



NATIONAL ASSOCIATION OF WOMEN JUDGES

RESOLUTION

APPLICATION OF FORMAL ADJUDICATION REQUIREMENTS OF THE ADMINISTRATIVE PROCEDURES ACT PERTAINING TO EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ADMINISTRATIVE LAW JUDGES DECIDING EMPLOYMENT DISCRIMINATION CASES OF FEDERAL EMPLOYEES

Submission To NAWJ Board:

March 10, 2012

Location:

NAWJ Midyear Board of Directors Meeting in Cambridge, Massachusetts.

Submitted by:

The Honorable Kathleen Mulligan, Administrative Judge, Equal Employment Opportunity Commission, Los Angeles, California and President of the Administrative Law Judges Association (AJA). This submission is made on behalf of the AJA, which is an association of Equal Employment Opportunity Commission (EEOC) administrative law judges that seeks to provide education, information and advocacy to improve the federal sector process.

Presenters to NAWJ Board and NAWJ Membership:

Hon. Sandra Ann Robinson-New Jersey, Chair Resolutions Committee, and Hon. Justice Bernette Joshua Johnson – Louisiana Resolution Committee Member.

WHEREAS, EEOC judges now issue decisions which are final unless appealed to the Commission;

WHEREAS, EEOC judges now determine compensatory damages awards up to \$300,000 per claim;

WHEREAS, EEOC judges now decide claims under the Americans with Disabilities Amendments Act [ADAAA] and the Genetic Information Nondiscrimination Act [GINA];

WHEREAS, EEOC judges now preside over adversarial proceedings, with discovery disputes and motion practice modeled on the rules applicable in federal district court;

WHEREAS, EEOC judges now decide class certification motions involving expert reports, statistical data, and *Daubert* motions, and decide the merits of class action cases, which have thousands of class members across the country, and result in judgments or settlements up to \$60,000,000;

WHEREAS, The Commission is authorized by 42 *U.S.C.*Sec. 2000 e-4 (a) (2) (1978) to appoint administrative law judges [ALJs] to conduct hearings on the record;

WHEREAS, The Administrative Procedure Act [APA], 5 *U.S.C.* 554, 556 and 557, governs hearings on the record by almost every federal agency;

WHEREAS, EEOC administrative judges are not appointed under the APA, but rather EEOC appoints employees in general attorney classifications to hear federal employee discrimination cases;

WHEREAS, The statutory and regulatory changes over the past thirty-four years have brought profound changes to the federal hearings process, which require that these decisions be made by judges who are guaranteed the independence required in order to provide due process to the litigants involved;

WHEREAS, There are funds available to bring EEOC into compliance with the APA, with the President of the United States having proposed a budget for FY 2013, which substantially increases the EEOC's appropriation from the \$360 million received for FY 2012 to approximately \$374 million for 2013;

BE IT RESOLVED, that the membership of National Association of Women Judges calls on its allies and partners to join NAWJ to urge the Chair and Commissioners of the EEOC to exercise existing statutory authority and appoint Administrative Law Judges to decide employment discrimination cases filed by federal employees, and apply the formal adjudication requirements of the Administrative Procedure Act [APA] (5 *U.S.C.* sections 554, 556, and 557) to those hearings on the record, conducted by EEOC pursuant to 29 C.F.R 1614.

Mover: Honorable Kathleen Mulligan, California

Seconders: Honorable Ann Breen Greco, Illinois (and)
Honorable Diana Becton, NAWJ District 14 Director, California

(END)

Approved unanimously by the NAWJ Board of Directors - March 10, 2012
Released to the NAWJ Membership April 5, 2012