

APPENDIX B

A PLAN FOR FAIR AND EQUAL EMPLOYMENT

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MASSACHUSETTS TRIAL COURT

A PLAN FOR EQUAL AND FAIR EMPLOYMENT

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I. Introduction

One of the goals of the Massachusetts Trial Court is to appoint a diverse workforce through equal and fair employment practices. A diverse workforce furthers the administration of justice by recognizing and allowing for the interplay of different views and perspectives. Diversity respects individual differences and recognizes the unique contributions that each individual can bring to create an inclusive work environment that maximizes the potential of all employees. Diversity and equal and fair employment practices improve employee satisfaction and contribute to increased employee retention and productivity. They also help to promote public confidence in the courts, enhance the credibility of the courts in local communities, and increase employee sensitivity and awareness for the various constituents served by the Trial Court. In order to achieve a diverse workforce, the Trial Court has created this Plan for Equal and Fair Employment (Plan).

II. Anti-discrimination Policy and Purposes of the Plan for Equal and Fair Employment

A. Anti-discrimination Policy

It is the policy of the Massachusetts Trial Court to prohibit discrimination in employment on the basis of race, color, age, religious creed, national origin, gender/sex, sexual orientation, genetic information, ancestry, disability, veteran's status (including Vietnam Era veterans), and other characteristics protected by applicable state or federal law (protected categories). All employees (including judges) shall adhere to this non-discriminatory policy and support the Trial Court's commitment to equal and fair employment.

B. Purposes of the Plan for Equal and Fair Employment

The primary purposes of the Plan are to: (1) ensure that each court within the Trial Court reflects a level of diversity that resembles the labor market availability for that court; (2) identify any discriminatory employment practices and replace them with non-discriminatory employment practices; (3) broaden employee awareness regarding this Plan and the Trial Court's commitment to the principles of diversity, equal employment opportunity and fairness in the workplace; (4) ensure that fair employment practices are adhered to; and (5) evaluate the Trial Court's accomplishments and successes in ensuring equal and fair employment. This Plan incorporates by reference all other relevant Trial Court policies and procedures.

III. Monitoring and Implementation

A. Workforce Analysis and Utilization Analysis

The Trial Court shall prepare and maintain a workforce analysis, which examines the composition of its workforce. The Trial Court analyzes its workforce using the following eight EEO job categories established for State and local governments: Officials and Administrators; Professional; Technicians; Protective Service-sworn; Protective Service-non sworn; Office Clerical; Skilled Craft; and Service Maintenance. Within each EEO job category, the workforce analysis reports the total number of employees and the number of employees by protected class.

The Trial Court shall also prepare and maintain a utilization analysis in order to compare the composition of its actual workforce (workforce analysis) to the availability of workers with requisite skills in applicable labor market areas (the labor market analysis). The labor market analysis can be found at: www.census.gov.

Accurate employment data shall be maintained for the purpose of generating workforce statistics and reports. When the statistical measures show underutilization of the protected classes, the Trial Court shall set goals for hiring and promotions so that in the future, the workforce shall resemble labor market availability.

B. Administrative Practices Consistent with Plan

The Trial Court shall ensure that all personnel policies and procedures are consistent with the provisions of this Plan.

The Trial Court shall use a standard employment application form in an effort to eliminate subtle discrimination which can occur when only resumes are used. Such a form guarantees that the same information will be available for all applicants. Use of the standard form also ensures that applications do not include questions which are not job related and which have been shown to disproportionately result in the rejection of the protected classes. If department heads identify some responsibilities in a job as more important than others, they shall investigate whether this may have a disparate effect on the protected classes. In addition, special attention will be paid to academic, experience and skill requirements to ensure that the requirements in themselves do not constitute inadvertent discrimination or bias.

The Trial Court recognizes the importance of recruiting candidates from all protected classes, and shall maintain a list of the names and addresses of agencies and organizations across the Commonwealth which may refer such candidates for Trial Court positions. The Diversity Officer shall maintain this list and provide it to appointing authorities when requested.

The Trial Court is committed to providing all employees with an equal and fair opportunity for promotion and transfer, and shall monitor promotions and transfers to ensure that these actions are not based on bias or discriminatory practices.

The Trial Court shall ensure that all employees are aware of opportunities for training and career development, and that selection for all training and educational programs does not discriminate against employees in protected classes. In addition, the Trial Court will, subject to funding, provide education and training to prepare employees in protected classes for promotion within the system.

In the event layoffs within the Trial Court are necessary, such layoffs should not contravene the goals and objectives of this Plan.

IV. Internal Audit and Reporting Systems

The Trial Court has established internal audit and reporting systems which are designed to ensure that: (1) records are reviewed to ensure fair treatment of all employees and applicants, and to identify areas needing additional attention; (2) recommended improvements are identified and action oriented programs are implemented; and (3) appropriate records are maintained.

The Trial Court will:

1. Periodically review all of its employment practices and records in order to identify and eliminate any practices which may have contributed to underutilization of minorities, women and members of other protected classes. Practices and records to be reviewed as part of an audit will include, but not be limited to, the following:
 - a. the appointment packages stored or e-filed with the Human Resources Department, including Applications, resumes, job postings, Applicant Flow Logs (Form F-17), and other documents required by the Personnel Policies and Procedures Manual;
 - b. the content of job descriptions, in terms of their possible adverse impact on minorities, women, or other protected classes;
 - c. the use of search committees to interview candidates and make recommendations for hire or promotion;
 - d. the use of pre-employment and/or promotional tests;
 - e. the use of other criteria which may serve as disqualifying factors for employment;
 - f. summary data related to hires, transfers, promotions, discharges, layoffs, terminations, and other personnel transactions.
2. Report to the Court Administrator the documentation of employment practices, including any recommendations for change.
3. Create an online posting site on which all vacant positions for outside hire are published as a means of furthering its goal of creating a qualified and diverse pool of applicants for such vacancies. The Trial Court will also pursue a more specifically targeted program of recruitment in the event that underutilization has been identified.

4. Prepare a Status Report on an annual basis which evaluates its progress towards meeting the objectives of the Plan.

V. Responsibility for Implementation of the Plan

A. Chief Justice of the Trial Court

The Chief Justice of the Trial Court, pursuant to G.L. c. 211B, s. 9, is the policy and judicial head of the Trial Court. As such, the Chief Justice of the Trial Court has general superintendence of the judicial policy of the Trial Court.

B. Court Administrator

The Court Administrator, pursuant to G.L.c. 211B, s. 9A, is the administrative head of the Trial Court. In consultation with the Chief Justice of the Trial Court, the Court Administrator has general superintendence of the administration of the Trial Court and is responsible for establishing uniform guidelines and policies to further minority employment within the judicial system

C. Human Resources Department

The Human Resources Department (HR) is responsible for developing policies, procedures, and programs that comply with the Plan and state and federal laws. Under the supervision of the Director of Human Resources, the HR Department is responsible for the following areas: programs to ensure compliance with the Americans with Disabilities Act, employee benefit programs, position classification and salary administration, the Paid Leave Bank, the Personnel Policies and Procedures Manual, the Sexual Harassment Policy, union negotiations and contract administration. The HR Department also provides assistance and guidance to the Chief Justice of the Trial Court, the Court Administrator, the Diversity Officer, managers and employees.

D. Diversity Officer

The Diversity Officer, who reports directly to the Court Administrator or his/her designee, is responsible for the day-to-day administration of the Plan and for ensuring that employment activities are in compliance with the Plan, state and federal laws and regulations.

The Diversity Officer, under the supervision of the Director of Human Resources, shall review personnel actions and other employment activities to ensure equal and fair employment decisions. The Diversity Officer is responsible for conducting the workforce and utilization analyses, assisting in the development of goals based upon the results of the workforce and utilization analyses, and working with appointing authorities and department heads to accomplish those goals. The Diversity Officer is responsible for identifying problem areas and for recommending strategies to address those problem areas. The Diversity Officer is responsible for investigating complaints of discrimination, and shall assist judges and department heads in their efforts to implement the Plan within their offices. The Diversity

Officer shall compile statistical data, prepare reports, and serve as the liaison between the Court Administrator and various government agencies and professional organizations.

E. Race and Ethnic Advisory Board

The Race and Ethnic Advisory Board is responsible for recommending solutions to concerns relating to racial, ethnic, and cultural bias in the courts, as well as monitoring the impact of remedial measures and evaluating the progress of the courts in eliminating bias and unfairness in the courts.

F. Managers

Managers (including Judges) play an important role in implementing and ensuring compliance with the Plan in their areas of supervision. Managers are expected to exhibit exemplary behavior in treating all applicants and employees with respect, encouraging workforce diversity and making good faith efforts to ensure their workforce reflects the labor market availability for their court. Managers are responsible for creating professional work environments that promote employee awareness, acceptance of each other's differences and potential contributions, and which are free of unlawful discrimination. Managers are responsible for ensuring fair and equal employment decisions in all terms and conditions of employment and for ensuring full compliance with the Trial Court Personnel Policies and Procedures Manual. Managers are also responsible for ensuring that employees are aware of the Plan, for addressing any discriminatory behavior, taking appropriate preventive or remedial action to address such behavior, contacting the Diversity Officer for information on issues of concern, specific problems or potential discrimination complaints, and for assisting the Diversity Officer in the investigation of discrimination complaints and in the complaint resolution process.

G. Personnel Who Conduct Employment Interviews

All personnel involved in hiring and promotions shall be responsible for ensuring that applicants are treated fairly during the recruitment and selection process. Interviewers shall comply with the uniform hiring procedures outlined in the Trial Court Personnel Policies and Procedures Manual, including but not limited to, interviewing all identifiable minority candidates meeting the minimum qualifications for the position, asking job-related questions which are based on the job description, evaluating applicants using a standardized methodology for ranking applicants, and ensuring the submission of all appropriate personnel documentation to the Human Resources Department to demonstrate access and fairness in the hiring process, including completing the Applicant Flow Record (F-17), which analyzes the diversity of the applicant pool.

H. Trial Court Employees

Every employee of the Trial Court is responsible for conducting him or herself in a manner that is in full compliance with this Plan.

VI. Dissemination

The Trial Court has identified the following means of disseminating the Plan and other information related to equal and fair employment opportunity.

A. Internal Dissemination

- All Trial Court managers and employees will be informed that a copy of the Plan is included in the Personnel Policies and Procedures Manual. A copy of the Plan is also available at the Office of Court Management.
- The Plan will be posted electronically on the Trial Court intranet site: <http://trialcourtweb.jud.state.ma.us/admin/hr/affirmintro.html>
- A poster stating the Anti-discrimination Policy and Purposes of the Plan shall be posted in a conspicuous location, such as on courthouse bulletin boards.
- The handbook titled “*Within Our Reach: Gender, Racial and Ethnic Equality in the Courts*” which restates the Trial Court’s commitment to equal opportunity is available in hard copy upon request and on the Trial Court internet site: <http://trialcourtweb.jud.state.ma.us/admin/hr/withinourreach.html>
- Supplemental information will be placed on the Trial Court intranet site or disseminated via electronic mail.
- Internal newsletters, press releases and other publications will, as appropriate, feature both minority and non-minority personnel.
- The Trial Court will inform union officials of the Plan, enlist their commitment to the goals of the Plan and will seek to negotiate language for collective bargaining agreements which reflects this commitment.
- The Plan will be discussed at new employee orientation and other training programs.

B. External Dissemination

- The Application for Employment shall include language that is consistent with the Anti-discrimination policy (www.mass.gov/courts/jobs).
- All Job Descriptions and recruitment ads shall include the EEO/AA statement.
- Professional organizations, community action groups, job placement centers and minority and female organizations, secondary schools and colleges that

provide recruitment services will be informed that the Trial Court is an equal opportunity employer.

- A non-discrimination clause will be incorporated in all purchase orders, leases, grants and contracts for the procurement of goods and services.
- Trial Court activities and fair employment initiatives will be publicized annually in the Trial Court's Annual Report as required under the provisions of G.L. c. 211B.

VII. Internal Complaint Procedure

The Trial Court shall maintain formal and informal procedures to assist applicants, employees or court users with their complaints of discriminatory treatment. The complaint procedure shall be used by anyone who may have reason to believe they have a complaint of discrimination. (See Appendix A - Internal Complaint Procedure).

The Trial Court prohibits retaliation against any person who files a discrimination complaint or any person who assists in the investigation of such complaint. A person who chooses to use the complaint procedure is not precluded from filing a complaint or grievance with other appropriate entities such as the Massachusetts Commission Against Discrimination, the Equal Employment Opportunity Commission, or the Union.

Appendix A

Internal Complaint Procedure

This section details the Trial Court's in-house complaint procedure. An individual may file either an informal complaint or a formal complaint to address issues of discrimination. The informal complaint procedure may be used to facilitate a speedy resolution of a complaint by using positive open dialogue to resolve issues and misunderstandings. The formal complaint procedure may be used to record in detail the allegations of a complaint and proposed resolutions.

A. Informal Complaint Procedure

An individual (including a manager) may initiate an informal complaint by contacting the Diversity Officer. The Diversity Officer shall encourage all court personnel to fully utilize the resources of the Diversity Officer for advice, information or counseling as soon as the need arises. The Diversity Officer shall investigate and attempt to resolve the complaint informally through positive dialogue. This assistance shall address informal approaches and options in order to help managers, court personnel and users of the court to resolve the complaint. The Diversity Officer is committed to preventing infractions of Trial Court policies and shall assist court personnel with their difficulties. The Diversity Officer, at all times, shall facilitate an amicable resolution and shall be available to assist supervisors, managers, court personnel and users of the court in reaching a resolution. If a resolution is not reached, the complainant may file a formal complaint.

B. Formal Complaint Procedure

1. The Complaint

To file a formal complaint, an individual must submit a written complaint with the Diversity Officer, who will log the complaint and notify the Court Administrator and the Director of Human Resources that a complaint has been received.

The Diversity Officer shall arrange a meeting with the complainant within ten working days of receipt of the initial complaint. The purpose of the meeting is to ensure that the Diversity Officer understands the complainant's allegations and desired relief, and has the opportunity to describe the complaint investigation procedure more fully.

If the complaint includes a request for reasonable accommodation for a physical or mental handicap, that issue shall be forwarded to the ADA Coordinator.

If it is determined that the complaint is a sexual harassment matter under the Trial Court's Sexual Harassment Policy and Procedure, the Diversity Officer shall direct the complainant to the Human Resources Department.

2. The Investigation

The Diversity Officer shall thoroughly and objectively investigate all complaints of discrimination in a fair and expeditious manner and shall attempt to resolve the issue

which generated the complaint with the goal of mediation and an amicable resolution. In this process, the Diversity Officer shall privately interview relevant parties and witnesses, examine appropriate documents, and gather other essential information relevant to the complaint. The individual being interviewed may have a representative of his or her choice at the interview. During this process, the Diversity Officer shall maintain confidentiality as much as possible.

If the complaint has been made against a specific individual, the Diversity Officer will meet privately with the individual to discuss the complaint. That individual may respond to the complaint orally or in writing.

All employees are expected to cooperate in any investigation conducted by the Diversity Officer. Witnesses and relevant parties shall be asked to sign written statements of their accounts.

3. Conclusion

At the conclusion of the investigation, the Diversity Officer shall provide a written report to the Director of Human Resources, including a summary of findings and recommendations. If a formal investigation confirms that discriminatory conduct has occurred, the Director of Human Resources will work with the relevant Department Head(s) to implement appropriate disciplinary action and/or remedial measures.

C. Database Log for Tracking/Reporting Discrimination Complaints

The Diversity Officer shall maintain a central database log of all formal and informal complaints filed. This database shall capture pertinent information including the name of the complainant, the name of the respondent, court location, date filed, type of complaint, date completed, recommendation and action taken.

Appendix B

EEO/AA GLOSSARY

Race/Ethnic Categories:

White (not of Hispanic origin): All persons having origins in any of the original peoples of Europe, North Africa, or the Middle east

Black (not of Hispanic origin) : All persons having origins in any of the Black racial groups of Africa.

Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

Asian or Pacific Islander: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands and Samoa.

American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

Cape Verdean: All persons having origins in the Cape Verde Islands.

Persons with Disabilities: All persons who have a physical or mental impairment, which substantially limits one or more major life activities, or have a record of such impairment, or are regarded as having such impairment.

Vietnam Era Veteran: Vietnam veteran shall mean (1) any person who performed such wartime service during the period commencing August 5, 1964 and ending on May 7, 1975, both dates inclusive, or (2) any person who served at least 180 days of active service in the armed forces of the United States during the period between February 1, 1955 and August 4, 1964.

Appendix C

Relevant Laws and Regulations

A. Federal Laws

Title VII of the Civil Rights Act of 1964 (Title VII)

<http://www.eeoc.gov/policy/vii.html>

Age Discrimination in Employment Act of 1967 (ADEA)

<http://www.eeoc.gov/policy/adea.html>

Americans with Disabilities Act of 1990 (ADA)

<http://www.eeoc.gov/ada/>

Civil Rights Act of 1991

<http://www.eeoc.gov/policy/cra91.html>

Civil Rights Act of 1866 (Section 1981)

<http://www.supremelaw.org/ref/1866cra/1866.cra.htm>

Equal Pay Act of 1963

<http://www.eeoc.gov/policy/epa.html>

Rehabilitation Act of 1973

<http://www.eeoc.gov/policy/rehab.html>

The Vietnam Era Veterans Readjustment Assistance Act

http://www.dol.gov/esa/ofccp/regs/compliance/ca_vevraa.htm

Immigration Reform and Control Act of 1986 (IRCA)

<https://www.oig.lsc.gov/legis/irca86.htm>

Executive Order 11246

<http://www.dol.gov/esa/ofccp/regs/statutes/eo11246.htm>

B. Massachusetts Laws

Massachusetts Fair Employment Practices Law, G.L. c. 151B, §4

<http://www.mass.gov/legis/laws/mgl/151b-4.htm>

Massachusetts Age Discrimination Law, G.L. c. 149, §24A

<http://www.mass.gov/legis/laws/mgl/149-24a.htm>

Massachusetts Equal Pay Law, G.L. c. 149, §105A

<http://www.mass.gov/legis/laws/mgl/149-105a.htm>

Massachusetts Equal Rights Law, G.L. c. 93, §102

<http://www.mass.gov/legis/laws/mgl/93-102.htm>

REFERENCES

Massachusetts Court Interpreters for the Trial Court, G.L. c. 221C, §7

<http://www.mass.gov/legis/laws/mgl/221c-7.htm>

**Improving Access to Services for Persons with Limited-English Proficiency -
Executive Order 13166**

<http://www.usdoj.gov/crt/cor/13166.php>