

United States Bankruptcy Court

Southern District of Indiana



Policy on Equal Employment Opportunity, Discrimination, Harassment, and Employment Dispute Resolution

**Original Date Adopted and
Implemented by the Court:**

January 1, 1999

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October 11, 2018

**POLICY ON EQUAL EMPLOYMENT OPPORTUNITY,
DISCRIMINATION, HARASSMENT, AND EMPLOYMENT DISPUTE
RESOLUTION FOR THE UNITED STATES COURTS FOR THE
SOUTHERN DISTRICT OF INDIANA**

Adopted October 11, 2018

I. Policy Statement

The courts of the Seventh Circuit are committed to providing rights and protections to all court employees. Equal employment opportunity is provided to all persons regardless of their race, color, national origin, age (at least 40 years of age at the time of the alleged discrimination), religion, sex, sexual orientation, gender identity or expression, veteran status, disability, or genetic information. The courts of the Seventh Circuit will promote equal opportunity through a program encompassing all facets of personnel management, including recruitment, hiring, promotion, and advancement. Discrimination against, and harassment of, court employees will not be tolerated. Retaliation against employees for good-faith efforts to assert rights and protections under this Policy also will not be tolerated.

II. Scope of Coverage

This Policy applies to all courts and court units within the Southern District of Indiana, including the District Court, the Bankruptcy Court, the Clerk's Offices of the District and Bankruptcy Courts, and the United States Probation Office. The protections afforded by this Policy, including access to informal remedies (*e.g.*, requests for advice, informal reports of wrongful conduct) apply to court employees, as well as contract employees, externs, interns, magistrate judge applicants, applicants for law clerk, paralegal, or judicial assistant positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, and volunteer mediators. The procedural rights to pursue formal dispute resolution under this Policy, however, do not apply to contract employees, externs, interns, magistrate judge applicants, applicants for law clerk,

paralegal, or judicial assistant positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, or volunteer mediators.¹

This Policy is not intended to duplicate or supersede the provisions for resolving complaints of judges' misconduct or disability under 28 U.S.C. §§ 351–362. Alleged judicial misconduct must be addressed through a judicial misconduct complaint directed to the Chief Judge of the Seventh Circuit.

III. Definitions

For purposes of this Policy –

- A. The term “employing office” includes all offices of the United States District Court for the Southern District of Indiana, including the Office of the Clerk; the United States Bankruptcy Court for the Southern District of Indiana, including the Office of the Clerk; and the United States Probation Office for the Southern District of Indiana. The District and Bankruptcy Courts are the employing offices of District and Bankruptcy Judges' chambers staff, respectively.
- B. The term “court” refers to the District Court and/or Bankruptcy Court, and the employing office that would be responsible for redressing, correcting, or abating the alleged violations.
- C. The term “disability” means a physical or mental impairment that substantially limits one or more of the major life activities of an employee, a record of such an impairment, or being regarded as having such an impairment. (For extended text, see 42 U.S.C. § 12102(2)).

¹ The exclusion of contract employees, externs, interns, magistrate judge applicants, applicants for law clerk, paralegal, or judicial assistant positions, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, and volunteer mediators from the right to pursue formal dispute resolution is consistent with the Seventh Circuit's Policy on Equal Employment Opportunity, Discrimination, Harassment, and Employment Dispute Resolution and is supported by the fact that these individuals are not employed by the court.

IV. Equal Employment Opportunity and Anti-Discrimination Rights

Discrimination based on race, color, national origin, age (at least 40 years of age at the time of the alleged discrimination), religion, sex, sexual orientation, gender identity or expression, veteran status, disability, or genetic information is prohibited.

Court unit executives must ensure that, consistent with the *Guide to Judiciary Policy*, vacancies are publicly announced to attract candidates who represent the make-up of persons available in the qualified labor market and that all hiring decisions are based solely on job-related factors. Reasonable efforts should be made to see that the skills, abilities, and potential of each employee are identified and developed, and that all employees are given equal opportunities for promotions by being offered, when the work of the court permits, and within the limits of available resources, cross-training, reassignments, special assignments, and outside job-related training.

Recruitment — Each non-chambers employing office will make reasonable efforts in the recruitment process to obtain a pool of qualified applicants who reflect the make-up of all such persons in the relevant labor market and will publicize all vacancies. Each chambers will follow all hiring practices set forth in or consistent with the *Guide to Judiciary Policy*.

Hiring — Each employing office will make its hiring strictly upon an evaluation of a person's qualifications and ability to perform the duties of the position satisfactorily.

Promotion — Each employing office will promote employees according to their experience, training, and demonstrated ability to perform duties of a higher level.

Advancement — Each employing office will seek, insofar as reasonably practicable, to improve the skills and abilities of its employees through cross-training, job restructuring, assignments, details, and outside training.

V. What is Discrimination?

Discrimination is generally defined as a materially adverse action affecting the terms and conditions of employment that is taken because of an individual's race, color, national origin, age, religion, sex, sexual orientation, gender identity or expression, veteran status, disability, or genetic information.

VI. What is Harassment?

Harassment is a form of discrimination. It is generally defined as unwelcome conduct that is based on race, color, national origin, age, religion, sex, sexual orientation, gender identity or expression, veteran status, disability, or genetic information, that is subjectively and objectively offensive and has the purpose or effect of unreasonably interfering with an individual's work and creating an abusive, hostile, or intimidating work environment.

Sexual harassment is a form of discrimination based on sex. It may include unwelcome sexual advances or other nonconsensual conduct of a sexual nature, when (1) submission to or rejection of such conduct is used as a basis or threatened basis for employment decisions, or (2) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance and creating an abusive, hostile, or intimidating work environment.

Sexually harassing behavior includes physical, verbal, and nonverbal behavior. Examples of inappropriate sexual behavior include, but are not limited to:

- unwanted sexual advances;
- inappropriate touching or other physical contact;
- promotion, retention or other employment actions (positive or negative) affected by an individual's submission to or rejection of unwelcome sexual advances;
- favoritism based on submission (consensual or nonconsensual) to sexual overtures;
- repeated sexual jokes, flirtations, advances or propositions, or discussions of sexual activity (whether in conversation or through electronic or other means);
- abuse of a sexual nature or suggestive, insulting, or obscene comments or gestures; and
- display of sexually suggestive objects or pictures.

This Policy also expressly prohibits behavior that harasses or discriminates against court employees on the basis of any factor protected by law. Forms of such harassment or discrimination can include physical, verbal, and nonverbal behavior that harasses, or disrupts or interferes with work performance, or in any way creates or contributes to an intimidating, hostile, or offensive work environment. Examples of such harassment or discrimination include, but are not limited to:

- Epithets, threats, slurs, or off-color jokes; and
- Drawings, cartoons, or behavior that is insulting, derogatory, or ridiculing of persons based on their legally protected status.

This Policy is intended to provide means for addressing unwelcome conduct regardless of whether it meets the legal standard for severe or pervasive conduct. Further, regardless of its form or motive, bullying, harassment, disrespectful treatment of colleagues, or action that undermines the court's ability to administer justice and serve the public will not be tolerated.

VII. Employment Dispute Resolution Coordinator

The Chief Judge of each court will designate an individual to serve as the court's EEO/EDR Coordinator. The duties of the court's EEO/EDR Coordinator include:

- providing information to the judges and employees of the court regarding the rights and protections afforded under this Policy;
- advising the court's Chief Judge regarding designation of EEO/EDR counselors—employees who agree to serve in that role and to receive specialized training in counseling other employees and in the procedures established by this Policy, including the formal EDR procedures—within each court and employing office within the Seventh Circuit.

Pursuant to the Seventh Circuit's Policy on Equal Employment Opportunity, Discrimination, Harassment, and Employment Dispute Resolution, the Chief Judge of the Seventh Circuit will designate an individual to serve as the Circuit EEO/EDR Coordinator. The duties of the Circuit EEO/EDR Coordinator include:

- providing information to the judges and employees of the courts within the Seventh Circuit regarding the rights and protections afforded under this Policy;
- advising the Chief Judge of the Seventh Circuit regarding designation of EEO/EDR counselors—employees who agree to serve in that role and to receive specialized training in counseling other employees and in the procedures established by this Policy, including the formal EDR procedures—within each court and employing office within the Seventh Circuit;²
- disseminating information to employees regarding the identity of designated EEO/EDR counselors and how to contact one of them if necessary;
- coordinating and organizing the procedures to establish and maintain official files of the court pertaining to reports and requests for dispute resolution and other matters initiated and processed under this Policy;
- coordinating relevant training for employees and judges;
- collecting, analyzing, and consolidating statistical data and other information pertaining to the court’s processes under this Policy;
- recording any resolution reached on matters initiated under this Policy; and
- compiling and submitting an annual report on the implementation of its EEO/EDR Policy to the Administrative Office for inclusion in the Director’s Annual Report to the Judicial Conference.

² A current list of designated EEO/EDR counselors within the circuit shall be readily available to employees within the Seventh Circuit. Designations shall be made by the Chief Judges of the District and Bankruptcy Courts, after consulting with the other Judges of their respective Courts. The goal is that an employee who wishes to request advice or to make a report of wrongful job-related conduct may be able to choose to communicate with an individual who is or is not in the same court unit or location, and with a person whom the employee can trust to understand and empathize with those involved.

VIII. Options for Resolution

If you believe that you have been subjected to discrimination or harassment, you have a number of options. You should select the route you feel most appropriate for your circumstances, which may include a request for advice, an informal report of wrongful conduct, or a request for formal dispute resolution.

Requests for Advice: You may, as an initial matter, contact the court or Circuit EEO/EDR Coordinator or a designated EEO/EDR counselor to request advice about your situation. Any request for advice shall be kept confidential, but the contacted Coordinator or counselor shall provide an explanation of the informal and formal options for pursuing the matter under this Policy.

Informal Reports of Wrongful Conduct: You also may report wrongful job-related conduct to the court's or Circuit EEO/EDR Coordinator or a designated EEO/EDR counselor. A judge may be the subject of a request for advice or a report of wrongful conduct.

If the request for advice or report of wrongful conduct indicates wrongful conduct by a judicial officer, the person receiving the information shall promptly notify the Chief Judge of the Seventh Circuit (either directly or through the Circuit EEO/EDR Coordinator) so that the Chief Judge of the Seventh Circuit may take any appropriate action, including informal measures, pursuant to the provisions of 28 U.S.C. §§ 351–362 and Volume 2, Part E of the Guide to Judiciary Policy.

The court or Circuit EEO/EDR Coordinator or designated EEO/EDR counselor shall ensure that all reports of wrongful conduct not involving judicial officers are investigated by the appropriate persons, and efforts should be made to resolve the issue through meaningful discussion and mediation. The informal nature of the process is intended to provide as much flexibility as possible in reaching an appropriate resolution of the report. The court or Circuit EEO/EDR Coordinator or designated EEO/EDR counselor shall keep informal investigations not involving judicial officers as confidential as possible under this Policy.

Formal Dispute Resolution: You also may initiate a more formal dispute resolution process, which may involve a formal hearing, by submitting a written request pursuant to the procedures set forth below in Section XI.

Other Options: If you prefer to address the situation without assistance, you can communicate either orally or in writing with the person whose behavior is of concern. Your communication should clearly identify the conduct that is of concern and indicate that it was unwelcome and offensive and should cease. Such a communication often will cause the unwelcome behavior to stop, particularly where the person may not be aware that the conduct is unwelcome or offensive.

Regardless of how you choose to address your concerns, the court may be required, or may otherwise deem it appropriate, to commence its own investigation and to take further action.

IX. Responsibility to Report Wrongful Conduct

Discriminatory, harassing, retaliatory, or other inappropriate behavior covered by this Policy often can occur without witnesses. What one person may regard as offensive, another may not. For the court to implement this Policy effectively, it is critical that all employees respond to and report discrimination, harassment, retaliation, and inappropriate sexual and other behavior covered by this Policy. If you believe that you have been subjected to discrimination, harassment, retaliation, or inappropriate sexual or other behavior, you are encouraged to ask the offender to stop engaging in the objectionable behavior. In addition (or instead, if such informal requests are ineffective or impractical under the circumstances), you should report such conduct to the court's or Circuit EEO/EDR Coordinator or a designated EEO/EDR counselor.

If the individual committing the alleged discrimination or harassment works for an outside agency such as the United States Marshals Service (including Court Security Officers), United States Attorney's Office, Office of the Indiana Federal Community Defender, General Services Administration, or local law enforcement, the appropriate Chief Judge or court unit executive should confidentially report the allegation to the head of the agency and request an internal investigation to be followed by a final report of the outcome of the investigation to the appropriate Chief Judge or court unit executive within a reasonable time.

If you have reason to believe that a colleague has been subjected to or has engaged in discrimination, harassment, retaliation, or inappropriate sexual or other behavior, you are encouraged to ask the offender to stop engaging in the objectionable behavior. In addition (or instead, if such informal requests are ineffective or impractical under the circumstances), the court encourages you to

promptly report discrimination or other inappropriate behavior to the court's or Circuit EEO/EDR Coordinator or a designated EEO/EDR counselor and to make such report before the behavior has become severe or pervasive. Prompt reporting could prevent the behavior from escalating and allows the court to respond rapidly and to take appropriate action to minimize harm to individuals involved and to minimize the disruption to our work environment. The appropriate court will promptly investigate all reports of discrimination or inappropriate sexual or other behavior. Reports and investigations will be handled in as confidential manner as possible, consistent with the need to investigate and take corrective action.

Supervisors who learn of inappropriate behavior have an obligation to take effective remedial action.

X. Confidentiality

The courts of the Southern District of Indiana will strive to protect, to the greatest extent possible, the confidentiality of persons reporting discrimination, harassment, or retaliation, and of those accused of such conduct. Complete confidentiality cannot be guaranteed, however, where it would conflict with the court's obligation to investigate meaningfully or to take corrective action. Even when some disclosure of information or sources is necessary, it will be limited to the extent possible. The courts will, to the extent permitted by law and consistent with their responsibilities to the public, keep confidential all records of reports of wrongful conduct, requests for formal dispute resolution, responses, and investigations. To the extent a report addresses wrongful conduct by a judicial officer, confidentiality will be governed by 28 U.S.C. §§ 351–362 and Volume 2, Part E of the *Guide to Judiciary Policy*.

If you believe you might have been subjected to discrimination or harassment and want to discuss the matter in a more confidential setting or clarify your feelings about whether and how you wish to proceed, you may want to consult a social worker, therapist, or clergy member who may be permitted by law to assure greater confidentiality. Employees may contact the Employee Assistance Program (1-800-222-0364) for confidential assistance and, if desired, referral to other resources. Discussions with the Employee Assistance Program are confidential and are not considered notice to the appropriate court.

XI. Formal Dispute Resolution Procedures

A. Request for Formal Dispute Resolution

If an employee who reports wrongful conduct informally feels that the issue of discrimination, harassment, or retaliation has not been resolved by the informal process, the employee may request a hearing before the Chief Judge of the appropriate court. The request must be made within 180 days of the alleged violation or within 180 days of the time the employee becomes aware of the alleged violation. The request must be in writing, identify all individuals involved, describe the discrimination, harassment, or retaliation at issue, and identify the relief or remedy being sought.

To the extent feasible, an individual invoking the formal dispute resolution procedures of this Policy may use a reasonable amount of official time to address the issue, so long as it does not unduly interfere with the performance of his or her court duties.

The formal request for a hearing and any other documents shall be reviewed by the Chief Judge or by another judge of the court designated by the Chief Judge. In the event the Chief Judge recuses or is unavailable to serve, the reviewing official shall be designated by the most senior active judge. The matter shall be designated "In the Matter of [Employing Office]" and given an appropriate number for purposes of record-keeping.

B. Investigation and Hearing

The judge assigned to resolve the matter shall determine what investigation is necessary, including the individuals to be contacted and documents to be gathered. Once the investigation is complete, a hearing shall be held to resolve the matter, unless the judge determines that no material factual dispute exists. In general, the presiding judge shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:

- the hearing shall be commenced no later than 60 days after the filing of the request;

- the requesting person and the head of the office from which relief is sought must receive written notice of the hearing; such notice shall also be provided to the individual(s) alleged to have violated rights protected by this Policy;
- at the hearing, the requesting party will have the right to representation, to present evidence on his or her behalf and to cross-examine witnesses, and the employing office will have the right to present evidence on its behalf and to cross-examine witnesses;
- a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;
- in reaching a decision, the Chief Judge or designated judge shall be guided by the judicial and administrative decisions under the relevant statutes;
- remedies may be provided as set forth in this Policy where the judicial officer finds that the requesting party has established by a preponderance of the evidence that a substantive right protected by this Policy has been violated;
- the final decision of the Chief Judge or designated judge must be issued in writing not later than 30 days after the conclusion of the hearing, and any necessary orders shall be signed by the judicial officer issuing the final decision;
- all parties and any aggrieved individuals shall have the right to written notice of any action taken as a result of a hearing; and
- any person or party involved in the review process shall not disclose, in whole or in part, any information or records obtained through or prepared specifically for, the review process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties.

A written record of such contacts must be kept and made available for review by the affected person(s).

The Chief Judge or designated judge may extend any of the deadlines set forth in this Policy for good cause. All extensions of time granted will be made in writing and become part of the record.

A final decision of the Chief Judge or designated judge is subject to review by a three-judge panel for recommendation to the entire Circuit Council. According to Circuit Policy, such a panel shall be chosen from among Circuit Council members who are not part of the court involved in the matter. A decision by the Circuit Council is final.

C. Prohibition Against Retaliation

Persons who in good faith request formal dispute resolution under this Policy have the right to be free from retaliation, coercion, or interference because of making such a request. Likewise, any person who participates in good faith in the filing or processing of a request, such as a mediator, witness, representative, or co-worker, is entitled to freedom from retaliation. Any alleged retaliation shall be handled in the same manner as a report of discrimination or harassment under this Policy.

D. Right to Representation

Every person requesting formal dispute resolution under this Policy and every person accused of wrongful conduct shall have the right to be represented by a person of his or her choice if such person is available and consents to be a representative. A court employee may accept the responsibilities of representation if it will not unduly interfere with his or her court duties or constitute a conflict of interest, as determined by the representative's appointing officer. Persons requesting formal dispute resolution may employ counsel at their own expense but do not have the right to counsel appointed at government expense.

E. Disqualification or Recusal

Whenever a person invoking the formal dispute resolution procedures of this Policy or an employing office or person whose conduct is the subject of such a request files a timely and sufficient written statement

that the judge before whom the matter is pending has a personal bias or prejudice for or against any interested party, the matter shall not proceed until the presiding judge has had an opportunity to consider the statement and to decide whether disqualification is appropriate.

The written statement shall state the facts and the reasons for the belief that bias or prejudice exists and shall be provided to the appropriate Chief Judge, the person to be disqualified, the employing office, and the Circuit EEO/EDR Coordinator within 14 days after a judge is assigned to hear the matter.

F. Disciplinary and Remedial Actions

Potential disciplinary and remedial consequences for conduct determined to constitute harassment or discrimination under this Policy include but are not limited to the following:

- an apology to the complainant;
- required counseling or training;
- oral or written reprimand;
- loss of salary or other benefit; and
- suspension, probation, demotion, or termination.

Other remedies for violations of substantive rights under this Policy may include:

- placement of an employee in a position previously denied;
- placement in a comparable alternative position to which the complainant consents;
- reinstatement to a position from which previously removed;
- prospective promotion to a position (consistent with hiring practices as outlined in the *Guide to Judiciary Policy*);

- priority consideration for a future promotion or position;
- back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
- records modification and/or expungement;
- "equitable" relief, such as temporary stays of adverse actions;
- granting of family and medical leave; and
- accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.

Remedies that are *not* available include:

- payment of attorney's fees (except as authorized under the Back Pay Act);
- compensatory damages;
- punitive damages; and
- overtime pay.

G. Records

At the conclusion of formal and informal proceedings under this Policy, all papers, files, transcripts, audio or visual recordings, and reports will be deposited with the court's EEO/EDR Coordinator, who will retain and secure the materials at least for the duration of the accused individual's employment with the court or 10 years, whichever is longer. No papers, files, transcripts, audio or visual recordings, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement official personnel action.

XII. Family and Medical Leave

Title II of the Family and Medical Leave Act of 1993, 5 U.S.C. § 6381 *et seq.*, applies to court employees in the manner prescribed in Volume 12, Chapter 9, Section 920.20.35 of the *Guide to Judiciary Policy*.

XIII. Worker Adjustment and Retraining Notification Rights

No “employing office closing” or “mass layoff” (as defined below) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff that results from the absence of appropriated funds.

The term “employing office closing” means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.

The term “mass layoff” means a reduction in force which—

- is not the result of an employing office closing, and
- results in an employment loss at the single site of employment during any 30-day period for (1) at least 33 percent of the employees (excluding any part-time employees), and (2) at least 50 employees (excluding any part-time employees); or at least 500 employees (excluding any part-time employees).

For extended text see 29 U.S.C. § 2101.

XIV. Employment and Reemployment Rights of Members of the Uniformed Services |

The court shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 *et seq.*

XV. Occupational Safety and Health Protections

Each employing office shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Requests for formal dispute resolution that seek a remedy that is within the jurisdiction of the General Services Administration (“GSA”) or the United States Postal Service (“USPS”) to provide are not cognizable under this Policy. Such requests should be filed directly with GSA or the USPS as appropriate.

XVI. Polygraph Tests

No employee shall be required to take a polygraph test.

XVII. Whistleblower Protection

Any judge or employee with authority over personnel shall not take or threaten to take an adverse employment action against an employee who reasonably and in good faith discloses information to the appropriate federal law enforcement authority, a supervisor or managerial official of the employing office, a judicial officer of the court, or the Administrative Office of the United States Courts, about a violation of law, rule or regulation or other conduct which constitutes gross mismanagement or gross waste of funds or constitutes substantial and specific danger to public health or safety. This section applies only if such disclosure of information:

- is not specifically prohibited by law,
- does not reveal case-sensitive information, sealed material, or the deliberative processes of the federal judiciary (as outlined in the *Guide to Judiciary Policy*, Vol. 20, Ch. 8), and
- does not reveal information that would endanger the security of any federal judicial officer.

An “adverse employment action” means a termination, demotion, transfer, or reassignment; loss of pay, benefits, or awards; or any other employment action that is materially adverse to the employee’s job status, compensation, terms, or responsibilities, or the employee’s working conditions.

XVIII. Preparation of Annual Report

The EEO/EDR Coordinator for each court will prepare an annual report for the year ending September 30, consolidating the data and statements. The report will include tables to be provided by the Administrative Office of the United States Courts consolidating the information provided by each employing office. The report also will describe instances where significant achievements were made in providing equal employment opportunities, will identify areas where improvements are needed, and will identify factors inhibiting achievement of equal employment opportunity objectives. In addition, the annual report will indicate:

- The number of formal requests for dispute resolution initiated;
- The types of formal requests for dispute resolution initiated according to race, color, national origin, age, religion, sex, sexual orientation, gender identity or expression, veteran status, disability, or genetic information;
- The number of formal requests for dispute resolution resolved formally without a hearing; and
- The number of formal requests for dispute resolution resolved formally with a hearing.

The above information will not identify the names of the parties involved but will identify whether or not a judge was the subject of the matter. Upon approval of the court, this report will be submitted by the Chief Judge to the Administrative Office of the United States Courts by November 30 of each year. A copy of the report will remain in the court and will be made available to the public upon request.

Adopted - (October 11, 2018)