Commission articulates the general principles governing the Commission's enforcement efforts, establishes national enforcement priorities, sets general parameters for the development of the Local Enforcement Plans, and delegates significant litigation authority to the Office of General Counsel so that the Commission can most effectively and efficiently accomplish its enforcement objectives.

## II. Governing Principles

The National Enforcement Plan incorporates the following principles, which have guided its development and will govern its implementation.

A. The Commission is committed to an enforcement plan that encompasses a three-pronged approach to eliminate discrimination in the workplace: (1) prevention through education and outreach; (2) the voluntary resolution of disputes; and (3) where voluntary resolution fails, strong and fair enforcement.



First, the Commission recognizes that achieving its fundamental mission -- the eradication of employment discrimination -- requires not only enforcement of the law, but also prevention of the problem through public outreach and education. Therefore, within current resource limitations, the National Enforcement Plan encourages that public education, outreach, and technical assistance be conducted at both the national and local level to support and enhance the enforcement activities directed by the NEP.

Second, the Commission is committed to the voluntary resolution of disputes where appropriate and feasible. The Commission recognizes that negotiated agreements that resolve claims of discrimination can directly advance the Commission's enforcement objectives, in addition to benefitting the parties to a particular dispute. The Commission believes that the use of Alternative Dispute Resolution (ADR) significantly furthers the Commission's mission as a law enforcement agency. Accordingly, the Commission strongly encourages its use as an integral part of our enforcement process.

Finally, the Commission is fully committed to firm and fair enforcement, including litigation, where voluntary efforts to achieve compliance fail. The Commission recognizes that an effective litigation program is critical to the furtherance of the Commission's enforcement agenda by enjoining current violations, deterring future violations, and providing remedies to victims of employment discrimination.

B. The Commission recognizes that given budget constraints under which it operates, it cannot be all things to all of its various constituencies. Moreover, the Commission must be candid with the public regarding the decisions that it makes. The adoption of this National Enforcement Plan and the subsequent adoption of Local Enforcement Plans will take critically important steps in this direction.

C. The combination of limited resources and increasing demands on the Commission requires a carefully prioritized and coordinated enforcement strategy. Strategic enforcement will assure the most effective use of the Commission's resources by assuring that available funds are devoted to efforts which have the potential to yield the greatest dividends in achieving equal employment opportunity. As part of this strategic enforcement strategy, the Commission is committed to the strategic and proactive use of its limited enforcement resources through, among other things, systemic investigations and litigation.

D. The Enforcement Plan must assure fair, aggressive and credible enforcement of all of the statutes enforced by the Commission regardless of the basis of discrimination or the issue.



E. Determination of whether a case should be pursued under the National Enforcement Plan will be based both on the issue raised and an assessment that the strength of the case supports the decision to proceed.

F. The Commission's enforcement activities will not be limited exclusively to the enumerated priority areas. With regard to charge processing, the Commission will issue cause findings in all cases in which it determines that it is more likely than not that discrimination has occurred and will proceed to conciliation in such cases. With regard to litigation, the Commission may pursue certain cases in which it has found cause, even though those cases do not fall clearly within an enumerated enforcement priority. At the same time, the Commission will not pursue litigation on every charge which falls within the NEP or the Local Enforcement Plans (LEPs). The Commission recognizes that it will be required to forgo litigating some good cases in order to devote adequate resources to other cases. At every stage of the process, the Commission will assess the available facts to determine whether the strength of the case and the nature of the issue supports the decision to proceed.

G. Enforcement efforts must be directed to the resolution of the Commission's pending inventory, in addition to the approximately 100,000 new cases which are projected to be filed over the next year. The Commission's recently implemented charge prioritization policies have already significantly reduced the Commission's current inventory, and it is anticipated that this trend will continue barring unforeseen circumstances. Both the National and Local Enforcement Plans must provide immediate strategies for continuing to reduce the existing inventory of cases. Such strategies should not ignore each office's need also to provide the resources necessary to support priority cases and address new filings. The backlog of cases is unfair to charging parties and respondents alike, diminishes EEOC's credibility as a law enforcement agency, and consumes valuable resources.

While the charge prioritization policies reflected in the NEP will permit the Commission to dedicate significant resources towards the Commission's goal of achieving a manageable inventory, the Commission recognizes that without a significant increase in resources, this goal will remain elusive.

### III. Enforcement Priorities

Based on the above principles, the Commission has identified three major categories of priorities, which include a series of subcategories, that will provide the foundation of the National Enforcement Plan. These priority categories will apply, as



appropriate, to investigation, conciliation, and litigation, including both trial and appellate practice, as well as the EEOC's amicus curiae and intervention representation.

The Commission sets forth the following areas as priorities under the National Enforcement Plan. These priorities will apply to each of the statutes enforced by the Commission and to all persons protected by these statutes.

A. Cases involving violations of established anti-discrimination principles, whether on an individual or systemic basis, which by their nature could have a potential significant impact beyond the parties to the particular dispute.

1. Cases involving repeated and/or egregious discrimination, including harassment, or facially discriminatory policies.

2. Challenges to broad-based employment practices affecting many employees or applicants for employment, such as cases alleging patterns of discrimination in hiring, lay-offs, job mobility, including "glass-ceiling" cases, and/or pay, including claims under the Equal Pay Act.

B. Cases having the potential of promoting the development of law supporting the antidiscrimination purposes of the statutes enforced by the Commission.

1. Claims presenting unresolved issues of statutory interpretation under one or more of the statutes enforced by the Commission, as follows:

a. Claims presenting unresolved questions regarding the allocation of burdens in disparate treatment cases as set forth in *St. Mary's Honor Center v. Hicks*.

b. Claims presenting questions regarding the scope of liability under the statutes enforced by the Commission, including issues of employer liability in harassment cases and individual liability.

c. Claims of national origin discrimination involving language issues, including accent discrimination and restrictive language policies or practices.

d. Claims clarifying the Title VII duty to reasonably accommodate religious practices.



e. Claims raising unresolved questions under the Americans with Disabilities Act regarding the meaning of "reasonable accommodation" and the term "qualified individual with a disability," as well as the defenses of "undue hardship" and "direct threat."

f. Claims presenting questions regarding the interpretation of the prohibition of disparate impact discrimination under the Civil Rights Act of 1991, the Age Discrimination in Employment Act, and the Americans With Disabilities Act.

g. Claims based on the intersection of two or more prohibited bases of discrimination (e.g., discrimination against women of color, older women, or minority persons with disabilities).

h. Claims addressing the legality of agreements that mandate binding arbitration of employment discrimination disputes imposed as a condition of initial or continued employment.

i. Claims presenting unresolved issues regarding the provision of employee benefits, including claims arising under Title I of the Older Workers Benefits Protection Act, and the Americans With Disabilities Act.

j. Claims of comparable significance identified and approved in the Local Enforcement Plans.

2. Cases involving legal issues where there is a conflict in the federal circuit courts on a Plan priority or in which the Commission is seeking Supreme Court resolution of such issue.

C. Cases involving the integrity or effectiveness of the Commission's enforcement process, particularly the investigation and conciliation of charges.

1. Cases involving allegations of retaliation against persons for participating in Commission proceedings or opposing unlawful employment discrimination, particularly cases where the scope of the statutory protection against retaliation is at issue.

2. Cases presenting challenges to Commission policy declarations, such as guidelines, regulations or policy guidance.



3. Cases protecting Commission access to information, including subpoena enforcement proceedings and proceedings to preserve or prevent the loss or destruction of evidence, except as set forth in paragraph 5 below.

4. Cases involving allegations of a material breach of an agreement to which the Commission was a party settling an earlier proceeding.

5. Cases involving alleged violations of the Commission's recordkeeping and reporting requirements where there is reason to believe that there may be another violation of statutes enforced by the Commission.

With the adoption of these priorities, and pursuant to a Motion unanimously adopted by the Commission on April 19, 1995, the Commission hereby withdraws all Priority Issues Lists that have previously set out priority issues for Commission consideration.

#### IV. Local Enforcement Plans

Each District Director and Regional Attorney shall develop a Local Enforcement Plan (LEP) and a supporting document detailing its plan to implement the LEP. These documents shall be submitted concurrently to the Commission, the General Counsel and Director of the Office of Program Operations (OPO), for approval no later than forty-five (45) days from the date of the adoption of the National Enforcement Plan. In turn, the General Counsel and Director of OPO shall review the LEPs and submit their recommendations to the Chairman no later than twenty-one (21) days from the date the LEPs are submitted by the District Offices. The Commissioners may also submit their comments to the Chairman on the LEPs and the implementation documents, as well as on the recommendations submitted by OGC and OPO, no later than thirty-five (35) days from the date that the LEPs are submitted by the District Offices. Then, the Chairman shall have thirty (30) days to determine whether to approve the LEPs. LEPs are to be consistent with the National Enforcement Plan, but their specific goals and objectives should be tailored to reflect legal and factual issues specific to the communities served by each office, as well as each office's resources. In particular, LEPs shall include the following critical components:

A. An evaluation and strategy to address the provision of Commission services to underserved populations and geographic regions, as well as employment practices of particular importance in the region served by each District Office.



B. A description and identification of the local issues which are on the NEP.

C. A description of each office's plan to resolve the pending cases in the office's inventory, including the long-term plans of the District Office to use ADR techniques as a part of its charge processing activities.

D. In addition, each District Office shall develop an implementation document supporting the LEP. This document shall describe the District Office's strategy for utilizing its resources and give Headquarters information critical for planning, staffing, and the allocation of resources in the field. This document shall:

1. Prioritize and justify the issues identified in the LEPs as to severity and need for local impact, taking into account industries, constituencies, and geographic areas involved;
2. Identify pending charges/suits or proposed charges/suits which fall within the local priority list and indicating those which would have the greatest impact;
3. Identify which of those current charges/suits can be pursued with available resources, as well as those others that could be pursued if additional resources were available; and
4. Describe how the plan results will be achieved, including time lines.

Given that disclosure of the implementation documents would seriously circumvent the Commission's pending and proposed enforcement efforts, they will be treated by the Commission as confidential.

V. Delegation of Authority to General Counsel

The Commission, by resolution of April 19, 1995, delegated litigation authority in certain cases to the General Counsel until such time as the Commission adopts the National Enforcement Plan. With the goals of increasing strategic enforcement for the General Counsel and field attorneys, freeing the Commission to focus on policy issues, and increasing the efficiency and effectiveness of our litigation program, the Commission now provides such delegation as follows:

First, the Commission delegates to the General Counsel the decision to commence or intervene in litigation in all cases except the following:



- a) Cases involving a major expenditure of resources, e.g., cases involving extensive discovery or numerous expert witnesses and many pattern-or-practice or Commissioner's charge cases;
- b) Cases which present issues in a developing area of law where the Commission has not adopted a position through regulation, policy guidance, Commission decision, or compliance manuals;
- c) Cases which, because of their likelihood for public controversy or otherwise, the General Counsel reasonably believes to be appropriate for submission for Commission consideration; and
- d) All recommendations in favor of Commission participation as amicus curiae which shall continue to be submitted to the Commission for review and approval.

Second, the Commission ratifies its decision to give the General Counsel the authority to redelegate to Regional Attorneys the authority to commence litigation. The Commission encourages such redelegation of litigation authority as appropriate.

Finally, the Commission restates and ratifies its April 19, 1995 delegation to the General Counsel of the authority to refer public sector Title VII and ADA cases which fail conciliation to the Department of Justice, as well as the authority to redelegate this authority to Regional Attorneys. Regional Attorneys are encouraged to consult informally with designated "point of contact" attorneys at the Department of Justice regarding significant legal issues that arise in processing state and local government charges that appear to have litigation potential.

The General Counsel will report to the Commission quarterly on each new case filed pursuant to the delegated authority procedure set out above. The report will briefly describe the issue, basis, and scope of the case, and indicate whether authority to file it had been delegated to the Regional Attorney by the General Counsel. The General Counsel's report shall include an assessment of how the delegation authority has been exercised and whether the Commission's stated goals have been better achieved as a result of the delegation. Such reports shall be presented for discussion at the first regularly scheduled Commission meeting after the Report is prepared. The General Counsel will establish procedures for monitoring the performance of Regional Attorneys and will report to the Commission on such effectiveness once each year.





VI. Settlement and Alternative Dispute Resolution

The Commission's Policy Statement on Alternative Dispute Resolution (ADR), adopted on July 17, 1995, as well as the Commission's policy regarding settlements adopted on April 19, 1995, will apply to the implementation of the National and Local Enforcement Plans.

In the ADR Policy Statement, the Commission confirmed its strong commitment to using voluntary alternative methods for resolving disputes in all of its activities, including all aspects of the enforcement process, where appropriate and feasible. ADR is fully consistent with EEOC's mission as a law enforcement agency and is squarely grounded in the statutes enforced by the Commission. Used properly and in appropriate circumstances, ADR can provide less expensive, less contentious, and faster results in eliminating workplace discrimination.

ADR must be viewed as an integral component of its comprehensive enforcement program. ADR will complement current charge processing systems by facilitating early resolution of disputes where agreement is possible, thereby freeing up resources for identifying, investigating, settling, conciliating or litigating other matters. Improvements in the Commission's enforcement efforts should enhance the Commission's credibility as a law enforcement agency.

The Commission recognizes that negotiated agreements that resolve claims of discrimination can benefit the parties to a dispute as well as directly advance the Commission's enforcement objectives. While encouraging the use of ADR, the Commission recognizes that it must remain vigilant in assuring that ADR, as used by the Commission, does not conflict with or undermine our enforcement objectives.

Within these limitations, and in conjunction with ADR programs which it may itself implement, the Commission reemphasizes the important role of settlement and conciliation as an integral component of its comprehensive enforcement program.

VII. Enforcement Partnership with State and Local Fair Employment Agencies

On May 22, 1995, the Commission resolved to establish a new partnership with the state and local fair employment practices agencies (FEPAs), recognizing our common mission to eliminate and prevent employment discrimination and to provide timely and effective redress for individuals who have been discriminated against. The Commission adopted the EEOC/FEPA Task Force's recommendation that the



Chairman should take actions to forge this partnership by eliminating duplication of effort that might exist with respect to the processing of charges. As part of this process, the Chairman requested the Director of OPO to consult with field offices and FEPAs to explore the feasibility of joint investigative and enforcement activities.

The FEPAs' enforcement efforts must be viewed as an integral component of the Commission's enforcement efforts. To enhance the roles of the FEPAs in the Commission's enforcement efforts, the Chairman suggested that the Director of OPO, in consultation with the FEPAs, review and discuss the recommendations of the Task Forces on Charge Processing and Alternative Dispute Resolution, exploring ways in which the principles and recommendations, particularly those concerning priority charge handling and the measurement of results, may be used to further our joint mission of eradicating and preventing discrimination. Therefore, the District Offices are encouraged to solicit suggestions from the FEPAs in developing and implementing their LEPs in an effort to minimize duplication of efforts.

#### VIII. Implementation

While this plan does not, and is not intended to, define the operational implementation of the enforcement priorities, the following considerations should guide implementation steps:

1. The top priority for charge processing (Category A), includes Enforcement Plan cases and, within resource constraints, other cases in which it appears more likely than not that discrimination has occurred.
2. A determination that a charge falls within the Enforcement Plan requires a determination that the issue raised is an Enforcement Plan priority as well as an assessment that the strength and potential impact of the case supports the decision to proceed.
3. Although it will be possible to categorize some charges as Enforcement Plan cases immediately upon receipt of the charge, the categorization of other cases will require further evaluation and investigation. The Commission is committed to devoting the appropriate level of resources to the evaluation and investigation of all cases potentially falling within the priorities enumerated in the NEP or Local Enforcement Plans. Nonetheless, District Offices should endeavor to identify Enforcement Plan cases at the earliest possible time following receipt of charge.



4. Offices should develop procedures to assure routine and effective consultation between legal and investigative personnel in all phases of the identification and development of Enforcement Plan cases.

5. Cases falling under the enumerated priorities in the NEP and/or Local Enforcement Plans should be accorded priority in investigation with respect to speed, depth, and other measures of dedication of resources in order to assure that the investigation will support a subsequent and timely enforcement action if appropriate.

6. The Commission recognizes that some cases that fall within the enumerated priorities will require a commitment of substantial resources from the District Office and may diminish that office's ability to pursue other cases in litigation.

7. In addition to charges filed by individuals, Commissioner's charges under Title VII and the ADA and directed investigations under the ADEA and EPA provide important enforcement tools under the Enforcement Plans.

8. All District Offices with responsibilities under the Enforcement Plans should conduct outreach and educational activities and obtain on a regular basis input from stakeholders and interested groups on the effectiveness of the implementation of the National and Local Enforcement Plans. These offices should also conduct regular assessments of the communities they serve to identify any special needs or employment discrimination issues that may otherwise not be addressed.

9. The Commission recognizes that it may not be able to litigate every case that fails conciliation, including cases which fall within the National and Local Enforcement Plans. Thus, the Commission encourages the General Counsel, District Directors, and Regional Attorneys to work closely with the private bar, which continues to play a critical role in civil rights enforcement.

10. All components of all offices in headquarters and the field will work together cooperatively to efficiently and effectively accomplish the mission of the agency.

#### IX. Reporting

The General Counsel and the Director of the Office of Program Operations shall report quarterly to the Commission on the effectiveness of their efforts under the Enforcement Plans. These reports will include recommendations for amendments to the National



Plan or Local Plans where appropriate for the Commission's consideration and, with respect to the General Counsel, the matters set forth in Section V, pages 14-15.

**Equal Employment Opportunity Commission**

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**National Enforcement Plan**

[ SEAL ]

Gilbert F. Casellas  
Chairman

Paul M. Igasaki  
Vice Chairman

Joyce E. Tucker  
Commissioner

Paul Steven Miller  
Commissioner

C. Gregory Stewart  
General Counsel

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February 1996



**C. FIVE-POINT PLAN\***

EEOC's Five-Point Plan provides the framework for accomplishing our agency's mission and is central to our three overarching Strategic Objectives. The Five-Point Plan places a premium on coordination, innovation and results. Under the Plan, all facets of EEOC's work will be viewed with an eye toward being more proactive and more effective. Each element of the Five-Point Plan is described below.

1. Proactive Prevention

The best way to combat discrimination is to prevent it from happening in the first place. We will work to proactively prevent discrimination by providing information and solutions to members of the public that will help them identify and solve problems before they escalate. We will serve as a clearinghouse of reports and best practices to encourage learning and understanding among employers and employees. We will also introduce new and innovative outreach activities, such as: teleconferences, technical assistance visits, flexible training opportunities, an enhanced Web site, information dissemination through public radio and television, cyber forums, and partnerships and strategic alliances to strengthen efforts and build support. In essence, we will work to promote healthy workplace practices and to instruct managers in an effort to find the "cure" for discrimination.

2. Proficient Resolution

Providing quality services that are fair, prompt, and cost effective, is vital to the EEOC's mission. We will ensure that our work is consistent, accurate and timely. The EEOC will evaluate and improve every stage of the private sector charge process and will collaborate with other federal agencies in our effort to make the federal complaint process more efficient. The EEOC will also introduce new performance techniques to streamline procedures, while enhancing the integrity of our processes.

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\* EEOC Chair Cari M. Dominguez adopted the Five-Point Plan in 2001. The description of the Five-Point Plan printed here is from the EEOC's *Strategic Plan for Fiscal Years 2004 - 2009*, which is available on the Commission's website ([http://www.eeoc.gov/abouteeoc/plan/strategic\\_plan\\_04to09.html](http://www.eeoc.gov/abouteeoc/plan/strategic_plan_04to09.html)).



3. Promote and Expand Mediation/Alternative Dispute Resolution (ADR)

Promoting and expanding mediation and other types of ADR is the centerpiece of the EEOC's Five-Point Plan. Our private sector mediation program has demonstrated that disputes can be settled quickly, amicably and cost-effectively through ADR techniques.

We will build on earlier successes through the continued development of a comprehensive agency-wide ADR program. We will review the pool of private sector charges eligible for mediation and offer mediation at various stages of the private sector charge process. We also will work to expand the number of private employers participating in Universal Agreements to Mediate, which allow EEOC to attempt mediation in all cases involving an employer so long as the charging party consents.

EEOC will also expand the use of ADR in the federal sector program by continuing to explore new and different ADR methods, identifying ADR methods that prove most efficient and cost effective at the hearings stage of the federal complaint process, and evaluating the results of an appellate-stage mediation program piloted in 2002. We will continue to expand and improve our Federal Sector ADR web page, which serves as a clearinghouse about ADR for federal employees.

4. Strategic Enforcement and Litigation

We must use all research tools available to us, and deploy agency resources strategically, if we want to have a meaningful impact on discrimination in today's workplace and the workplace of the future. We will examine emerging workplace trends and issues in both the private and federal sectors and use this information to make reasoned and calculated decisions about what issues merit our attention and how we can better integrate our policy guidance, investigative, litigation and federal coordination functions. In determining where the agency needs to concentrate its enforcement and litigation efforts, the EEOC will establish baseline information on investigation, litigation and federal sector activities; examine recent court decisions; consult with agency staff and stakeholders; evaluate the agency's outreach activities; and conduct annual reviews of economic indicators, demographic trends, employer practices, industry literature and legislative initiatives. Finally, we will continue to strengthen partnerships between EEOC investigators and attorneys and between the EEOC and other federal agencies.



5. EEOC as a Model Workplace

The President's Management Agenda (PMA) provides the roadmap for the final point of the agency's Five-Point Plan. The President's agenda addresses important enhancements to internal agency operations and its interface with the public. The integration of our Five-Point Plan and other Administration and agency initiatives will help build a model workplace where we can effectively and efficiently accomplish our goals in an environment conducive to good employment practices.

The very principles and standards we promote to employers should be readily apparent in our own operations. To achieve our aims, we will build an organization committed to providing opportunities for EEOC employees to grow professionally. We will accomplish this through occupational and leadership development, performance management programs, the use of enabling technologies and a flexible, adaptable work environment that is conducive to teamwork. We will build a model workplace with programs and practices worthy of emulation.