

State of Minnesota

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# **OFFICE OF ADMINISTRATIVE HEARINGS**

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## **Affirmative Action Plan**

**2012 – 2014**

600 North Robert Street  
St. Paul, MN 55101

This document can be made available upon request in alternative formats by contacting:

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# OFFICE OF ADMINISTRATIVE HEARINGS

## 2012 – 2014 Affirmative Action Plan

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# I. EXECUTIVE SUMMARY

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## OFFICE OF ADMINISTRATIVE HEARINGS Affirmative Action Plan 2012-2014

Review revealed underutilization of the following protected group(s) in the following goal units:

GOAL UNITS	PROTECTED GROUPS		
	Women	Minorities Persons of Color	Persons With Disabilities
Officials/Administrators	0	0	0
Professionals	X	0	X
Office/Clerical	0	0	X

Once approved, information about how to obtain or view a copy of this plan will be provided to every employee of the agency. Our intention is that every employee to is aware of the Office of Administrative Hearings' commitments to affirmative action and equal employment opportunity. The plan will also be posted on the agency's website and maintained in the Human Resources/Affirmative Action Office.

This affirmative action plan meets the applicable laws and rules governing affirmative action, and contains the goals and timetables as well as reasonable and sufficiently assertive methods for achieving them. This affirmative action plan contains an internal procedure for processing complaints of alleged discrimination from employees, and each employee has been apprised of this procedure.

\_\_\_\_\_ 651-361-7832 \_\_\_\_\_ July 30, 2012  
Affirmative Action Officer (phone number) Date

This affirmative action plan contains clear designations of those persons and groups responsible for implementing the attached affirmative action plan as well as my personal statement of commitment to achieving the goals and timetables described herein.

\_\_\_\_\_ July 30, 2012  
(Signature of Agency Head/Human Resources Director) Date

This affirmative action plan meets the statutes and rules governing affirmative action, and contains goals and timetables as well as methods for achieving them which are reasonable and sufficiently assertive to deal with the identified disparities.

\_\_\_\_\_ July 30, 2012  
(Agency Head) Date

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## II. STATEMENT OF COMMITMENT

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The Office of Administrative Hearings is committed to Minnesota's statewide affirmative action efforts and equal employment opportunity policies. I affirm my personal and official support of these policies which provide that:

- Discrimination against applicants or employees on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age will not be tolerated.
- This agency is committed to the implementation of the affirmative action policies, programs, and procedures included in this plan;
- This agency will continue to actively promote a program of affirmative action, wherever minorities, women, and persons with disabilities are underrepresented in the workforce;
- This agency is committed to the retention all qualified, talented employees, including protected group employees.

It is the agency's policy to provide an employment environment free of any form of discriminatory harassment as prohibited by federal, state, and local human rights laws. I strongly encourage suggestions as to how we may improve. We strive to provide equal employment opportunities and the best possible service to the citizens of Minnesota.

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Raymond R. Krause  
Agency Head

July 30, 2012  
Date

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### III. PERSONS RESPONSIBLE FOR DIRECTING/IMPLEMENTING THE AFFIRMATIVE ACTION PLAN

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#### A. Chief Administrative Law Judge - Raymond Krause

1. Responsibilities: The Chief Administrative Law Judge has the final responsibility for the success of the agency's Affirmative Action Plan and for compliance with the Americans with Disabilities Act.
2. Duties: The Chief Administrative Law Judge shall appoint the Court Administrator to develop, administer and implement the agency's Affirmative Action Plan.
3. Accountability: The Chief Administrative Law Judge is directly responsible to the Governor and the State Commissioner of Minnesota Management and Budget for the success of the plan and is indirectly responsible to the State Affirmative Action Officer.

#### B. Affirmative Action Officer – LeeAnn Shymanski Designee/Personnel Aide – Michelle Lardani

1. Responsibilities: The Affirmative Action Officer/Designee is responsible for revising, implementing and directing the agency's Affirmative Action Plan and for coordination of the agency's compliance with the requirements of the ADA.
2. Duties:
  - To participate in the review of personnel practices of the agency and recommend policy changes when appropriate.
  - To investigate complaints of alleged discrimination.
  - To arrange for training seminars to be conducted at the agency and to advise employees of other available training opportunities relative to subjects applicable to this Plan.
  - To submit affirmative action reports as required and coordinate communications involving affirmative action and equal opportunity.
  - To plan and conduct exit interviews with and issue exit interview forms to all departing employees for the purpose of written reports analyzing data obtained from these forms in search of reasons for turnover, etc. Particular attention will be given to retention rate of protected group individuals to determine whether these members are

adversely leaving state service.

To review all public relations, advertising, and promotional materials distributed by the agency for equal opportunity compliance and relevance to protected groups and compliance with ADA requirements.

To recruit protected group persons for employment opportunities within the agency.

To review and recommend changes in policies, procedures and programs to facilitate affirmative action within the agency.

To preview all layoff decisions to determine its effect on the agency's affirmative action goals and timetables.

3. Accountability: The Affirmative Action Officer/Designee will be directly accountable to the Chief Administrative Law Judge.

#### **C. Court Administrator - AnnMarie O'Neill**

1. Responsibilities: The Court Administrator formulates the affirmative action policy, develops affirmative action procedures, and shares responsibility for the success of the plan with the Chief Administrative Law Judge.

2. Duties: To supervise administrative aspects of the plan.

To approve and monitor all revisions and changes in the agency's Affirmative Action Plan.

To provide administrative support to the Affirmative Action Officer.

To act as liaison with the State Affirmative Action Officer and any other federal, state or local governmental office responsible for ensuring equal opportunity/affirmative action.

To assist the Chief Administrative Law Judge in the formulation of affirmative action policies.

3. Accountability: The Court Administrator is directly accountable to the Chief Administrative Law Judge.

#### **D. Managers and Supervisors**

1. Responsibilities: The managers and supervisors are responsible for the implementation of the agency's affirmative action policies and goals for persons directly under his/her supervision.
  
2. Duties:
  - To communicate the policy and spirit of the Plan to employees under his/her immediate supervision. The Affirmative Action Officer will be available to assist them if necessary.
  
  - To work closely with the Court Administrator, Affirmative Action Officer, and Minnesota Management and Budget to ensure that all selection criteria are job related.
  
  - To choose candidates for new positions or promotional opportunities on the basis of qualifications, experience, the agency's affirmative action goals and the pre-hiring review.
  
  - To assist the Court Administrator in recruiting and hiring protected class persons.
  
  - To estimate staffing needs and projected vacancies for his/her divisions in the coming year and set goals consistent with the agency's affirmative action goals and timetables.
  
  - To respond to requests for information related to discrimination complaints within three (3) working days.
  
  - To assure that no reprisals are made against an employee for filing a discrimination complaint.
  
  - To make all employees aware of training and improvement programs as appropriate.
  
3. Accountability: The managers are directly, and the legal support staff and administrative services supervisors indirectly, accountable to the Chief Administrative Law Judge and s/he will be evaluated on the results of his/her affirmative action efforts as s/he would be on any other program or production related area.



## **E. All Employees**

1. Responsibilities: Every employee is responsible to conduct themselves in accordance with the policies and procedures of this plan.
2. Duties: To communicate in a respectful, nondiscriminatory manner regardless of one another's race, color, creed, sex, national origin, age, marital status, sexual orientation, disability, religion, status with regard to public assistance, or membership or activity in a local commission.
3. Accountability: The managers are directly, and the legal support staff and administrative services supervisors indirectly, accountable to the Chief Administrative Law Judge and s/he will be evaluated on the results of his/her affirmative action efforts as s/he would be on any other program or production related area.

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## **IV. COMMUNICATION OF THE AFFIRMATIVE ACTION PLAN**

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### **A. Internal Methods of Communication**

1. Copies of this plan will be distributed to all employees via email. New employees will receive a copy of the AA Plan at the time of his/her office orientation. A current copy will be posted on the agency's Intranet webpage; and will be available in the offices of the Court Administrator and the Affirmative Action Officer.

Responsible Official(s): Court Administrator  
Affirmative Action Officer

2. Informational sessions for supervisors on the Affirmative Action Plan will be held at the time of a vacancy.

Responsible Official(s): Court Administrator

3. All supervisors will be responsible for communicating the policy and spirit of the plan to employees under his/her immediate supervision.

Responsible Official(s): All supervisors

4. The agency's Affirmative Action Plan will be discussed with new employees at the time of his/her orientation session with the Court Administrator or designee; current employees are hereby invited to discuss the Plan with either the Court Administrator or the Affirmative Action Officer at any mutually-convenient time.

Responsible Official(s): Court Administrator

## **B. External Methods of Communication**

1. A mailing list consisting of community groups and groups representing protected classes will be maintained to keep these groups informed of position openings. Whenever such material is available, it will be mailed to those on the list.

Responsible Official(s): Court Administrator  
Affirmative Action Officer

2. All public relations and promotional materials will be reviewed for affirmative action and equal opportunity content and impact.

Responsible Official(s): Court Administrator  
Affirmative Action Officer

3. A copy of the Affirmative Action Plan will be posted on the Office of Administrative Hearing's website and will be available to the public upon request.

Responsible Official(s): Affirmative Action Officer

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## **V. PROHIBITION OF HARASSMENT/DISCRIMINATION POLICY**

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It is the policy of the Office of Administrative Hearings to prohibit harassment of its employees based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights, disability, sexual orientation, or age. This prohibition with respect to harassment includes both overt acts of harassment and those acts that create a negative work environment. Any employee subjected to such harassment should file a complaint internally with the agency's Affirmative Action Officer. If the employee chooses, s/he may file a complaint externally with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or through other legal channels. These agencies have time limits for filing complaints, so individuals should contact the agencies for more information. In extenuating circumstances, the employee should contact the State Affirmative Action Officer at Minnesota Management and Budget for information regarding the filing of a complaint. Any unintentional or deliberate violation of this policy by an employee will be cause for appropriate disciplinary action.

Each employee is responsible for the application of this policy. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment, and compliance within the framework of this policy. All employees must be informed that harassment is unacceptable behavior. The Affirmative Action Officer will be expected to keep the Office of Administrative Hearings and its employees apprised of any changes in the law or its interpretation regarding this form of discrimination. The Affirmative Action Officer designee is responsible for:

1. Notifying all employees, and orienting each new employee who is hired, of this policy; and employees and applicants

2. Informing all employees of the complaint procedure and ensuring that all complaints will be investigated promptly and carefully.

## **Definitions**

**Discriminatory harassment** - any behavior based on protected class status which is not welcome, which is personally offensive, which, therefore, may effect morale and interfere with the employee's ability to perform. For example, harassment based on national origin has been defined by the U.S. Equal Employment Opportunity Commission as "Ethnic slurs and other verbal or physical conduct relating to an individual's national origin."

**Sexual harassment** - specifically defined by the Minnesota Human Rights Act, which states in regard to employment, that:

"Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when: (1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment; (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decision affecting that individual's employment; or (3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

It is possible for discriminatory harassment to occur: 1) among peers or coworkers, 2) between managers and subordinates, or 3) between employees and members of the public. Employees who experience discriminatory harassment should bring the matter to the attention of the Office of Administrative Hearings' Affirmative Action Officer. In fulfilling our obligation to maintain a positive and productive work environment, the Affirmative Action Officer and all employees are expected to address or report any suspected harassment or retaliation.

Varying degrees of discriminatory harassment violations can occur and require varying levels of progressive discipline. Individuals who instigate harassment are subject to serious disciplinary actions up to and including suspension, demotion, transfer, or termination. Additionally, inappropriate behaviors that do not rise to the level of discriminatory harassment, but are none the less disruptive, should be corrected early and firmly in the interests of maintaining a barrier-free work place. Individuals who participate in inappropriate behaviors at work are also subject to disciplinary actions.

Any employee or applicant who believes that s/he has experienced discrimination or harassment based on his/her race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age may file a complaint of discrimination.

Complaints of discrimination or harassment can be filed using the internal discrimination complaint procedure included in this affirmative action plan.

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## **VI. COMPLAINT PROCEDURE FOR PROCESSING COMPLAINTS OF ALLEGED HARASSMENT/DISCRIMINATION**

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The Office of Administrative Hearings has established the following discrimination complaint procedure to be used by all employees and applicants. Coercion, reprisal, or intimidation against anyone filing a complaint or serving as a witness under this procedure is prohibited.

### **Responsibility of Employees**

All employees shall respond promptly to any and all requests by the Affirmative Action Officer for information and for access to data and records for the purpose of enabling the Affirmative Action Officer to carry out responsibilities under this complaint procedure.

### **Who May File**

This complaint procedure may be used by an employee, applicant, or eligible person whose dispute or disagreement is based upon the belief that s/he has been discriminated against in employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age; or that s/he has been harassed by an employee because of the above factors.

This complaint procedure may also be used by any employee, applicant, or eligible person who believes that s/he is a victim of retaliatory action by an employee of this agency as the result of filing a complaint, cooperating in an investigation or otherwise participating in any action under this procedure.

This complaint procedure may not be used for disputes which are covered exclusively by provisions of a collective bargaining agreement or the Managerial or Commissioner's Plans. Such disputes should be handled under the grievance or dispute resolution procedures contained in those collective bargaining agreements or plans.

This complaint procedure does not in any way limit an employee's or applicant's right to file a formal complaint with the Minnesota Department of Human Rights, the U. S. Equal Employment Opportunity Commission, or an appropriate court of law.

Employees who are terminated are encouraged to file their internal complaint prior to their actual separation; however, complaints will be taken for a reasonable period of time subsequent to the actual separation date.

### **The Complaint Procedure**

The internal complaint procedure provides a method for resolving complaints involving violations of this agency's nondiscrimination policy within the agency. Employees and applicants are encouraged to use this internal complaint process. Retaliation against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels is prohibited. The Affirmative Action Officer may contact the State Affirmative Action Officer if s/he wants information about filing a complaint.

### **Filing Procedures**

1. The employee or applicant completes the “Harassment/Discrimination Complaint Form” provided by the Affirmative Action Officer. Employees are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation(s) may involve discriminatory harassment. The Affirmative Action Officer will, if requested, provide assistance in filling out the form.
2. If in filing a complaint an employee states that s/he is unable to function in the worksite from which the complaint arose, the appointing authority, or his/her designee in his/her absence from the agency, shall begin a preliminary investigation within two (2) calendar days. If this preliminary investigation establishes that a reasonable basis for the employee’s concern about continuing in the worksite exists, the appointing authority shall take intervening action to defuse the situation, which may include temporarily reassigning either party until such time as the complaint is fully investigated, there is a finding, and corrective action, if required, is implemented.
3. Within seven (7) calendar days, the Affirmative Action Officer will determine if the complaint falls under the purview of Equal Employment Opportunity law, i.e., the complainant is alleging discrimination or harassment on the basis of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, disability, sexual orientation, or age; or if the complaint is of a general personnel concern. The Affirmative Action Officer shall also discuss other options for resolution, such as workplace mediation.
4. If it is determined that the complaint is not related to discrimination but rather to general personnel concerns, the Affirmative Action Officer will inform the complainant, in writing, within ten (10) working days.
5. If the complaint is related to discrimination, the Affirmative Action Officer will, within seven (7) working days, schedule a meeting with the appropriate Section Head and any appropriate parties to discuss and outline the basic facts of the complaint. After the meeting, the Section Head will, within 3 days, provide the complainant with a written decision in the matter or will request in writing that the Affirmative Action Officer or other appropriate investigative body (with a copy to the employee or applicant) conduct an investigation of the matter.
6. If the complaint is referred to the Affirmative Action Officer for investigation, the Affirmative Action Officer shall ensure an investigation is conducted in a timely manner. The investigation may include interviews with and/or statements from all parties involved including the complainant, respondent, complainant’s supervisor, witnesses and co-workers as well as a review of all pertinent records or documents relating to the complaint. A report will be prepared and submitted to the responsible party in the agency who is authorized to take action to resolve or correct the situation. The Affirmative Action Officer may also provide recommendations to the responsible party. Appropriate action will be taken in a timely manner and may include discipline up to and including discharge.

### **Disposition of Complaints - Time Limits**

Time limits in the specified areas above may be waived or modified upon mutual agreement of the parties involved. The final written disposition of a formal complaint shall be provided within sixty (60) days of receipt of the complaint. The final disposition of a complaint, if based on protected group status, shall be filed with the Commissioner of Minnesota Management and Budget within thirty (30) days of final determination.

### **Appeal Procedure**

If the disposition of the complaint by any responsible party, other than the Chief Administrative Law Judge, is not satisfactory to the complainant, it may be appealed in writing to the Chief Administrative Law Judge within five (5) working days following notification of the disposition of the complaint.

The Chief Administrative Law Judge shall review the appeal and discuss it with the employee as needed. If the complaint is resolved, that resolution will be put in writing and signed by the Chief Administrative Law Judge and the complainant, including the complainant's representative, if any. If no settlement is reached, the Chief Administrative Law Judge shall give a written decision to the employee within a reasonable period following the meeting. The decision by the Chief Administrative Law Judge will be the agency's final decision.

### **Alternative Investigation**

As an alternative to the above, and at his discretion, the Chief Administrative Law Judge may refer a complaint to Minnesota Management and Budget, Labor Relations Division, for the purpose of conducting an investigation and making a recommendation.

### **Retention of documents**

All documentation associated with a complaint shall be considered investigative data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the complainant and respondent(s). After an investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.

All data collected may at some point become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:

- A. Interviews or written interrogatories with all parties involved in the complaint, e.g., complainant, respondent(s), and his/her respective witnesses; officials having pertinent records or files, etc.
- B. All records pertaining to the case i.e., written, recorded, filmed, or in any other form.

The Affirmative Action Officer designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

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## **VII. REASONABLE ACCOMMODATION POLICY**

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## **POLICY**

The Office of Administrative Hearings is committed to the fair and equal employment of people with disabilities. Reasonable accommodation is the key to this non-discrimination policy. While many individuals with disabilities can work without accommodation, other qualified employees and applicants face barriers to employment without the accommodation process. It is the policy of this agency to reasonably accommodate qualified individuals with disabilities unless the accommodation would impose an undue hardship. In accordance with the Minnesota Human Rights Act and the Americans with Disabilities Act, accommodations will be provided to qualified individuals with disabilities when such accommodations are directly related to performing the essential functions of a job, competing for a job, or to enjoy equal benefits and privileges of employment. This policy applies to all applicants, employees, and employees seeking promotional opportunities.

### **Definitions**

**Disability** - For purposes of determining eligibility for a reasonable accommodation, a person with a disability is one who has a physical or mental impairment that substantially limits one or more major life activities; or a record of such an impairment; or being regarded as having such an impairment.

**Reasonable Accommodation** - A reasonable accommodation is a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability to enjoy an equal employment opportunity.

Examples of accommodations may include acquiring or modifying equipment or devices; modifying training materials; making facilities readily accessible; modifying work schedules; and reassignment to a vacant position.

Reasonable accommodation applies to three aspects of employment:

1. To assure equal opportunity in the employment process;
2. To enable a qualified individual with a disability to perform the essential functions of a job; and
3. To enable an employee with a disability to enjoy equal benefits and privileges of employment.

### **Procedure - Current Employees and Employees Seeking Accommodation**

1. This agency will inform all employees that this accommodation policy can be made available in accessible formats.
2. The employee shall request a Reasonable Accommodation form from his/her supervisor and submit the request to the Court Administrator.
3. The Court Administrator may request documentation of the individual's functional limitations to support the request. Any medical documentation must be collected and maintained on separate forms and in separate, locked files. No one will be told or have access to medical information unless the disability might require emergency treatment.

4. When a qualified individual with a disability has requested an accommodation, the Court Administrator shall, in consultation with the individual and his/her supervisor if necessary:
  - a. Discuss the purpose and essential functions of the particular job involved. Completion of a step-by-step job analysis may be necessary.
  - b. Determine the precise job-related limitation.
  - c. Identify the potential accommodations and assess the effectiveness each would have in allowing the individual to perform the essential functions of the job.
5. Within seven working days of that meeting, the Court Administrator must either approve or disapprove the requested accommodation.
6. If the accommodation is approved and a significant cost is involved, the Court Administrator will forward it along with her recommendation to the Assistant Chief Administrative Law Judge, who must approve or disapprove the expenditure within three working days.
7. If approved, the Court Administrator will assist the supervisor in making the accommodation that is the most appropriate for both the individual and the Office of Administrative Hearings. While an individual's preference will be given consideration, the Office of Administrative Hearings is free to choose among equally effective accommodations and may choose the one that is less expensive or easier to provide.
8. The Court Administrator will submit the appropriate documents to the purchasing agent if equipment, furniture or other assistive devices must be purchased.
9. If an accommodation cannot overcome the existing barriers or if the accommodation would cause an undue hardship on the operation of the business, the Court Administrator, employee, his/her supervisor and the ADA Coordinator shall work together to determine whether reassignment may be an appropriate accommodation.
10. The ADA Coordinator will complete the Reasonable Accommodation Agreement form and maintain the form along with all other documentation pertaining to the accommodation.

### **Procedure-Job Applicants**

1. All initial communication with job applicants regarding job vacancies shall indicate the willingness of the Office of Administrative Hearings to make a reasonable accommodation to the known disability and shall invite the applicant to contact the office for the needed accommodation.
2. The job applicant shall inform the Court Administrator of the need for an accommodation. The Court Administrator will discuss the needed accommodation and possible alternatives with the applicant.
3. The Court Administrator will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.



## **Denial of Accommodation**

If the requested accommodation made by a job applicant is denied, the Affirmative Action Officer shall notify the job applicant of the decision and advise them of the right to file a complaint with the Minnesota Department of Human Rights or the U.S. Equal Employment Opportunity Commission or other legal channels. In addition, applicants who are dissatisfied with the decision pertaining to a requested accommodation may file an appeal with the agency head within a reasonable period time, for a final decision. If the individual believes the decision is based on discrimination, they may file a complaint internally through the agency's complaint procedure as outlined in this plan.

All denials of requests for accommodation will be documented and kept on file by the Affirmative Action Officer. The Affirmative Action Officer shall notify the employee of his/her right to file a complaint under the Appeals section of this provision, and advise the employee of the right to file a complaint with the Minnesota Department of Human Rights or the U.S. Equal Employment Opportunity Commission.

## **Policy for Funding Accommodations**

Funding must be approved by the Court Administrator for accommodations that do not cause an undue hardship.

## **Definition of Undue Hardship**

An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of this agency.

## **Procedure for Determining Undue Hardship**

In determining whether or not providing a reasonable accommodation would impose an "undue hardship," the Court Administrator and ADA Coordinator will consider at least the following factors:

1. overall size of the program (i.e., number and type of facilities, size of budget);
2. type of the operation including the composition and structure of the work force;
3. nature and cost of the accommodation needed;
4. reasonable ability to finance the accommodation; and
5. documented good-faith efforts to explore less restrictive or less expensive alternatives including consultation with the disabled person or with knowledgeable disabled persons or organizations.

The ADA Coordinator will provide a decision to the employee.

## **Appeals**

An employee who is dissatisfied with the reasonable accommodation decision can appeal directly to the Chief Administrative Law Judge within three working days of the decision. The Chief Administrative Law Judge will review all pertinent material and steps leading to the decision.

The Chief Administrative Law Judge will make a recommendation to the Court Administrator and employee within three working days unless additional time is needed to obtain more information from outside sources. If the employee is still dissatisfied with the decision, s/he may file with federal, state, local and human rights agencies or other legal channels. Compliance agencies which are investigating complaints will be provided documentation relating to the denial of a request for reasonable accommodation. Information will be provided in compliance with the Minnesota Government Data Privacy Act.

If the individual believes a decision is based on discrimination, s/he may file a complaint internally through the agency's complaint procedure as outlined in this plan.

### **Supported Work**

The agency will review vacant positions and assess the current workload and needs of the agency to determine if job tasks might be performed by a supported employment worker(s). If appropriate, a list of supported worker candidates will be requested from Minnesota Management and Budget. The agency will work with the Court Administrator and ADA Coordinator to recruit and hire individuals for supported employment if such a position is created.

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## **VIII. EVACUATION PROCEDURES FOR PERSONS WITH DISABILITIES AND WEATHER EMERGENCY**

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### **Building Evacuation**

The Stassen Building, Office of Administrative Hearings, Emergency Plan 2008, which includes building evacuation, has been adopted and distributed to all staff via email and publication on Office of Administrative Hearings' internal home page.

Floor wardens and monitors have been designated in conjunction with the Plan. There are evacuation routes posted in various locations in the office. Certain employees have volunteered to assist employees with disabilities. The designated floor wardens will operate within the building's Emergency Plan in arranging for evacuation of all employees. Floor wardens are responsible for notifying safety personnel if an employee with a disability or special request must be left in a designated area of the building.

The Office of Administrative Hearings has offices located in Duluth and St. Paul. The Duluth office is in an owned building and will follow the emergency and evacuation plans for that location.

### **Weather Emergency**

The *Time Off in Emergencies* documentation can be found on the Minnesota Management and Budget website or at <http://www.mmb.state.mn.us/doc/weather/adminproc.pdf> and has been distributed to all staff. Weather and evacuation emergency information is conveyed to employees by: 1) the methods outlined in the *Time Off in Emergencies* or 2) if at the office, employees are notified by

managers/supervisors upon instruction from the Chief Administrative Law Judge or his designee; or 3) if the emergency is declared by the building management, instructions are given over the building's speaker system.

If a weather emergency is declared before the start of an employee's shift and the employee relies on the Minnesota Relay Service, the supervisor will contact the employee through MRS (1-800-627-3529).

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## **IX. GOALS AND TIMETABLES**

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Attachment D – the Affirmative Action Goals and Analysis – identifies specific job categories within the Office of Administrative Hearings that have a disparity in protected job groups and provides an analysis and timetable to correct the disparities.

### **1. Goal**

To create an environment that encourages and assists in the development of all agency personnel. All training is contingent upon available funding.

- A. Objective: To provide training to develop the talent of all employees, including protected group members, to better perform their jobs and prepare them for additional responsibilities and/or promotions.
- B. Action-Step(s):
  - 1. All section managers and supervisors will inform persons under their direct supervision of training programs, which, if successfully completed, could increase their chances for additional responsibilities and/or promotional opportunities; and
  - 2. All employees will be given the opportunity to participate in appropriate training and educational programs offered by the State or conducted by managers and supervisors.
  - 3. All employees will be advised of the agency's policies on reimbursement and time off for approved training.
- C. Assignment: Managers and supervisors, Court Administrator and Affirmative Action Officer
- D. Target Date: Continuous
- E. Evaluation: A review of all internal training and education programs will be made annually and data will be maintained for purposes of monitoring employees' participation in training and educational programs and their upward mobility experienced as a result of that participation.

### **2. Goal**

To correct all disparities for each occupational category by protected group.

- A. Objective: To recruit qualified protected group members so that when vacancies occur in a job group that is underutilized, this agency will have access to qualified applicants in the protected groups.
- B. Action-Step(s):
  1. Identify and contact appropriate professional and occupational organizations and associations, businesses and educational institutions to recruit protected group applicants.
  2. Maintain ongoing lists of applicants, including protected group applicants, for all occupational categories assigned to this agency.
  3. All initial correspondence to potential employees regarding the interview and hiring process will include a statement offering reasonable accommodation to persons who request it.
- C. Assignment: Court Administrator and Affirmative Action Officer
- D. Target Date: Continuous
- E. Evaluation: Based on the availability of qualified applicants, the underutilization of protected groups will be reduced or eliminated.

### 3. Goal

To provide all employees with the opportunity to attend training regarding the prevention of any type of harassment/discrimination, workforce diversity, and reasonable accommodation issues.

- A. Objective: To increase the sensitivity of employees to co-employees and clients of this agency, and to provide a work environment free of harassment and discrimination.
- B. Action Step(s):
  1. Employees will be given the opportunity and encouraged to attend training courses designed to prevent harassment and/or discrimination, with consideration given to current budget restraints.
  2. Managers and supervisors will be required to attend a minimum of one such training course each fiscal year, with consideration given to current budget restraints.
- C. Assignment: Court Administrator and Affirmative Action Officer
- D. Target Date: Continuous
- E. Evaluation: All employees, including managers and supervisors, will attend courses designed to prevent harassment/discrimination.

#### 4. Goal

To hire an employee under the Supported Work Program.

- A. Objective: To develop a position with duties that can be performed by a person with severe disabilities. This position will be shared by all divisions at the Office of Administrative Hearings and the funds will be taken from the Workers' Compensation Special Fund and the Revolving Account.
- B. Action-Step(s):
  - 1. To meet with supervisors and managers to discuss the Supported Work Program so that they are aware of the purpose and expectations of the position.
  - 2. To determine what duties and responsibilities performed by current employees could be transferred to create this position.
  - 3. To create a meaningful position description for this position.
  - 4. To contact Minnesota Management and Budget to assist the Office of Administrative Hearings in recruiting candidates for the position.
- C. Assignment: Court Administrator and Affirmative Action Officer
- D. Target Date: As soon as practical.
- E. Evaluation: A position will be created and filled by a Supported Employment Worker.

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#### **X. AFFIRMATIVE ACTION PROGRAM OBJECTIVES**

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In order to meet the agency's affirmative action goals, the following personnel actions will be taken:

##### Consultation with Supervisors

Supervisors will be advised by the Affirmative Action Officer of the goals for the various job groups under their supervision.

##### Self-analysis

- 1. Annually, the personnel aide shall prepare the following information:
  - a. The current employment profile of the department.
  - b. The extent to which protected group individuals are represented in the workforce, by EEO job group, as compared to the relevant civilian labor force established goals in that geographic area.

- c. The number of interviews, hires, terminations and promotions occurring in the preceding quarter, by race, sex, disability and job group.
2. Annually, the personnel aide will compile exit interview data, by division.
3. Annually, the Court Administrator and the Affirmative Action Officer shall review the above information and re-evaluate/identify priorities, based on degree of disparity and opportunity to hire or to remove barriers to progress. New or continuing action objectives shall be established for the remainder of the fiscal year.
4. On a quarterly basis, the Affirmative Action Officer will consult with the Court Administrator to provide updated information on affirmative action goals.
5. The information gathered from the above analysis will be shared with supervisors and managers on an annual basis, or at the time of a vacancy.

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## **XI. METHODS OF AUDITING, EVALUATING AND REPORTING PROGRAM SUCCESS**

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### **A. Pre-Employment Review Procedure/Monitoring the Hiring Process**

1. If a vacancy occurs, the supervisor of the affected section may or may not request to fill the position. If a decision is made to fill the vacancy, the Court Administrator and the Affirmative Action Officer will be notified verbally or in writing, if, based on the Affirmative Action Plan, there is a disparity in the job category the vacant position comes under.
2. If a disparity exists, the Affirmative Action Officer will work closely with the Court Administrator, manager and/or supervisor, monitoring and collecting data for each step of the hiring and/or promotional process which includes:
  - a. A position analysis will be completed for the vacant job.
  - b. Job-related criteria (knowledge, skills, and abilities--KSAs) needed to perform the job will be determined.
  - c. The position description will be revised as needed.
  - d. The Court Administrator determines whether any bargaining unit employees are eligible to bid on the position. If so, the job will be posted for the required length of time. If an employee bidding on the job is successful, the job will be filled in accordance with the union contract.
  - e. The Court Administrator ascertains whether there exists an appropriate certification list or if a job announcement is in order.

- f. If a job announcement is in order, the agency, including the Affirmative Action Officer, will recruit affirmatively for the position.
- g. If an appropriate eligible list exists, telephone calls will be made and/or letters will be sent by Federal mail to all persons eligible for certification. Interviews will be scheduled for interested persons responding to telephone calls made and letters sent. The agency's ability to provide reasonable accommodation will be communicated to all applicants.
- h. A list of job related questions will be devised by the supervisor, the Affirmative Action Officer, and the Court Administrator to make sure that the questions are uniform, appropriate and job-related.
- i. Interviews will be conducted, using the uniform job-related questions, by the supervisor and/or others.
- j. Interviewees' applications/resumes will be compared to the qualifications (KSAs) stated in the job announcement. Candidates will be compared on qualifications and the responses given in their interviews held to this point, keeping in mind the affirmative action goals based on agency disparities.
- k. Prior to selection of a candidate, the manager or supervisor will discuss his or her anticipated selection with the Affirmative Action Officer to ascertain that the selection is consistent with the agency's affirmative action program.
- l. If there is a disparity and the supervisor rejects a protected group member, the supervisor will provide the rationale for why the candidate was chosen or the rationale for why all of the other candidates were not chosen. Copies of the written rejection will be reviewed by the Affirmative Action Officer and the Court Administrator and no selection will be made until such written reasons have been reviewed. Where the Affirmative Action Officer believes that the reasons for rejection are unjustified, and the matter is not satisfactorily resolved and, prior to any offer being made, these views will be transmitted to the Chief Administrative Law Judge who may take appropriate action including a recommendation that the preliminary rejection be reconsidered.
- m. All candidates will be notified of the hiring decision.
- n. Documentation (e.g. interview rosters, responses by interviewees, etc.), will be kept on the selection process for all appointments. Data on every appointment, where there is a disparity, will indicate the opportunity the agency had to hire affirmatively and whether there was a missed opportunity
- o. The Minnesota Data Government Practices Act defines which personnel data is classified as public; protected group status is not identified as public data. Therefore, information shall not be disclosed to any person who is not authorized to receive information regarding the protected group status of a selected applicant.

## **B. Pre-Review Procedure for Layoff Decisions**

If it is necessary to layoff employees, such decisions will be made in accordance with the agreement of the affected bargaining units and the applicable rules of Minnesota Management and Budget. The Court Administrator and Affirmative Action Officer will determine what effect the layoff will have on the affirmative action goals and timetables so that any disparities created can be addressed at the next opportunity. The Senior Management team and affected supervisors and managers will be advised of the results.

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## **XII. RECRUITMENT PLAN**

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The objective of a recruitment plan is to attract qualified applicants in order to obtain a balanced workforce and to meet agency affirmative action goals to achieve a diverse work force. Supervisors and managers are required to comply with Section XI of the agency's Affirmative Action plan in order to meet this objective. Recruitment opportunities exist for the positions of administrative law judge, workers' compensation judge and the internship positions. All other positions are filled by persons who transfer, are on state lay-off lists or are on the eligible lists received from Minnesota Management and Budget.

### **A. Advertising Sources**

The following publications are considered when availability of a position is to be published.

- Access Press
- Finance & Commerce
- Bench & Bar
- Minnesota Women Lawyers
- State Register
- Minnesota American Indian Bar Association
- Minnesota Association of Black Lawyers
- Minnesota Hispanic Bar Association
- National Asian Pacific American Bar Association - Minnesota Chapter
- District bar associations in specific areas

### **B. Recruitment of Persons with Disabilities**

In order to broaden the pool of qualified candidates with disability, the Office of Administrative Hearings will forward a copy of all posted vacancies to the MMB's Workforce Diversity Office for dissemination to the diversity-based listserv. The Workforce Diversity Office of MMB has a diversity-focused email list with over 500 contacts. The list includes diversity organizations, community members, professional groups, and individuals who work with women, people of color, persons with disabilities, and veterans.

### **C. Internships**

**Administrative Law Clinic, William Mitchell College of Law:** Participants are law students who are enrolled in the Administrative Law Clinic at William Mitchell. All students who are enrolled



participate. There is no recruitment because everyone who enrolls in this particular clinic is a part of the internship program. Students receive 2 credits for each semester and may enroll for up to two semesters. The law student attends the hearing with the Administrative Law Judge and then prepares a draft decision, which is evaluated by the Administrative Law Judge and sent to the law school.

The Office of Administrative Hearings, **Workers' Compensation** Division Summer Internship Program started in 2004. Law students and college pre-law students contact Assistant Chief Judge Eric Lipman to apply for the internship. Students have also been referred to the Internships by law school and college professors. Interns are selected based on their interest and experience in Workers' Compensation and/or trial advocacy. Students may make arrangements with their schools for academic credit for the internship. Students attend Workers' Compensation proceedings, including following a case through the entire process, do legal research, draft memorandums, orders, decisions and findings and orders, and observe proceedings before administrative and judicial branch appellate and trial-level courts.

#### **D. Supported Employment (M.S. 43A.191, Subd. 2(d))**

This agency supports the employment of individuals with disabilities and will review vacant positions to determine if job tasks can be performed by a supported employment worker(s). The agency will work with community organizations that provide employment services to people with disabilities to recruit for these positions.

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### **XIII. RETENTION PLAN**

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#### **A. Person Responsible for Agency's Retention Program/Activities**

The Office will strive to create an environment which promotes the retention of a diverse workforce. Raymond R. Krause, Chief Administrative Law Judge, has final responsibility for this objective. Those who assist are:

Eric Lipman, Assistant Chief Administrative Law Judge  
Timothy O'Malley, Assistant Chief Administrative Law Judge  
AnnMarie O'Neill, Court Administrator  
LeeAnn Shymanski, Affirmative Action/Americans with Disabilities Officer  
Cathrine Quintero, Support Staff Supervisor, Workers' Compensation Section

#### **B. Separation and Retention Analysis by Protected Groups**

Thirteen (13) employees left the Office of Administrative Hearings in Fiscal Years 2011 and 2012:

Retirement – 10  
Layoff – 2  
Terminated without Rights – 1

The three Office of Administrative Hearings' job and protected groups affected were:

Officials/Administators – 1 female  
Professionals – 5 female , 2 male - 1 disabled  
Office/Clerical – 5 female - 1 ethnic minority, 1 disabled

### **C. Methods of Retention of Protected Groups**

The Office of Administrative Hearings has adopted a number of methods to encourage the retention of employees. Some examples are flex-time schedules, telecommuting, reduced work hours, work groups to discuss concerns and possible changes to existing policies and procedures, exit interviews, establishment of training budgets, and notifying/posting of promotional and transfer opportunities. All managers and supervisors are responsible for assisting employees under his/her supervision in achieving his/her identified work goals.

## ATTACHMENT A – HARASSMENT/DISCRIMINATION FORM

### HARASSMENT/DISCRIMINATION COMPLAINT FORM

#### Please Read Before Completion of Form

Any complaint of harassment/discrimination is considered confidential data under Minnesota Statute 13.39, Subd. 1 and 2. This information is being collected for the purpose of determining whether harassment/discrimination has occurred. You are not legally required to provide this information, but without it, an investigation cannot be conducted. This information may only be released to the Affirmative Action Officer designee, the complainant, the respondent, and appropriate personnel.

#### Complainant (You)

Name	Job Title	
Work Address	City, State, Zip Code	Telephone (    )
Agency	Division	Manager

#### Respondent (Person Who Harassed/Discriminated Against You)

Name	Job Title	
Work Address	City, State, Zip Code	Telephone (    )
Agency	Division	Manager

#### The Complaint

Basis of Complaint (“X” all that apply):

<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> Disability	<input type="checkbox"/> Sexual Orientation
<input type="checkbox"/> Sex	<input type="checkbox"/> Creed	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Status with Regard to Public Assistance
<input type="checkbox"/> Age	<input type="checkbox"/> Religion	<input type="checkbox"/> National Origin	<input type="checkbox"/> Membership or Activity in a Local Human Rights Commission

Date most recent act of harassment/discrimination took place:	If you filed this complaint with another agency, give the name of that agency:
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Describe how you believe that you have been harassed/discriminated against (names, dates, places, etc.). Use a separate sheet of paper if needed and attach to this form.

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**Information on Witnesses Who Can Support Your Case**

Name	Work Address	Work Telephone
1.		(    )
2.		(    )
3.		(    )

Additional witnesses may be listed in “Additional Information” or on a separate sheet attached to this form.

This complaint is being filed on my honest belief that the State of Minnesota has harassed/ discriminated against me. I hereby certify that the information I have provided in this complaint is true, correct and complete to the best of my knowledge and belief.	
Complainant Signature	Date
Affirmative Action Officer Signature	Date

**ATTACHMENT B – REQUEST FOR REASONABLE ACCOMMODATION**

**Request for Reasonable Accommodation Form**

<b>Employee Name:</b>	<b>Classification/Division</b>	<b>Date of Request:</b>								
<p><i>Attach additional sheets for questions below if necessary.</i></p> <p><b>1. Please describe the nature of your medical condition for which you are requesting an accommodation. Describe how it limits any major life activities.</b></p>										
<p><b>2. How does it affect your ability to perform your job?</b></p>										
<p><b>3. Type of accommodation requested:</b></p> <table border="0"> <tr> <td><input type="checkbox"/> Making facilities readily accessible</td> <td><input type="checkbox"/> Modification of equipment or devices</td> </tr> <tr> <td><input type="checkbox"/> Job restructuring</td> <td><input type="checkbox"/> Qualified reader or interpreter</td> </tr> <tr> <td><input type="checkbox"/> Part-time or modified work schedule</td> <td><input type="checkbox"/> Acquisition of equipment or devices</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other (specify): _____</td> </tr> </table>			<input type="checkbox"/> Making facilities readily accessible	<input type="checkbox"/> Modification of equipment or devices	<input type="checkbox"/> Job restructuring	<input type="checkbox"/> Qualified reader or interpreter	<input type="checkbox"/> Part-time or modified work schedule	<input type="checkbox"/> Acquisition of equipment or devices	<input type="checkbox"/> Other (specify): _____	
<input type="checkbox"/> Making facilities readily accessible	<input type="checkbox"/> Modification of equipment or devices									
<input type="checkbox"/> Job restructuring	<input type="checkbox"/> Qualified reader or interpreter									
<input type="checkbox"/> Part-time or modified work schedule	<input type="checkbox"/> Acquisition of equipment or devices									
<input type="checkbox"/> Other (specify): _____										
<p><b>4. Describe in detail the accommodation you are requesting:</b></p>										
<p><b>5. Has your medical provider recommended the accommodation?    <input type="checkbox"/> Yes    <input type="checkbox"/> No</b></p>										
<p><b>6. How will the requested accommodation be effective in allowing performance of the essential job function(s)?</b></p>										
<b>Signature of Employee:</b>		<b>Date:</b>								

This information will be used by human resource management or any other person, including the agency's legal counsel, who is authorized by my employer to handle medical information for ADA/MHRA purposes and, any information concerning my physical or mental condition, that are necessary to determine whether I have a disability as defined by the Americans with Disabilities Act and/or the Minnesota Human Rights Act, and to determine whether any reasonable accommodations can be made. The provision of this information is voluntary, however if you refuse to provide it, your employer may refuse to provide reasonable accommodation.

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## ATTACHMENT C – REASONABLE ACCOMMODATION AGREEMENT

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### *REASONABLE ACCOMMODATION AGREEMENT*

This form is to be completed by the Department's Affirmative Action Officer after the reasonable accommodation decision has been made. The signatures at the bottom of this form indicate an agreement between the employee and the Office of Administrative Hearings to the specific accommodation.

**Employee Name:**

**Job Title:**

**Division or Department:**

**Supervisor:**

**Date of reasonable accommodation request:**

**Limitation(s) identified:**

**Accommodation requested:**

**Accommodation approved:**

**Review date (if any):**

I have read the Employee Request for Reasonable Accommodation. I understand that all tangible accommodations purchased by the Office of Administrative Hearings will become property of the State of Minnesota.

<i>SIGNATURES</i>	<i>DATE</i>
<b>Employee:</b>	
<b>Supervisor:</b>	
<b>Court Administrator:</b>	
<b>Chief Judge:</b>	
<b>Affirmative Action Officer:</b>	

## **ATTACHMENT D – AFFIRMATIVE ACTION GOALS AND ANALYSIS**

This plan is written to specifically address the job categories within the Office of Administrative Hearings that have a disparity in the identified protected groups. Protected groups include minorities, women and persons with disabilities. A disparity exists when the percentage of protected group persons within a job group is less than the percentage determined for our Office. The percentages are based upon statistics from the U.S. Census/Affirmative Action Statistics. The job groups for the Office of Administrative Hearings' employees are Officials and Administrators, Professionals, and Office/Clerical/Paraprofessional.

### *Women*

EEO Job Group	Total Number in Group	Total Number of Women in Group	% in Group	Availability %	Availability Number	Number Underutilized
Officials and Administrators	X	X	40%	37.8%	2	X
Professionals/ Paraprofessionals	X	X	44.1%	53.8%	18	X
Office/Clerical	X	X	85.7%	67.7%	19	X

### *Minorities*

EEO Job Group	Total Number in Group	Total Number of Minorities in Group	% in Group	Availability %	Availability Number	Number Underutilized
Officials and Administrators	X	X	0%	5.1%	0	X
Professionals/ Paraprofessionals	X	X	11.8%	8.0%	3	X
Office/Clerical	X	X	10.7%	8.2%	2	X

### *People with a Disability*

EEO Job Group	Total Number in Group	Total Number of Disabled in Group	% in Group	Availability %	Availability Number	Number Underutilized
Officials and Administrators	X	X	20%	11.31%	1	X
Professionals/ Paraprofessionals	X	X	5.9%	10.88%	4	X
Office/Clerical	X	X	7.1%	11.56%	3	X

Analysis and Timetable – The external analysis indicates that Office of Administrative Hearings is underutilized in the Women category by 3 in the Professionals/Paraprofessionals job group category and People with a Disability category by 3 in the Professionals/Paraprofessionals job group category and by 1 in the Office/Clerical job group category. Per statute, Office of Administrative Hearings realizes there is a second internal factor to be considered in the analysis; however, said analysis is not relative to Office of Administrative Hearings. Based upon employee turnover and budget constraints, Office of Administrative Hearings does not realistically expect to achieve the availability percentages in the People with a Disability category. Should hiring opportunities or vacancies arise in any job group, the goal will be to correct in 2012-2014 any disparities that exist and to increase the diversity of the office as a whole.