



DISCIPLINARY RULES & PROCEDURES

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GENERAL POLICY STATEMENT

The Vision Statement of DWS is as follows: “Our vision is to be the provider of choice for employment services by being a dynamic organization in which we take pride in exceeding the expectations of our customers by providing courteous, efficient, and effective service.

DWS’s vision statement assumes personal integrity and commitment to excellence of all its employees. It is especially true of all supervisors. Furthermore, it is imperative that supervisors make every effort to ensure that prospective employees are committed to a personal code of integrity and that they view employment with DWS as a means to providing service to the public.

Each employee should understand that his/her level of success at DWS is directly related to the degree of commitment he/she brings to the delivery of quality services to the client and to the overall effort of the Department in that regard.

It is the policy of the agency to help each employee realize his/her potential for professional growth and service, and to avoid obstacles to their growth and development.

Supervisors at every level are required to make every effort to ensure consistent and fair application of the Agency’s disciplinary policy. This does not mean that every offense automatically calls for the same action, but it does mean that the same analysis should precede every application of the policy. Nevertheless, there will be instances where managers or supervisors will make inequitable application of the policy. Recognizing this reality, there is the further provision for grievance procedures and for Alternate Dispute Resolution (ADR) Determination (Mediation), available to **FULL TIME EMPLOYEES** who feel that they have been treated unjustly or unfairly. All other disciplinary policies and procedures apply equally to full time and intermittent employees at and after the effective date of the policy statement. Accordingly, the **Administrative Memorandum #37-89, pertaining to intermittent employees is hereby rescinded.**

THIS SUPERCEDES THE INTERNAL SECURITY POLICY AND RULES OF CONDUCT.

All managers and supervisors are required to familiarize themselves and those they supervise with the contents of this handbook.

INTRODUCTION

Supervisors and the System

The Department of Workforce Services has a framework of policies and procedures which enable all employees (management and staff) to work together in a harmonious manner in order to achieve goals and to satisfy needs.

There are three interrelated factors in this “framework”:

1. The organization structures establishing the policies, rules and procedures.
2. The supervisor’s and employee’s role in, and compliance with, the structure.
3. The leadership process: setting examples, offering instruction, training, etc., that has a direct affect on the employee’s support of the compliance to the structure.

Most people prefer to work in an environment which is orderly and based on clearly defined standards. Effective and sensitive leadership are essential elements in creating such and environment. Nevertheless, occasionally employees will deviate from accepted and expected standards of conduct that corrective action will be necessary. If a supervisor determines that corrective/disciplinary action is required, he/she should also ensure that only such action as is necessary to correct the deficiency and/or to maintain good order and morale within the department should be taken. In determining appropriate course of action, the supervisor should consider the total documented record of the employee, any explanation the employee may give for the infraction or omission, and other circumstances surrounding the offense. Importantly, the supervisor should keep uppermost in his/her mind the employee’s potential for future service, and only such action as is necessary to (1) correct unacceptable conduct, (2) maintain good order, and (3) promote the general morale and welfare of the Department as a whole should be taken.

The supervisor is responsible for the morale and professional development of his/her subordinates. The supervisor should encourages each employee supervised to take advantage of training opportunities and to be alert for ways to enhance the Department’s total performance by cooperating with others. It is important for the supervisor to know that his/her own worth to the Department is directly related to his/her subordinates’ value (to the Department). Therefore, to the extent the supervisor helps subordinates’ realize their goals of professional development and enhanced performance, he/she advances his/her own career.

The keys to effective leadership, and thus the realization of maximum effectiveness of all employees are:

1. An employee orientation and training program designed to ensure a thorough understanding by the employee of the responsibilities of his/her position and the standards expected by supervisors.
2. Regular and effective communication, involving both "information" from the supervisor, and a "sensitivity" to expressed concerns and revealed needs of the employees.
3. Fairness on the part of the supervisor in dealing with all subordinates, both in affording opportunities for professional development, and in dealing with in fractions and/or omissions.

It is up to supervisors to establish and maintain a climate in which employees take pleasure in participating in a well led, productive team effort. Supervisors should be quick and liberal in offering praise and expressing appreciation for good, and especially for exceptional service. This is the surest way to promote morale and to establish a routine pattern of superior performance.

The supervisor will be most effective if he/she commands the respect of those supervised. Accordingly, every supervisor should strive to increase his/her own professionalism, and to set positive examples for good work practices and attitudes and behavior toward others.

In an ideal setting, supervisors and those for whom they are responsible will work together as a well-disciplined and harmonious team, complimenting one another as goals are achieved. In this ideal setting, self-discipline is the common denominator, in that each member of the team understands that his/her role is important in achieving common goals. Occasionally, a team member will fail to perform as expected and required in order for the common goals to be realized. In these instances, corrective action must be taken in a prompt, but fair and effective manner. Some factors supervisors should consider in taking corrective action are set out in Section I, following:

SECTION I

SUPPORT FOR CORRECTIVE/DISCIPLINARY ACTION

Supervisors shall ensure that their corrective/disciplinary actions will be supported by management at all levels. Briefly, these are the “tests” that must be met:

1. Is the policy reasonable?

A supervisor has a responsibility to inform his/her own supervisor if there is reason to believe that a policy/regulation is not reasonable. Assuming the policies/regulations are reasonable, the methods used in applying them must also be reasonable.

2. Did the employee have reasonable opportunity to know the policies?

The supervisor has the responsibility to inform employees of all policies pertaining to them.

3. Did the employee know the possible penalties for violating the policy?

Each employee will be advised of the importance of policies and regulations pertaining to their employment, they will be advised of the consequences of not adhering to them.

4. Did the employee have an opportunity to explain the situation?

An employee will always be given an opportunity to explain his/her conduct before action is taken against him/her. Supervisors should resist the temptation to act precipitously, without having made proper inquiry.

5. Did the employee actually violate a policy?

Some actions or omissions are clearly violations of policies. Others are not. Sometimes, and employee’s conduct may be personally offensive to the supervisor, but not a violation of the Department’s policies. A supervisor should be well versed on the applicable policies, and prior to taking any adverse action against an employee, should ensure that an offense in fact occurred, and that the employee committed such offense.

6. Is there a “match” of the action to the offense and is its application free of discrimination?

The supervisor should guard against over-reaching or under-reacting when correcting or penalizing an employee. The action must match the infraction sufficient to obtain constructive response from the employee, but not so severe as to cause a sense of unfair treatment. ***Fair minded judgment is required at all times.***

7. Are the policies applied equally and consistently to all employees?

All policies must be applied and be enforced in a manner as not to discriminate against any employee or group of employees.

CHALLENGES IN ADMINISTERING CORRECTIVE/DISCIPLINARY ACTIONS

Supervisors sometimes find it easier to let unacceptable behavior slide rather than confront the problem. It is imperative that supervisors recognize infractions and act to ensure they do not continue. This may take the form of counseling, but more may be in order. Unless a policy calls for mandatory action for a particular offense, the supervisor is given wide latitude in applying corrective action. Furthermore, except where offenses are considered so egregious as to require severe, predetermined penalties, the supervisor should apply the least severe form of corrective action necessary to achieve the goal of restoring the employee as a productive member of the team, and of maintaining good morale within the office. Continued infractions would of course demand increasing levels of severity.

CLASSES OF OFFENSES, PENALTIES AND DOCUMENTATION

The following section provides a uniform set of general definitions and disciplinary guidelines under which most agency policy violations can be categorized. However, each violation and offender must be evaluated independently. **It is the purpose of this section to give general guidelines in order to insure consistently fair application of corrective/disciplinary action.** It is not intended to represent an inflexible prescription for action in every instance.

In applying these guidelines, MANAGERIAL AND SUPERVISORY STAFF SHALL BE HELD TO A HIGHER STANDARD OF CONDUCT. Consequently, when these employees commit an offense identified under Class B Infractions, and of such magnitude that the employee's continued employment cannot be tolerated, termination can occur, without any progressive steps having been taken. Therefore, the Director reserves the right to exercise his/her prerogative of applying a more severe penalty for managers and supervisors where documented evidence of policy violations warrants deviation from the guidelines.

Also included in the following section are guidelines for maintaining proper and adequate documentation on disciplinary matters which is a critical and, perhaps, most important element of any disciplinary procedure.

SECTION II
DISCIPLINARY RULES AND PROCEDURES
CLASSES OF OFFENSES AND CLASS DEFINITIONS

CLASS A: Offenses of such a serious nature as to warrant immediate dismissal as set forth in the attached listing of Class A infractions. However, unless otherwise provided, following the listing of an offense designated as Class A, nothing herein is intended to take from the supervisor or manager his/her discretion in considering the total work history of the employee in determining whether to impose the maximum allowed penalty for any particular offense. Thus, even in the case of an offense designated Class A, allowing for immediate termination, justice and prudence may require a lesser penalty for a first offense. However, **such infractions should be reviewed by Personnel, Legal, and EEO to insure consistent application of policy.** It is anticipated that such discretion would be inappropriate for a 2nd documented offense involving a Class A infraction.

General Definition, Class A Offense: Willful or wanton violations of Agency policies which may adversely affect or disrupt the Agency's business or operations: **OR**

Willful violations of State or Federal laws which pertain to the operations or business interests of the Agency; **OR**

Fraudulent or dishonest act(s) involving any program or activity administered or supervised by the Agency or committed on Agency premises or property; **OR**

Willful acts, other than dishonesty and destruction of property, which result in a loss to the Agency or in a loss or damage to Agency property, equipment, or to Agency employees in the amount of \$100 or more.

DISCIPLINARY

ACTION: For infractions identified as so egregious as to merit immediate dismissal, the penalty for the infraction shall in fact be immediate dismissal. In all other instances of Class A infractions, while the penalty **may be** immediate dismissal, the manager of supervisor has the option of recommending to the director in writing that a suspension of up to 5 days and a written warning. **However, the penalty for a second offense within five years shall be dismissal.**

CLASS B: Offenses of such seriousness as to warrant suspension as set forth in the attached listing of Class B infractions.

General Definition: Acts of insubordination, discourtesy, impropriety, or acts of gross negligence which may adversely affect or disrupt Agency business operations, **OR**

Willful acts which pose a threat to the safety or security of Agency property, equipment or employees or to the public while on Agency premises; **OR**

Other acts of misconduct, other than fraud and theft, which result in a loss of less than \$100.

DISCIPLINARY

ACTION: 1st Infraction . . . Suspension, without pay, for up to 5 days, and a written warning.

2nd Infraction, within a 5 year period Dismissal.

NOTE: If, in the case of Class B offenses, multiple infractions have occurred at the time of initial discovery, a suspension, without pay, of up to thirty (30) working days may be assessed.

CLASS C: Lessor offenses of such a nature as to warrant progressive disciplinary steps from oral and written warnings to suspension and dismissal as set forth in the attached listing of Class C infractions.

General Definition: Minor offenses of negligence, imprudence, or carelessness reflecting a disregard for, or constituting a violation of standard work rules, policies, or procedures, but which do not result in a loss or damage to property or persons, nor constitute a violation of rules or policies affecting the safety of Agency property or employees.

DISCIPLINARY

ACTION: 1st Infraction . . . Oral warning and counseling.

2nd Infraction . . . Written warning.

3rd Infraction . . . Final written warning.

4th Infraction . . . Suspension, without pay, for up to 5 days.

5th Infraction . . . Dismissal

NOTE: Class C offenses shall be cumulative on a revolving 365-calendar day basis from date of each such infraction, and different infractions within the same class category shall attach and become cumulative.

ARKANSAS DEPARTMENT OF WORKFORCE SERVICES
DISCIPLINARY PROCEDURES

CLASS A INFRACTIONS REQUIRING IMMEDIATE DISMISSAL:

1. **Dishonesty and Destruction of Property:** All such acts also require restitution, and may result in criminal charges.
 - a) Embezzling Agency funds.
 - b) Theft or destruction of Agency property, regardless of where housed, stored or located or theft or destruction of others on Agency premises.
 - c) Misappropriation of Agency funds.

2. **Assault and/or Battery:**
 - a) Assaulting another employee or a “client”.
 - b) Fighting or creating a disturbance on Agency premises, or at anytime or place while on official Agency business or duty status. (This does not preclude self-defense from unprovoked attack.)

3. **Conviction of a Class Y Felony Offense, at the state level, or equivalent offense at the Federal level.**

4. **Complicity and Corruption:**
 - a) Complicity with a client or an employer to commit fraud or dishonest act(s) in connection with a claim(s) for benefits or employer tax liabilities.
 - b) Request for, and/or acceptance of gratuity, reward or favor for official acts.

NOTE: This is not intended to preclude unsolicited “complimentary gestures” of very small monetary value as a token of appreciation for a job well done. It is intended to prevent bribery.

5. **Unauthorized or Illegal Possession or use of Weapons, Liquor, Drugs or Narcotics.**
 - a) Unauthorized possession of firearms or other weapons on Agency premises.
 - b) Use or possession of illegal drugs or narcotics on Agency premises, or in Agency vehicle, or at any place or location while on official Agency business or duty status.
 - c) Use of intoxicating liquor on premises, in an Agency vehicle or while in official duty status.

6. **Running or standing as a candidate for elective office in a partisan election in violation of the Hatch Act (5 US CODE ANN. Section 1500)**

CLASS A INFRACTIONS ALLOWING FOR IMMEDIATE DISMISSAL, BUT ALSO ALLOWING FOR LESSOR PENALTY AT THE DISCRETION OF THE AGENCY.

1. **Abandonment of Job (Unauthorized absence for two days or more).** (See also Leave and Attendance under Class B and Chronic Tardiness under Class C).
2. **Acts of Dishonesty or Breach of Trust:** (All such acts resulting in loss to the Agency require restitution, and may result in criminal charges).
 - a) Charging personal long distance telephone calls to the Agency, which result in charges or a monetary loss of \$100 or more.
 - b) Fraudulent claims for travel expenses totaling \$100 or more.
 - c) Misrepresentation of a material fact(s), or making a false statement(s) in connection with employment/job application, work related activity, record, report, investigation or other Agency related activity or proceeding.
 - d) Fraudulently claiming unemployment benefits regardless of whether monetary loss occurred or resulted.
 - e) Fraudulently claiming sick leave.
 - f) Any act resulting in cancellation or loss of bond coverage for the employee or any act which would render an employee a security risk.
3. **Conviction of a felony (other than a Class Y) under the Arkansas Criminal Code, or an equivalent Federal conviction.**

NOTE: Any employee convicted of a felony must report the conviction through his/her "chain of command", within ten working days of the conviction. Failure to so report also constitutes a Class A infraction.

4. **Violations of the Hatch Act or Governor's Policy Directive Regarding Political Activity.**
 - a) Directly or indirectly coercing, commanding, assessing, soliciting, or otherwise persuading any employee to contribute anything of value to a party, committee, organization, agency or person for political purposes.
 - b) Engaging in partisan political activity of any type during work hours, or using State or Agency property or equipment for such purposes, including display of bumper stickers, decals or other political advertising. (This prohibition does not apply to personal vehicles even when in use in the performance of official duties.
 - c) Use of official authority or position to influence, or affect in any way, the result of an election or nomination for political office.

5. **Other Class A Infractions:**

- a) Transaction of Agency business at any site other than central office, local office, itinerant points, or at plants where mass layoffs occur, unless authorization has been given by the Director or his designated representative for the transaction to occur elsewhere.
- b) Using one's position with the Agency for self-serving, or other improper purpose.
- c) Obtaining or using claimant information, wage record information, employer information, job order information, and insurance file information of Agency employees for own personal use or benefit, or for that of any relative(s).

“Relatives is defined to include the following: Persons who are related by blood, marriage, or adoption such as: spouses, children, parents, grandparents, brothers, sisters, uncles, aunts, nephews, nieces, cousins, in-laws, and step-relatives.”

- d) Representing claimant or employer by “Power of Attorney” or otherwise, in any matter involving any official Agency law or regulation.
- e) It is the policy of the Agency that Employer contribution tax payments or unemployment insurance overpayment refunds made in cash may be accepted, but only by employees so authorized who shall use Agency numeric receipts. Cash will be converted to money orders, cashier checks, etc., and made payable to the Department of Workforce Services within 24 hours or one working day of receipt thereof and transmitted immediately to the Agency's Contribution Tax Unit or Benefit Payment Control Unit. It shall not be deposited to a personal account or used for any purpose by the person accepting it from payer. **Violation of this policy by depositing cash to a personal account, or using for personal benefit shall be a Class A violation. Otherwise, it is a Class B violation.**
- f) Use of Agency computer systems (including internet and e-mail) to access pornographic or gambling sites or to transmit obscene material to others.
- g) Such other willful acts of a similar nature or seriousness not specified above which fall within the scope of a Class A offense as defined above. (See General Definitions).

CLASS B INFRACTIONS

1. Leave and Attendance:

- a) Unauthorized absence of from two to fifteen hours.
- b) Failure or refusal, without good cause, to work overtime when scheduled or requested to do so under the following circumstances:
 - (1) The possibility of working overtime was a part of the terms of hire when the employee accepted the job or with the employee's knowledge has been made a condition of employment,
 - (2) Emergency situations which arise and require the performance, outside normal working hours, of services of the type and nature which the employee is capable of performing in order to safeguard Agency property, prevent hardship to persons served by the Agency, or to meet workload deadlines.

2. Acts of Dishonesty or Breach of Trust: which result in a loss of less than \$100 or which violate security policies (exclusive of acts of Dishonesty, as defined under Class A offenses for which no minimum monetary loss is specified). All such acts also require restitution and may result in criminal charges.

- a) Unauthorized or personal use of agency credit cards, vehicles or other agency property or equipment, including the operation of an agency vehicle without a valid driver's license.
- b) False or improper claims for travel reimbursement resulting in a monetary loss of less than \$100.
- c) Failure to properly safeguard agency credit cards, keys, access to restricted areas or confidential information, or other security breaches which result in a loss or pose a threat to the safety or security of agency property, equipment, records, employees or clients.
- d) Charging personal long distance calls to the agency, which results in charges or monetary loss of less than \$100.
- e) Disclosing passwords (except as stipulated in Agency policy), allowing others to use one's password, using one's password to sign onto the system for someone else; or failing to sign off the system.

3. **Other Class B infractions:**

- a) Reporting to work under the influence of intoxicating liquor or drugs.
- b) Gambling on premises. ¹ (except as stipulated under Class A Infractions, 5(f).
- c) Possession of intoxicating liquor on premises. ¹
- d) Use of insulting, abusive, obscene, profane, or other offensive language directed to another employee or member of the general public.
- e) Use of insulting, abusive, obscene, profane, or other offensive language concerning another employee, ethnic or religious group which tends to create a hostile work environment.
- f) Racial, sexual or religious harassment.
- g) Intentional interference, hindrance, delay or other willful act designed to impede, delay, or block the filing, processing and/or resolution of an employee grievance under the Agency's Grievance Procedure.
- h) Retaliation, discrimination or reprisal against an Agency employee because he/she has filed a complaint or grievance under the Agency's Grievance Procedure, or for having provided information in connection with or participation in any Agency hearing, investigation or other official Agency proceeding.
- i) Discourteous treatment of a client or a member of the general public.
- j) Insubordination (Refusal to obey a reasonable order or directive issued within one's own chain of command.)
- k) Engaging in activity constituting a conflict of interest or an impropriety as an Agency employee, representative or agent.
- l) Endangering safety of employees or Agency property.
- m) Failure to report an accident involving an agency vehicle, property or equipment or resulting in personal injury or damage.
- n) Use of Agency time, property or equipment for conduct of personal business, or engaging in other unauthorized or prohibited activity.

¹ 'Refers to physical structures housing the places of business of the Agency.'

- o) Sleeping on the job.
- p) Failure to comply with DWS's policy on use of e-mail, software licensing, or use of personal computers for internet access, except, however, if such conduct falls under Class A Infractions regarding pornography, gambling, or sending of obscene material, as provided at 5(f) under "Other Class A Infractions," it shall be treated as such rather than as a Class B infraction.
- q) Providing Agency services to relatives or cohabitants without prior supervisory approval or providing Agency services to oneself.
- r) Changing names, addresses, or personal identification numbers (PIN) in the Claim file or Employer Master File, except in accordance with written Agency policy and procedures.
- s) Requesting claimant or employer to sign blank or incomplete forms.
- t) Tracing, duplicating or otherwise affixing claimant or employer signature on Agency forms or documents.
- u) Changing or altering documents; or reactivating claims, except in accordance with written Agency policy and procedures.
- v) Disclosure of information from Agency files other than as provided by the Arkansas Employment Security Law and Regulations (ACA 11-10-314), Arkansas Freedom of Information Act (ACA 25-19-101, et.seq.), and State Code of Ethics (ACA 21-8-304), and any amendments thereto.
- w) Removal of property or equipment from work place without prior authorization.
- x) Certifying payment for claimant who has not reported as directed, except in accordance with written Agency policy and procedures.
- y) Failure to report known improper claims or benefit payment activity, suspected fraud, or similar improper activity involving any Agency employee or program.
- z) Offering advice to applicants, claimants, or employers calculated to avoid required work search, reporting of earnings, tax liability or other requirements under the Employment Security Law or Regulations promulgated thereunder.
- a-1) Every employee is required to report convictions for misdemeanors and all moving traffic violations **while on agency business (agency vehicle or private vehicle)**. Failure to so report constitutes a Class B infraction.

b-1) Such other willful acts of a similar nature of “moderate seriousness” not specified above which fall within the scope of Class B offenses defined above. (See General Definitions).

CLASS C INFRACTIONS:

1. Chronic tardiness. ¹
2. Excessive personal use of Agency telephones. ²
3. Parking in “reserved” parking spaces including fire and traffic lanes.
4. Interfering with another employee’s job performance.
5. Unauthorized absence of less than two hours, including overstaying of lunch and coffee breaks. ³
6. Use of insulting, abusive, obscene, profane or other offensive language in the presence of the general public or other Agency employees. (See personal conduct under Class B infractions where such is directed to a specific person or persons).
7. Any violation of DWS Information Security policies not covered under Class A and B Infractions.

8. **Other Class C Infractions:**

Includes all other minor infractions of a similar nature not specified above which fall within the scope of a Class C act or infraction as defined above. (See General Definitions)

1 Refers to unexcused tardiness (without good cause). “Chronic” is defined as being late or tardy 3 times or more within any consecutive 30 day period, 6 times within a six month period, or 8 times within a given 12 month period. LWOP shall be assessed for each “unexcused” absence or tardiness of 15 minutes or more. Annual leave or LWOP shall be used in cases of excused absence or tardiness as appropriate.

2 Excessive is defined as more than three calls in one work day, or any personal calls in excess of five minutes.

3 Refers to 15 minute break in a.m. and in p.m., and 30 minute lunch period unless otherwise specified by supervisor.

PRIOR TO DISCIPLINARY ACTION

(CHECKLIST)

ASK YOURSELF –

- Do I have all the facts? Was there a thorough investigation of the incident?
- Do I have direct evidence (facts) or am I basically dealing with others' opinions?
- What other people are involved, directly or indirectly? Are there eyewitnesses?
- Am I certain I have the complete picture of what happened?
- Have I talked to the employee in private?
- Did I give the employee a fair chance to present his/her side of the situation?
- What is the employee's overall record – Is there a record of previous infractions of a similar nature? Record of steps or actions taken.
- Are similar records or files kept and similar steps taken to correct the behavior or improper actions of all employees on a consistent basis?
- To what extent was the employee familiar with the rules and regulations? Should the employee have been expected to know? Was the rule posted, published or otherwise made available to the employee?
- Did the employee have fair warning of the possible consequences of the action?
- Are there any unusual circumstances that must be considered in this case?
- To what extent has this rule been enforced in the past?
- Is the action I am considering consistent with that applied in prior situations?
- Is the action appropriate?
- What impact might the action have?
- Am I handling this in a fair and impartial way?
- Am I prepared to explain why my action is necessary?
- Will the action prevent a recurrence of the employee's behavior in the future?

GENERAL GUIDELINES FOR EMPLOYEE FILES

1. Don't wait for problems to develop. Documentation should be an on-going practice.
2. Document the performance of all employees. Don't keep records on just women and minorities.
3. Avoid "building a file" in order to terminate/discipline an employee.
4. Documentation should be objective, factual, specific and behavioral.
5. Avoid references to an employee's character, personal values, appearance, personal taste or attitude.
6. Avoid including your own "opinion" in the documentation.
7. Documentation should accurately reflect the events being documented.
8. Document both good and bad performance and/or work related behavior.
9. Support all documentation with specific examples or samples of work.
10. Documentation should be consistent.
11. Document occurrences in a timely manner.
12. Make file accessible, but confidential (accessible to only the employee and possibly your supervisor).
13. Review entire file or record prior to taking disciplinary action.
14. Remember, the real purpose of documentation is to provide back-up information to support your personnel actions.

(A sample copy of an "Employee File Notes" form which is recommended for informal documentation purposes follows this page.)

FORMAL DOCUMENTATION

Formal documentation begins when a particular incident or series of incidents progress to the point that the facts should become part of an official personnel record.

Good documentation is a clarification of all events and should include the following:

1. **Salutation** – the memo should always be addressed to the employee, not “the file”. Personnel should be copied.
2. **Date of Incident(s)**
3. **The Problem** – What specifically occurred. If the employee’s view differs from yours, include it.
4. **Implications** – What happens as a result of the employee’s behavior?
5. **Prior Record** – only in occurrences of similar behavior. Have they done this before?
6. **Prior Conversations** – about the issue described as “the problem.” Specifics on improvement or lack of improvement after these conversations should be noted.
7. **Expected Solutions** – Be specific on what you and the employee have agreed upon as the course of action. Include time frames, etc.
8. **Disciplinary Action** – A specific statement of your immediate and future disciplinary measures.
9. **Consequences** – Exactly what will happen if the “expected solutions” do not occur?
10. **Follow-up** – if any kind of future meeting is scheduled on this problem it should be included.

**THE DISCIPLINARY
MEMORANDUM
OR
WRITTEN WARNING**

The mistakes most commonly made in writing disciplinary materials are:

- (1) Lack of clear, direct, relevant communications from the supervisor to the employee;
- (2) Reliance on general statements instead of specific factual detail; and
- (3) Reliance on conclusions without laying a factual foundation.

A disciplinary memorandum is written as a result of an employee's misconduct or deficient performance. The purpose of the memorandum is to put the employee clearly on notice that the conduct in question is unacceptable and to document the specific act or omission. These memoranda form an important foundation for disciplinary action such as dismissal. Because of its importance in any appeal from disciplinary action, the memorandum will come under very close scrutiny in an appeal or grievance process. Unfortunately, few supervisors or managers have been trained to write a disciplinary memorandum that can withstand the assault of a skilled attorney representing the employee.

Most employees will break a rule or commit an infraction from time to time. This should not be overlooked by the manager or supervisor, but it may not warrant a disciplinary memorandum. In many instances, the employee should receive counseling or an oral correction or warning to modify behavior. The date and nature of the discussion should be noted as an employee "file note" and retained in the supervisor's working file. In this way the information can be recalled as detailed background information if problems with the employee continue.

The decision to write a disciplinary memorandum is sometimes subjective. A good manager/supervisor does not write up every minor infraction or mistake. Such a policy breeds poor morale and will alienate the good productive employee. A disciplinary memorandum placed in an employee's personnel file is a significant action that should not be entered into without considerable thought. As a general rule, serious misconduct or repeated infractions must be covered by a disciplinary memorandum. The written disciplinary procedures and guidelines indicate the point at which official written disciplinary warnings and notices are required in addition to the "file notes" maintained by the supervisor.

The disciplinary memorandum should be neat, errorless and typed on a letter size sheet of paper (8-1/2 x 11"). Handwritten memos on half-sheets of paper lack an official appearance, tend to be illegible and often do not reproduce well for use at a disciplinary proceeding. It should be double-checked for misspelled words, punctuation and grammar. At a hearing, such minor errors often become the focus of attention while the substance of the memorandum is lost. A standardized format will add to the overall appearance of disciplinary memoranda when pulled together as part of the employer's disciplinary file.

The use of “Inter-Office Communication” memorandum forms have an added advantage in that they clearly show (1) who it is directed to, (2) who prepared it, (3) the date prepared, and (4) the subject. It is not unusual to have disciplinary memorandums offered as evidence with simple elements missing, such as the date prepared or the name of the employee to whom it is directed. This information must be clearly set forth in any disciplinary memorandum. Failure to do so detracts from its value as evidence and could result in the hearing officer excluding the document from the record.

In writing the body of the memorandum the manager/supervisor must address the following questions:

- 1) **When Did it Happen?** The disciplinary memorandum must indicate when the act or omission occurred. Dates are very important. Time is often a critical factor. Without the time, a question could be raised at a hearing months or even years later concerning whether or not the incident occurred during the employee’s lunch period or other non-duty time.
- 2) **Where Did the Incident Occur?** The place is oftentimes a critical element which must be set forth in the written disciplinary action. The place of the infraction is an important detail because it answers the question of whether the infraction occurred at the work site or workstation or off the premises.
- 3) **What Happened?** A specific narrative of what happened or a description of the incident must be set forth in detail. In the case of an incident of “sleeping on the job”, details such as the distance the observer was located from the “Sleeper” and the total length of time the observation took place should be included. These details satisfy questions such as: Did the observation of the sleeping condition take place over four seconds or four minutes? Could the “Sleeper” have been just resting his eyes? Such questions must be answered in the memorandum. What happened in full and specific detail must be answered.
- 4) **What is Wrong?** Even though it may seem obvious, the disciplinary memorandum must give the employee notice of his infractions or deficiencies. Oftentimes this includes a reference to a rule, policy or contract provision that has been violated as a result of the employee’s conduct. The rule or policy violated should be cited or a copy attached. If there have been previous infractions which have been brought to the employee’s attention, this fact should be included. Once the employee is specifically advised of his shortcomings he cannot successfully claim lack of fair notice at a subsequent disciplinary hearing.

- 5) **What Must Be Done?** The employee must be given direction as to the proper conduct or performance that will be required in the future as well as the consequences of the present and future violations or infractions. Such directives must be clear and leave no room for interpretation on the part of the employee. Permissive terms such as “request”, “hope”, “ask”, etc., have no place in a written disciplinary action. The “What Must Be Done” must be clearly written as a directive and not as a request.

Each memorandum should conclude with a statement about placement of the disciplinary memorandum in the personnel file and a space for the employee to sign that he has read and understands the disciplinary memorandum. The employee should also be afforded the opportunity to offer or attach any comments he wishes to make. Most experts recommend that all such documents be signed by the employee to establish a clear record that the employee received a copy. The major problem with this is that an employee may refuse to sign the document. In such cases the supervisor should write on the document “employee refused to sign” then date and initial the comment.

The disciplinary memorandum should be clearly written, specific, direct and to the point. Indirect or subtle comments run the risk of being misunderstood. Even if not misunderstood, the basis for a defense will arise when there is any room for interpretation. The well-written memorandum will be self-explanatory, standing on its own without additional explanation. The problem and what the manager or supervisor is doing in response will be clear by simply reading the memorandum.

SEXUAL HARASSMENT

In order to increase your awareness and to ensure your knowledge of the elements constituting sexual harassment, the following Agency policy is hereby provided.

ARKANSAS DEPARTMENT OF WORKFORCE SERVICES
SEXUAL HARASSMENT POLICY

I. PURPOSE

This policy is established to encourage employees to discuss problems of sexual harassment with appropriate supervisors, to explain, to reach resolution, to make adjustments, if necessary, and to foster better understanding between employees and supervisors. Such discussion will lead to better employee/supervisor understanding of policies, procedures and practices.

II. POLICY

It is the policy of this agency that sexual harassment, as defined in the Federal Guidelines (29 CFR CH XIV, Subsection 1604.11), Section 703 of Title VII of the Civil Rights Act of 1964, as amended, and Arkansas Act 563 of 1985, which amends Subsection (8) of Section 1801 of Act 280 of 1975 in the Arkansas Criminal Code, is intolerable and unconscionable.

It is also the policy of this agency that all employees be given the opportunity through established steps and processes as specified in the agency's grievance procedure, to resolve sexual harassment complaints. This policy does not reflect any change in the agency's grievance procedure.

III. CRITERIA

Conduct constitutes sexual harassment when:

- (a) Submission to the conduct is either an explicit or implicit term or condition of employment.
- (b) Submission to or rejection of the conduct is used as a basis for employment decisions affecting the person who did the submitting or rejecting or;
- (c) The conduct has the purpose or effect of unreasonable interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Actions that may be defined as sexual harassment may be overt, covert, or of a continuing nature, and may be either physical or verbal. Actions constituting sexual harassment are not limited to the "supervisor to employee" situation, but may include actions of co-workers, including those of the same or opposite sex.

IV. **NOTIFICATION**

This agency's grievance procedure authorizes the Grievance Officer to modify, waive, or otherwise change the Grievance Procedure in order to fulfill the intent of the procedure, provided the Agency Director and employee agree to the waiver, modification or change. To this effect, no employee, in order to effect resolution, shall be required to solely or independently confront the person allegedly conducting or causing the action believed to be sexual harassment.

Employees believing themselves to be victims of sexual harassment are encouraged to come forward in order to effect resolution of the complaint. Employees are encouraged to contact the appropriate level supervisor(s) or the appropriate grievance officer to begin the process of resolution.

Employees should submit complaints made in good faith, expressed in reasonable terms, containing cause for the complaint, corrective action desired and sufficient information upon which to base decisions.

Director

Date

GENERAL INVESTIGATION GUIDELINES FOR SEXUAL HARASSMENT

- Conduct a thorough and prompt investigation. Begin the investigation within seven (7) days of being advised of the situation. Extending the investigation traumatizes an organization and makes the witness testimony increasingly unreliable.
- Although a claim may appear on the surface to be frivolous, treat it as valid until you have established otherwise.
- While it is not possible to ensure complete confidentiality, keep the investigation and the facts that it uncovers under strict “need to know” basis as much as possible. Emphasize to all those involved in the investigation including the complainant, the accused and witnesses, the need to keep discussions strictly confidential, backing up these instructions with warnings of discipline if necessary.
- Limit the number of persons in the organization who have access to the information. Do not unnecessarily disclose information to witnesses. For example, instead of asking, “Did you see Paul touch Joan?” Ask, “Have you seen anyone touch Joan at work in a way that made her uncomfortable?” The purpose of the investigation is to gather facts, not disseminate allegations.
- If there is more than one allegation, treat each incident separately.
- In discussing the situation with witnesses, make it clear that the facts are not to be discussed with unconcerned parties. If there is any doubt about a potential witness’ ability to maintain confidentiality, it may be wise to think very carefully before involving that particular witness.
- To avoid defamation liability, never broadcast the facts of a given situation or the results as an example to others as a training tool.

INTERVIEWING THE COMPLAINANT

- Elicit specific details regarding the alleged sexual harassment. Include questions regarding the type of conduct, the frequency of the occurrence, what was said or done, where it occurred, where was the complainant touched, the dates that the conduct occurred, and the time period over which the conduct occurred. Find out whether or not there was a pattern of previous episodes or whether the complainant was aware of similar behavior by the accused towards another employee.
- Get the specific context in which the conduct occurred, including the nature and general description of the work area and the specific location. Did the conduct occur at a work-related function, during working time, or after hours?
- Determine the effect of the conduct on the complainant. Identify the type(s) of effects (for example, economic, non-economic and/or psychological). Was the conduct received as a joke, was it really unwelcome, did it embarrass, frighten or humiliate the complainant? Often, complainants contend that, while they may have voluntarily given in to the demands made of them, they did so out of fear or because they felt threatened. It is important to remember, however, that the real issue is not whether the behavior was voluntary or involuntary, but whether it was unwelcome.
- Determine whether or not persons of the opposite sex from the complainant were subjected to similar conduct or were treated differently by the alleged harasser.
- Determine the time relationship between the occurrence of the alleged conduct, its effect on the complainant, and the time when the complainant made the report. If there was a time lag between the occurrence and the report, find out why the complainant waited so long before reporting the situation. A plausible explanation may be the employee's fear of retaliation. Prepare a detailed chronology. Analyze whether there might have been certain events that triggered the complaint, for example, a denial of promotion, pay raise or transfer. Determine whether there were any possible motives on the part of the complainant.
- Find out what the complainant wants. How does the complainant want the situation resolved. Can the complainant continue to work for or with the accused, can the complainant be productive, will it be embarrassing or awkward for the complainant, does the complainant need counseling?
- Explain to the complainant that the charges are serious and that the agency will conduct a thorough investigation before reaching any conclusions, and that he or she will not be retaliated against for making the complaint.
- Make no statements about the accused's character, job performance or family life. If the accused were to sue for defamation, this might be enough evidence for a finding of malice. Malice nullifies the "qualified privilege" employers have to discuss internally these kinds of situations without incurring liability.

INTERVIEWING THE ACCUSED

- Obtain a statement from the accused.
- Identify the relationship of the accused to the complainant. Was the accused an agent of the agency, a supervisory employee, a co-worker or a non-employee?
- Was there any prior consensual relationship between the parties? How long have the parties known each other? Is there a history of group or individual socializing?
- If the individual was a supervisor, indicate the individual's job title, obtain a copy of the individual's job description, and determine the individual's specific duties at the time of the alleged harassment.
- Determine whether the accused directed, or had responsibility for, the work of other employees or the complainant, had authority to recommend employment decisions affecting others (for example, hiring, firing, promoting), or was responsible for the maintenance or administration of the records of others.
- You can expect the accused to deny the charges. Observe the reaction. Note whether or not there is surprise, anger or disbelief. Describe the details of the allegation and note the areas of disagreement between the testimony of both parties. If the accused denies the allegations, probe further to determine with the accused the background reasons, and motivations that could possibly trigger the complaint.

INTERVIEWING THE ACCUSED'S SUPERVISOR

- Talk with the accused's supervisor to learn about any discipline problems and behavior patterns on the part of the accused or the complainant and to determine whether or not the supervisor had any knowledge of the relationship between the parties.
- Did the complainant report the conduct to the supervisor? Was the supervisor in a position to observe the conduct? Should the supervisor have been alerted to the conduct? For example, was the conduct discussed in the presence of the supervisor or were there any rumors circulating?
- Determine whether or not there is any available documentation (that is, letters, memoranda, reports, statements or electronic mail) that would support the conclusion that the supervisor knew or had reason to know of the conduct. In a recent case, electronic mail (or e-mail) statements were allowed in as evidence to prove that the complainant's supervisor had a discriminatory attitude.

INTERVIEWING THE WITNESS

- Obtain statements from any witnesses who support or deny any of the complainant's allegations. This evidence is very critical to the investigation. Without it, it is simply the complainant's word against that of the accused. Be aware that often witnesses are reluctant to come forward out of fear of retaliation.
- Assure all witnesses that their cooperation is important, their testimony is confidential, and they will not be retaliated against for testifying.

RESOLVING THE COMPLAINT

- When attempting to remedy the conduct, avoid requiring the claimant to work less desirable hours or in a less desirable location. If you offer to transfer the complainant, try to get the complainant's consent and make sure the transfer position is substantially similar to the complainant's prior position. This helps ensure that the complainant is not being illegally punished for opposing discrimination or harassment.
- Consider the severity, frequency and pervasiveness of the conduct when imposing discipline on the harasser. There are several disciplinary options available, including oral and written warnings, reprimands, suspension, probation and, depending upon the severity of the problem, transferring, demoting or discharging the accused.
- When imposing discipline on the accused, any form of discipline short of discharge should be accomplished with a warning that similar misconduct in the future might result in immediate discharge.
- Conduct follow-up interviews with the parties to inform them of the agency's actions.

MODEL QUESTIONNAIRE ON SEXUAL HARASSMENT

This organization wants all of its employees to be able to work in security and dignity. This means that you should be free from sexual harassment, including:

1. Sexual relations or contact with a supervisor or co-worker that you do not want and to which you have not freely agreed;
2. Attention of sexual nature (degrading comments, propositions, jokes or tricks, etc.) that you do not want; and
3. The threat or suggestion that your job, advancement, assignments, wages, etc., depend on whether or not you submit to sexual demands or tolerate harassment.

We are asking our employees to answer the short questionnaire on the next two (2) pages in an effort to determine whether these problems exist here.

**“SAMPLE”
QUESTIONNAIRE**

- | | | | |
|---|---|-----|---|
| Y | N | 1. | Have you been subjected to sexual harassment while working for this organization? (If “No”, skip to Question 8). |
| | | 2. | If your answer to Question No. 1 was in the affirmative, what did you encounter? (Check as appropriate.) |
| | | | <input type="checkbox"/> Sexual relations I did not want. |
| | | | <input type="checkbox"/> Physical contact I did not want. |
| | | | <input type="checkbox"/> Annoying or degrading comments about my body. |
| | | | <input type="checkbox"/> Annoying or degrading remarks about sex. |
| | | | <input type="checkbox"/> Pressure to engage in sexual activity, but without job-related threats. |
| | | | <input type="checkbox"/> Threats or suggestions that my job, working conditions, etc., depending on submitting to sexual demands. |
| | | | <input type="checkbox"/> Other kinds of threats to get me to submit to sexual demands. |
| | | 3. | Who harassed you? |
| | | | <input type="checkbox"/> Co-worker. |
| | | | <input type="checkbox"/> Supervisor or boss. |
| | | | <input type="checkbox"/> Client or customer. |
| | | 4. | What action did you take to end the harassment? If none, why? |
| | | | |
| Y | N | 5. | Did the harassment stop when you objected to it? |
| Y | N | 6. | Would you have filed a complaint if you knew there had been a procedure for you to do so? |
| Y | N | 7. | Were you penalized in any way for objecting or complaining? If so, how? |
| Y | N | 8. | Do you know of anyone who works here who has been harassed and was afraid to object or complain? |
| Y | N | 9. | Was the victim male or female? |
| Y | N | 10. | Do you think that this is a problem that this agency needs to address? What suggestions do you have? |
| Y | N | 11. | Has harassment or your fear of it distracted you from work and reduced your efficiency? |
| F | M | 12. | Are you male or female? |

UNIFORM GRIEVANCE AND ALTERNATIVE DISPUTE RESOLUTION PROCEDURE *

* This procedure will be utilized during the test period.

I. Purpose

This grievance procedure is established to provide employees with a prompt review, impartial consideration and an equitable disposition of their grievances. Any employee who presents a grievance or complaint in good faith and in a reasonable manner shall be free from restraint, interference, discrimination or reprisal.

This procedure is intended to encourage employees to discuss problems with their supervisors, thereby providing a basis to talk over matters of mutual interest, to explain, to reach agreement, to make adjustments, if necessary, and to foster better understanding between employees and supervisors. The Alternative Dispute Resolution (ADR-Mediation) component of this procedure is provided to promote collaborative problem solving.

Such discussion will lead to better employee/supervisor understanding of policies, procedures and practices.

The Alternative Dispute Resolution (mediation) process may be utilized for resolution of any work-related disputes, which include issues that may not necessarily be defined as grievance issues.

II. Policy

It is the policy of this agency that all employees be given the opportunity, through established steps and procedures, to resolve complaints or grievances which they believe adversely affect their employment or working conditions in a timely manner.

It is also our policy that reasonable efforts be made to settle complaints or grievances as quickly as possible. Direct contact on a one-to-one basis between supervisor and employee has always been a policy of this agency and thus the Grievance and ADR (Mediation) Procedure is not intended, nor will it be allowed to become, a barrier to the supervisor/employee relationship.

Employees should submit only grievances or complaints made in good faith, expressed in reasonable terms, containing causes for the grievance, corrective action desired and sufficient information upon which to base decisions.

Access to this procedure is **at the employee's option** and does not create any expectation of continued employment, but provides an avenue of review and resolution of internal situations.

III. Definitions

1. **EMPLOYEE** – an individual who is a non-probationary, full-time employee of a state agency, commission, board or department who occupies a regular salaried position and who works a minimum of 1,000 hours per year, provided, however, that this policy shall not apply to employees who hold administrative posts, appointed positions, and employees who are on initial new hire probationary status. Part-time, temporary, intermittent, extra-help, emergency hire and new hire probationary employees do not have access to this procedure.
2. **GRIEVANCE** – a complaint by an employee regarding an aspect of his or her employment including but not limited to, annual leave, sick leave, compensatory time, dismissal, suspension, promotion, demotion, disciplinary actions, discrimination or any other work related problem except compensation and conditions which are beyond the control of agency management or are mandated by law.

Complaints based upon performance evaluation may be appealed utilizing the separate performance evaluation appeals process. Complaints concerning performance evaluation will not be reviewed by the State Grievance Review Committee, the State Employee Grievance Appeal Panel or through ADR.

Reduction-In-Force appeals shall be processed through a separate appeals procedure. The ADR mediator, the State Grievance Review Committee and/or the State Employee Grievance Appeal Panel will not hear complaints concerning reduction-in-force.

Non-selection for promotion or lateral transfer will not be heard by the State Grievance Review Committee or the State Employee Grievance Appeal Panel, unless discrimination is the basis of the complaint. Non-selection may be heard, internally, through mediation or the grievance procedure.

3. **ALTERNATIVE DISPUTE RESOLUTION – MEDIATION** – a process that allows parties to constructively manage conflicts through collaborative problem solving and joint decision making, through utilization of a third party neutral (mediator). Also referred to as ADR.

IV. PROCEDURE

All grievance, complaints, steps in the procedure and any appeal steps shall be processed through the agency grievance officer and should be handled in accordance with the following procedure:

NOTE: Participation in any portion of this procedure is voluntary. This includes the ADR (mediation) component or the grievance procedure component. If ADR (mediation) is the process selected by the employee to attempt resolution of the dispute, the employee will not have access to the grievance procedure component. If the employee elects to utilize the grievance procedure component, the employee will not have access to the mediation component. Regardless of the issue, the employee will not have access to the State Grievance Review Committee or the State Employee Grievance Appeal Panel if ADR (mediation) is the chosen resolution process.

The Grievance and/or ADR-Mediation may be terminated at any state, should an agreement between parties be reached. The grievance procedure may be terminated at any step by the grievant. The ADR process may be terminated, at any point, by the grievant, supervisor and/or mediator if the sessions are not productive.

The employee and agency may be represented by someone of his or her own choosing at each step of this procedure except the initial, informal grievance discussion or the initial ADR-Mediation session with the immediate supervisor.

The internal Grievance Procedure shall be completed within twenty-five (25) working days and the ADR (Mediation) Procedure shall be completed within ten (10) working days after the employee files a written grievance, unless an extension is agreed to by all parties involved. The total number of days, including extensions and/or appeal to the agency director, the State Grievance Review Committee or the State Employee Grievance Appeal Panel is not to exceed 35 working days.

It is recognized that supervisors and employees have frequent discussions of work related problems or disagreements. These candid conversations are generally healthy and helpful to both participants and this procedure is not intended to inhibit these exchanges. Before filing a written grievance, or using the alternative dispute resolution-mediation process, an employee is encouraged to discuss with his or her immediate supervisor the employee's problem in order to reach a satisfactory solution to the problem. (If the complaint is sexual harassment, the employee shall not be required to meet with the supervisor alone, if the supervisor is accused of the harassment.) Most problems can be cleared up or resolved at this point. Collaborative problem-solving is encouraged.

In the event the problem is not resolved by an informal meeting between the employee and the supervisor, the employee shall be assigned a Departmental Grievance Officer who shall assist the employee in commencing the Alternative Dispute Resolution-Mediation process or formal Grievance Procedure at the appropriate step, as determined by the Grievance Officer. If, for some reason, that Grievance Officer cannot process the grievance, another grievance officer will be assigned.

The employee and the appropriate level of management may have any person having knowledge of matters relevant to the grievance present at any and all steps of the Grievance or ADR Procedure. Both parties may also submit or request the submission of relevant written documents at any and all steps.

Under special circumstances, the Grievance Officer has the authority to modify, waive or otherwise change the Uniform Grievance/ADR Procedure in order to fulfill the intent of the procedure, provided such modification, waiver or change is agreed to by the Department Director and the employee. This shall include combining grievances. The Grievance Officer shall submit, in the same manner as his/her final report to the Department Personnel Manager, the justification for, and the details of, any variation from the procedure.

The Department Director may intervene at any step in the Grievance or ADR (Mediation) Procedure if the Director decides that direct action is necessary to resolve the complaint. The Department Director shall make every effort to resolve all matters involving allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion and/or failure to award compensatory time.

Should any person within the Department intentionally interfere with, hinder, block or otherwise impede the processing of a grievance, such employee shall be subject to disciplinary action. Further, should any employee or supervisor willfully fail to meet any of the deadlines set forth within this procedure in such an attempt to delay the resolution or disposition of a grievance, such employee or supervisor shall be deemed to have forfeited any participation which such employee or supervisor might otherwise have under this procedure. Additionally, should an employee be determined to have filed frivolous grievances or complaints, such employee shall be subject to disciplinary action.

DETERMINATION OF GRIEVABLE MATTERS

In the event the Grievance Officer and the employee disagree as to whether the matter under consideration is a grievable matter within the scope of these Procedures, Executive Order Number 86-1 and/or Executive Order Number 93-01, the Grievance Officer shall request a Determination from the State Grievance Review Committee by filing information concerning the nature of the complaint with the Administrator of the Office of Personnel Management. The employee shall file a position statement concerning the nature of the complaint with the Administrator of the Office of Personnel Management. The agency supervisor shall file a position statement concerning the nature of the complaint. These statements shall be filed with and attached to the Grievance Officer's request for the Determination. Determination matters include whether the matter is grievable, whether the employee has access to the procedure, and/or whether the matter is grievable to the State Employee Grievance Appeal Panel, State Grievance Review Committee or is eligible for ADR.

The Administrator of the Office of Personnel Management shall promptly report to the Grievance Officer and/or employee (where applicable), the Committee's decision concerning the Determination. Neither the Administrator of the Office of Personnel Management nor any member of the State Grievance Review Committee shall make any finding at this stage with regard to the merits of such complaint. Their review shall strictly be limited to the determination of whether the complaint consists of a matter which is grievable, whether the employee has access and/or the appropriate process for complaint.

SPECIAL NOTATIONS

Meetings and hearings at all Steps of the Grievance Procedure component, shall be transcribed and become part of the case file record if appealed to the agency director, State Grievance Review Committee or the State Employee Grievance Appeal Panel. Meetings/hearings of the ADR-Mediation component of this procedure shall not be recorded.

Grievances involving allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion and/or failure to award compensatory time shall commence at Step 3 (director's level) of this procedure unless the employee elects to utilize the ADR-Mediation process to attempt resolution.

At the conclusion of each step of the procedure, including ADR-Mediation, written notification of decisions, agreements or recommendations will be provided to all parties involved, including the employee's immediate supervisor (when appropriate). If ADR-Mediation is utilized, the only documentation shall be a written agreement or a statement which reports an agreement was not achieved.

The employee should attempt to resolve any work-related problems with the supervisor in an informal meeting prior to initiating the ADR process or the grievance procedure.

To initiate the Grievance or ADR-Mediation component of this procedure, the employee must submit the complaint or grievance in writing to the agency Grievance Officer within five (5) working days of the occurrence of the incident.

Step 1

The Grievance Officer will contact the appropriate supervisor within three (3) working days of the filing of a grievance and arrange for a meeting within three (3) working days between the employee and the supervisor with the Grievance Office present. The Grievance Officer shall explain the ADR (Mediation) process and Grievance procedure to both parties. The employee shall within two (2) working days select the process (Mediation-Option 1 or Grievance-Option 2) to be utilized.

Option 1. If ADR (Mediation) is utilized, the Grievance Officer shall contact the Office of Personnel Management to secure a mediator. The mediator shall contact the employee and appropriate level of management within two (2) working days of notification to schedule the initial mediation session.

If the ADR (Mediation) process is successful, the mediator shall formalize the agreement, in writing. The agreement shall be signed by the grievant, agency management, representatives, if present, and the mediator. Such agreement shall be filed with the Grievance Officer within five (5) working days of the conclusion of the ADR (Mediation) session.

If through ADR (Mediation) a resolution is not achieved within ten (10) working days, the mediator shall prepare a statement to that effect. The statement specifying that resolution was not achieved shall be signed by the grievant, management and mediator. At this point, the employee's access to internal resolution procedures is exhausted. Such statement shall be filed with the grievance officer within two (2) working days of the conclusion of the ADR (Mediation) process.

Option 2. If the Grievance Procedure is the option selected, the Grievance Officer shall contact the supervisor and arrange a meeting between the supervisor and employee within three (3) working days with the grievance officer present. The supervisor shall submit his decision in writing to the employee and the Grievance Officer within one (1) working day of the conclusion of this meeting. If the employee wishes to continue his or her grievance, written notice shall be provided to the grievance officer within two (2) working days of receipt of the supervisor's written decision. The process shall continue to Step 2.

STEP 2

The employee, if not satisfied with the results of Step 1 grievance procedure may, in writing, request a review by the next appropriate level of management. Such request shall be submitted to the grievance officer within two (2) working days of receipt of the decision at Step 1. The Grievance Officer will arrange and attend such a hearing within three (3) working days from the receipt of the written request. The Deciding Official may require the employee to set forth the nature of the disagreement with the decision in Step 1, in writing, prior to the hearing. The Deciding Official shall take testimony from relevant witnesses and the employee's supervisor. This hearing shall be recorded. The Deciding Official shall submit his decision in writing to the employee, the Grievance Officer and the supervisor within three (3) working days following the conclusion of the hearing.

STEP 3

If not satisfied with the result of Step 2, the employee may, in writing, request a hearing by the Assistant Director. Such request shall be submitted to the grievance officer within two (2) working days of the receipt of the decision at Step 2. The Grievance Officer will submit the matter to the Assistant Director. The hearing must be recorded and transcribed and shall become part of the case file, if appealed.

The Grievance Officer will, within three (3) working days, arrange and attend a meeting between the employee and the Assistant Director or his authorized representative (e.g. special hearing officer). Subordinate managers shall attend at the request of the Assistant Director. The hearing officer shall take testimony and accept exhibits. The hearing shall be recorded.

Within three (3) working days of the conclusion of either option, the Assistant Director shall submit his or her decision in writing to all parties involved, including the immediate supervisor (if appropriate).

STEP 4

If the employee has utilized the grievance procedure component and is not satisfied with the decision of the Assistant Director, he or she may, within five (5) working days of receipt of the Assistant Director's written decision appeal the Director's decision to the State Grievance Review Committee or the State Employee Grievance Appeal Panel (as appropriate).

If the employee has utilized the ADR (mediation) component, the employee's access to administrative processes has been exhausted.

Within five (5) working days from the date of receipt of the grievant's written appeal the State Personnel Administrator shall set a hearing date with the State Grievance Review Committee or State Employee Grievance Appeal Panel. The Committee or Panel shall conduct whatever review of the grievance it deems necessary. The Panel shall hear unresolved grievances concerning allegations of unlawful discrimination, termination, suspension without pay, involuntary demotion and/or failure to award compensatory time. The Committee shall hear all other unresolved grievances.

The Committee shall conduct its review and make recommendations to the Director and appealing party (and designated representatives) within ten (10) working days of the appeal.

The Panel shall conduct a hearing and make its decision within (5) working days following the conclusion of the hearing. The written decision shall be forwarded to the Department Director, appealing party, representatives of either or both parties and the employee's immediate supervisor within (10) working days following the conclusion of the hearing. The decision shall be binding on all parties.

STEP 5

If the review body is the State Grievance Review Committee, the Assistant Director shall review the Committee's recommendations and shall submit within three (3) working days of receipt of the written SGRC recommendation, his or her decision in writing to all parties, representatives and supervisors involved. The Committee shall be copied on this decision. The decision of the Assistant Director shall be final and binding on all concerned regarding this matter and this procedure, before the Committee.

If the review body is the State Employee Grievance Appeal Panel, the Director shall review the Panel's decision and effect implementation of the decision. If the Department Director does not agree with the Panel's decision, he or she may, within ten (10) working days of receipt of the Panel's written decision, provide the Chief Fiscal Officer of the State and the aggrieved employee with written justification of the agency's action and request a formal review of the Panel's decision by the Chief Fiscal Officer. The employee may also submit comments regarding the agency director's justification to the Chief Fiscal Officer. Such response to an agency appeal shall be submitted to the Chief Fiscal Officer of the State of Arkansas within ten (10) calendar days of the date of the agency appeal. (Appeals to the Chief Fiscal Officer should be processed by the agency grievance officer or authorized representative). Within fifteen (15) days of receipt of the agency director's justification and written request for review, the Chief Fiscal Officer shall issue a final administrative order affirming, reversing, or modifying the Panel's decision with such order binding on the agency.

This, however, does not prohibit employees from availing themselves of remedies outside these procedures. Each employee retains the right to file a complaint with the Equal Employment Opportunity Commission or pursue other legal remedies.

V. Documentation

It shall be the responsibility of the Grievance Officer to file a report of the grievance or complaint, the procedures followed and of its ultimate disposition, along with copies of all documentary evidence, with the Departmental Personnel Manager within ten (10) working days following final disposition of the grievance. In addition, when an employee commences the formal Grievance Procedure of ADR (Mediation) at any Step, it shall be the responsibility of the Grievance Officer to immediately file a form with the Departmental Personnel Manager, listing the name of the employee and of his immediate supervisor, the employing unit, the name of the Grievance Officer chosen, a statement of the nature of the grievance and the chosen method of resolution and the date formal proceedings commenced. All documentation relating to an employee grievance which shall be maintained in the Department Personnel Office shall be placed in a file separate from the employee's personnel file. No information relating to the grievance shall become a part of any employee's permanent personnel record. However, such records shall be maintained in hard copy for five (5) years and permanently in such a manner as may be prescribed in applicable state and federal laws with regard of retention of such records.

Agency's Director

Date

**TRANSMITTAL
FOR GRIEVANCE DETERMINATION**

Date: _____

Grievance Officer: _____

Agency/Department: _____

Mailing Address: _____

This form is to be used by the grievance officer when a decision cannot be reached internally, as to the grievability of a particular problem. The form will be filled in completely and forwarded to the Office of Personnel Management, for the Grievance Review Committee.

GRIEVANCE STATEMENT

In order to determine the grievability of a matter a complete statement must include: (Attach additional pages, if necessary.) What was the specific behavior, condition or violation of policy or procedure which the employee considers constitutes a grievance?

How has the employee been adversely affected by this situation?

**REQUEST FOR
ADR-MEDIATOR PROCESS**

Date: _____

Grievance Officer: _____

Agency/Department: _____

Employee: _____

This form is to be used by the grievance officer when the complaint is most appropriately addressed through the ADR process. (Additional pages may be attached, if necessary.)

EMPLOYEE STATEMENT:

What is the specific complaint, behavior, condition, etc., which the employee desires to have addressed through the ADR process?

How has the employee been adversely affected by this situation?

What does the employee request as the outcome of the ADR? What specific action(s) has the employee taken to try to resolve the matter?

The following signifies agreement of the employee and supervisor to attempt resolution of the above referenced matter through the ADR process.

I agree to meet with supervisor in the ADR process.

Employee

Date

I agree to meet with employee in the ADR process.

Supervisor

Date

STEP 1

Grievance Form

This form is to be used by the employee in filing a formal grievance. The form will be filled in completely and will serve, without amendment, as the source document for the grievance process. All supporting documentation must be attached to this grievance form.

Employee's Name: _____ **Job Title:** _____

Immediate Supervisor's Name: _____

Employee's Work Location: _____

GRIEVANCE STATEMENT

In order for a formal grievance to be processed, the following four (4) elements must be addressed: (Attach Additional Pages If Needed)

(1) What was the date of occurrence and what specific behavior, condition or violation of policy or procedure occurred which you consider constitutes a grievance?

(2) How have you been adversely affected by this grievance situation?

(3) What specific action have you taken to reconcile and improve this situation, including discussing it with your immediate supervisor? What has been the outcome of these efforts?

(4) What specific remedy do you request?

Employee's Signature: _____ **Date:** _____

STEP 1

REPLY TO EMPLOYEE GRIEVANCE
Immediate Supervisor

Supervisor's Signature: _____ **Date:** _____

Employee Answer:

Note: Explain fully why you do not accept the above response/decision.

- I accept the answer to my grievance.
- I do not accept the answer to my grievance and will refer it to the next step.

Grievant's Signature: _____

Date: _____

STEP 2

REPLY TO EMPLOYEE GRIEVANCE
Assistant Director

Assistant Director's Signature: _____ **Date:** _____

Employee Answer:

Note: Explain fully why you do not accept the above response/decision.

- I accept the answer to my grievance.
- I do not accept the answer to my grievance and will refer it to the next step.

Grievant's Signature: _____

Date: _____

STEP 3

REPLY TO EMPLOYEE GRIEVANCE
Department Director

Assistant Director/or Representative's Signature

Date

Employee Answer:

Note: Explain fully why you do not accept the above response/decision.

- I accept the answer to my grievance.
- I do not accept the answer to my grievance and will refer it to the next step.
- I do not accept the answer to my grievance and wish to refer my grievance to the State Employee Grievance Appeal Panel.

Grievant's Signature: _____

Date: _____

APPEAL
TO STATE GRIEVANCE REVIEW COMMITTEE

Date: _____

Grievance Officer: _____

Agency/Department: _____

Employee's Name: _____ **Phone Number:** _____

Home Address: _____

Representative's Name: _____ **Phone Number:** _____

Representative's Address: _____

Supervisor's Name: _____

This form is to be used if and when the employee wishes to appeal the department director's decision on the disposition of a grievance. All questions must be answered.

Who is appealing the grievance? (Please include name and job title.)

Why is the grievance decision being appealed?

Grievance Officer

Date

APPEAL
TO STATE EMPLOYEE GRIEVANCE APPEAL PANEL

Date: _____

Grievance Officer: _____

Agency/Department: _____

Employee's Name: _____ **Phone Number:** _____

Home Address: _____

Representative's Name: _____ **Phone Number:** _____

Representative's Address: _____

Supervisor's Name: _____

This form is to be used if and when the employee wishes to appeal the department director's decision on the disposition of a grievance. All questions must be answered.

Who is appealing the grievance? (Please include name and job title.)

Why is the grievance decision being appealed?

Grievance Officer

Date

MEMORANDUM

TO: SGRC/SEGAP Hearing Coordinator
Office of Personnel Management

FROM: _____
Grievance Officer Telephone _____

Agency and Address

DATE:

RE: Witness for Scheduled Hearing
The following persons will be called as witnesses for the
_____ case.

Name and Address	Phone
Witnesses for Employee:	
1.	
2.	
3.	
4.	
5.	
6.	
Witnesses for Supervisor/Agency:	
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

LITIGATION REPORTING REQUIREMENTS
UNDER EXECUTIVE ORDER 93-01

Executive Order 93-01 requires that effective July 1, 1993, all litigation involving personnel matters be reported to the Office of Personnel Management in a timely manner by state agencies, and also requires periodic updates to the Office of Personnel Management concerning the progress and outcomes of such litigation.

In order to meet the requirements of Executive Order 93-01 each agency must provide the following to the Office of Personnel Management:

1. A report on all litigation involving personnel matters pending as of July 1, 1993.

This report must also include any litigation which has not been settled and for which settlement is expected in the future.

2. A report on any new litigation involving personnel matters within thirty (30) days of the date of the filing of such litigation. Once a specific case has been reported to the Office of Personnel Management, a monthly report regarding that case must be filed with the Office of Personnel Management until the case is finally disposed of.

Attached are two forms for your use. The form entitled "Initial Report of Litigation Involving Personnel Matters to the Office of Personnel Management Under Executive Order 93-01" is to be used to file the report for each case pending as of July 1, 1993 and for any new case filed after that date. The form entitled "Monthly Status Report of Litigation Involving Personnel Matters to the Office of Personnel Management Under Executive Order 93-01" is to be filed by the fifth of each month. A separate form must be completed for each case even if no activity occurred during the reporting month. If no activity occurs regarding a case during a reporting month, a simple statement to that effect may

be placed on the reporting forms.

**Initial Report of Litigation Involving Personnel Matters to the
Office of Personnel Management Under Executive Order 93-01**

TO: Arkansas Office of Personnel Management
Attention: Kay Barnhill-Terry, State Personnel Administrator
Department of Finance and Administration
Post Office Box 3278
Room 201, 1509 West 7th Street
Little Rock, Arkansas 72203

FROM:

DATE:

RE:
(case name)

SUMMARY OF LITIGATION

1. Plaintiff: _____

_____ (Attorney)
2. Defendant: _____

_____ (Attorney)
3. Court/District/Division _____

4. Date Filed: _____
5. Docket Number: _____
6. Time Table/Deadline:
7. Constitution/Code/Act/Subject of Case:
8. Brief Description of Issues Involved:
9. Relief Sought:
10. State's Position:

AGREEMENT TO MEDIATE

Department of Workforce Services

1. I understand that this is an agreement by the parties to attempt to resolve the following issues by submitting the matters to mediation:

2. I understand that mediation is a dispute resolution process that is nonadversarial in nature and seeks to find reconciliation between disputing parties. The mediation process does not declare winners or losers. The main focus is to seek a resolution that is informal, timely, and is advantageous to both parties.
3. I understand that Mediators are not involved in the immediate occurrence and are committed to treating this matter in a fair and unbiased way. The Mediators' role is to facilitate and help the parties themselves reach a mutually satisfactory resolution to the problem. However, the decision-making power rests with the parties, not the Mediators. If the parties cannot agree on a resolution, the Mediators will NOT impose a resolution nor will they offer judgment as to which party, if any, is at fault. If an impasse exists, either party or the mediator may stop the proceedings.
4. I understand that the Mediators have no authority to make decisions or act as a judge or arbitrator. The Mediators will not act as an advocate or attorney for any party. To the extent either the complainant or the agency wishes to have a representative or legal counsel to consult with or assist at any stage in the mediation, the party is responsible for taking steps to obtain such a person.
5. I understand that mediation is a confidential process. Any documents submitted to the Mediators and statements made during the mediation are for settlement purposes only. I agree not to subpoena or request the Mediators to serve as witnesses or request or use as evidence any materials prepared by the Mediators for mediation, with the exception of a settlement document signed by the parties. In no event will the Mediators voluntarily testify on behalf of any party or submit any type of report in connection with this mediation. However, I understand that matters that are admissible in a court of law or other administrative process continue to be admissible, if otherwise discoverable, even though brought up in a mediation session.

6. Mediation is private, confidential and privileged from discovery. To ensure confidentiality, any writings or notes made or taken during the mediation session by the mediator, either party or parties and/or representatives shall be collected and destroyed by the mediator, in the presence of all, prior to adjournment of the mediation.
7. I understand that no party shall be bound by anything said or done at the mediation unless a written settlement is reached and executed by all necessary parties. If a settlement is reached, the Mediators shall reduce the agreement to writing, and when signed and approved by the parties and/or appropriate authorities, the settlement document shall be legally binding upon all parties to the agreement.
8. In electing to use mediation, I understand that no external statutory deadlines are waived and that all external statutory deadlines must be adhered to.
9. The aggrieved party's rights to pursue external formal processes are not waived and will be protected during the mediation process. At the same time, the aggrieved party's responsibilities to comply with all requirements of any external administrative or court process, e.g., time limits, points of contact, **ARE NOT WAIVED** and must be adhered to.
10. I understand that in the event the mediation is terminated for any reason, the aggrieved party may continue to pursue any external formal resolution of the matter as he/she sees fit as long as they are within statutory time.
11. No admission of guilt or wrongdoing by either party is implied, and none should be inferred, by participation in this process.
12. I will sincerely attempt to resolve this matter, agree to cooperate with the Mediators assigned to this matter, and give serious consideration to all suggestions made in regard to developing a realistic solution to the problem. I will conduct myself in a courteous and non-hostile manner, use appropriate language, and allow the Mediators to interrupt the process if they feel a caucus or break is needed to facilitate the mediation process. I enter into this process in good faith.
13. The Mediators agree to notify the parties, their representatives, and the appropriate management official of the status and results of the mediation process, including settlements, withdrawal from, and/or unsuccessful conclusion of the process within five (5) working days of the conclusion or termination of the process.

BY SIGNATURE BELOW, I ACKNOWLEDGE THAT I HAVE READ, UNDERSTAND, AND AGREE TO THIS AGREEMENT TO PARTICIPATE IN MEDIATION:

EMPLOYEE'S SIGNATURE DATE

EMPLOYEE REPRESENTATIVE'S SIGNATURE (if appropriate) DATE

MANAGEMENT OFFICIAL'S SIGNATURE DATE

AGENCY REPRESENTATIVE'S SIGNATURE (if appropriate) DATE

MEDIATOR'S SIGNATURE DATE

MEDIATION SETTLEMENT AGREEMENT

Department of Workforce Services

This Settlement Agreement resolves a dispute between _____ (complainant)
and _____ (agency) _____ regarding _____ (dispute)

This Settlement Agreement provides _____ (resolution)

When signed and approved by the parties and/or appropriate authorities, this Settlement Agreement shall be binding upon all parties to the agreement.

By signature below, I acknowledge that I have read, understand, and agree to this Mediation Agreement. I further agree that any and all information received or provided shall be kept confidential.

EMPLOYEE'S SIGNATURE DATE

EMPLOYEE REPRESENTATIVE'S SIGNATURE DATE

MANAGEMENT OFFICIAL'S SIGNATURE DATE

AGENCY REPRESENTATIVE'S SIGNATURE DATE

MEDIATOR'S SIGNATURE DATE

NON-SETTLEMENT DECISION

The undersigned parties have, either individually or collectively, come to the decision that a satisfactory settlement agreement to resolve this grievance matter cannot be reached through this mediation forum.

Such determination exhausts the administrative appeals for the employee in this matter.

By my signature below, I acknowledge that I have read and understand that we cannot reach a settlement or agreement in this matter. I further understand that all matters discussed and/or information provided in this forum shall be kept confidential.

Employee's Signature Date

Employee Representative's Signature Date

Management Official's Signature Date

Agency Representative's Signature Date

Mediator's Signature Date

MEDIATION INFORMATION SHEET

What is the Mediation Program?

The Mediation Program was created to actively support resolution of differences. Using mediation demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. Mediation is an alternative for resolving problems and disputes before the parties get involved in a more formal process.

What is Mediation?

Mediation is an informal way complainants can resolve disputes with a fellow employee, manager, or colleague. In mediation, a neutral person called a Mediator helps two or more persons explore ways to resolve their differences and reach an agreement that best addresses their interests. All parties must be willing to work out the problem among themselves. Mediation, unlike arbitration or court proceedings, does not focus on who is right or wrong. The Mediator has no power to make the decision for the parties or tell the parties what they should do. It is the parties themselves who decide what is important to each of them and make their own decisions based on those factors. A Mediator helps the parties become the decision-makers by understanding and listening to each other and by working together to create options and solutions which meet their concerns.

Why should I use the Mediation Program?

Mediation is faster, less formal, and much less expensive in both time and resources for all parties involved. Neither party gives up any rights when using the program. Mediation is simply another way to resolve disputes and has been used successfully by other agencies.

Mediation is a type of problem-solving process that helps individuals to:

- Communicate with each other.
- Create their own realistic and mutually satisfactory solutions instead of taking the problem to a judge, arbitrator, or outside decision-maker whose ruling may be unsatisfactory to both parties.

When can I use Mediation?

The Mediation Program can be used to resolve a variety of differences, including grievances, discrimination complaints, supervisor/employee and other workplace differences.

How do I begin the Mediation process?

The mediation process is initiated by contacting your agency grievance officer. Your agency grievance officer can discuss your options with you and provide more information on the mediation process.

How does the Mediation Program Work?

Requests for Mediation. The grievant may request mediation. Mediation requests may be initiated by contacting your agency grievance officer.

Assignment of Mediator or Co-Mediators. The agency grievance officer shall contact the Office of Personnel Management (OPM) who should assign mediators on a rotating basis from the Office of Personnel Management Mediator Roster. If either or both parties object to the Mediator or one/both of the Co-mediators assigned to a particular matter, the Office of Personnel Management will immediately assign another Mediator. The Office of Personnel Management will assign mediators within two (2) working days of a Mediation Request.

Signing the Agreement to Mediate. The parties and all persons participating in the mediation must sign an Agreement to Mediate prior to the mediation. The document will set forth the requirements for both parties entering into mediation in good faith to resolve their differences. The assigned mediator is responsible for ensuring that the agreement is signed before beginning the mediation session. All parties should sign the Agreement to Mediate within two (2) working days of the assignment of the Mediator.

Procedures after the Agreement to Mediate. The assigned mediators are responsible for scheduling the initial mediation session. The initial session will be scheduled as early as possible, but no later than two (2) working days after receipt of the assignment. Prior to the date scheduled for mediation, the Mediators should confirm the time, date, and place for the mediation with the grievance officer and both parties. This Mediation Information Sheet will be used by the grievance officer for briefing the parties on the mediation process.

Concluding the Mediation Process. At the conclusion of the mediation process, a Settlement Agreement shall be prepared and signed within five (5) working days of the agreement, if an agreement is reached. If an agreement is not achieved, the mediator shall file a short memorandum to that effect with the grievance officer. All notes and documentation concerning the mediation in the possession of the Mediators shall be destroyed. The grievance officer will provide the parties and the mediator with a Follow-up Evaluation Survey to be completed within five (5) working days following the conclusion of the mediation session.

Evaluating the Mediation Process. All evaluations will be sent to the Office of Personnel Management for compilation and analysis.

Who is involved in the Mediation Process?

Complainant: Any current employee, as defined in the uniform procedure, who has a problem that he/she would like to bring to mediation can participate in the program.

Management Participant: The executive staff member or manager (or designee) who is authorized to discuss and execute Settlement Agreements on behalf of the department.

Mediator: A fair, neutral, and impartial third party, trained and skilled in conflict resolution techniques, who has been approved to participate in the Mediation Program.

Representatives: Each person may select a representative to attend the mediation. The representative may be a friend, co-worker, supervisor, relative, or attorney. (The presence of a representative is not mandatory.)

Other Team Members: Generally, only the Mediators, the aggrieved person, and the management participant (and respective representatives, if desired) are present in the room where a mediation takes place. Behind the scenes, there may be a person/persons who need to be consulted regarding regulatory requirements.

Are Mediation sessions confidential?

Yes. The Mediators will protect the confidentiality of the parties and the mediation process. The mediation sessions and all materials disclosed during the mediation are confidential. Both parties must agree to confidentiality. Mediators will not testify concerning the mediation discussions. During private sessions, Mediators will not disclose to the other party anything that one of the parties has shared with them in confidence. Of course, if the case is not settled and goes to formal litigation, each party could use the court process to obtain documents that would normally be obtained through the litigation process or under the Freedom of Information Act. If there is an agreement, disclosure of such agreement will be on a need to know basis.

Will an aggrieved party's rights to pursue court and external administrative action be affected if he or she decides to mediate the issue?

No. If unresolved issues remain at the end of the mediation, the Mediators and the Aggrieved Person/Complainant will state these issues in writing during the final mediation session.

How are mediator's selected and trained?

Agency directors nominate individuals to serve as mediators. The mediators are then confirmed by the State Personnel Administrator. The nominees who successfully complete the mediation training will serve as mediators on a collateral-duty basis. Mediators will not conduct mediation sessions within their own agency.

How can you obtain further information about the Mediation Program?

For more information, contact the Department of Finance and Administration, Office of Personnel Management, 1509 West 7th Street, Room 201, Post Office Box 3278, Little Rock, Arkansas 72203-3278.

1. **Purpose:** To advise all employees of the revised Personnel Policies regarding the Agency's Disciplinary Rules and Procedures effective November 1, 2000.
2. **General Information:** In order to ensure the smooth operation of any organization, it is necessary to set standards to which all employees must adhere. Both management and employees need to have a clear understanding of what is considered acceptable conduct when engaged in Agency business. To be effective, the standards of conduct must be written clearly, disseminated widely, and enforced consistently.

With this mandate, Personnel Administration, the Office of Legal Services, Equal Employment Opportunity, Internal Audit and Security, and Senior Management have revised the disciplinary procedures for **full-time and intermittent employees**. These new procedures outline Agency disciplinary policies and rules, and specify the penalties that will be assessed as a consequence of violations or infractions. The amount of discipline administered for infractions by employees **has been modified** to give supervisors/managers the option of recommending less than maximum penalty for first infractions. Moreover, the new disciplinary policy and procedures **apply equally to** full-time and intermittent employees. Full-time employees who attended **mediation training** have received copies of subject policies. However, revised pages are being forwarded under separate cover.

In addition to the aforementioned policy is a revised Form DWS-ARK-850, Arkansas Department of Workforce Services Conditions Regarding Intermittent Appointment. This document stipulates the maximum number of hours an intermittent employee may be allowed to work in a given fiscal year. The signature portion of Form DWS-ARK-850 must be signed and returned to Personnel Administration.

Also included are the E-mail and Sexual Harassment Policies.

3. **Action Required:** All managers and supervisors should take the following action immediately upon receipt:
 - 1) Study and familiarize themselves with the revised policies and procedures;
 - 2) Discuss the disciplinary policy, rules, and procedures with **all employees** and furnish **each** employee with a copy of subject procedures;
 - 3) Have all intermittent employees read the Conditions Regarding Intermittent Appointment (page 67) and sign the certification document.
 - 4) All **employees** must read and sign the certification document for Disciplinary Rules and Procedures (page 68).
 - 5) Cost Center Managers must **return the above certifications to Personnel Administration within two (2) weeks of receipt** of the referenced policy revisions.
 - 6) **Inquiries:** Questions may be directed to Personnel Administration through

customary management channels.

- 7) **Attachment:** Revised Arkansas Department of Workforce Services Personnel Policies.
- 8) **Expiration Date:** Continuing

Employees who have received an Intermittent Appointment, after reading the following, should sign and return this Form to Personnel Administration.

Your Intermittent Appointment cannot continue for more than 1664 hours in any Fiscal Year. (Fiscal Year begins July 1 and ends June 30.)

You will be paid on an hourly basis and you normally will receive your paycheck bi-weekly.

The period of intermittent service shall not constitute a part of a probationary period nor service credit for full time Agency service. You will not receive fringe benefits accorded to permanent status employees. You may, however, become eligible for coverage under the Public Employees Retirement System depending upon the duration and/or length of your intermittent employment. You may also receive Holiday Pay under certain conditions depending upon the nature of your work schedule.

Intermittent employment is "at will." As such, Intermittent appointees may be subject to termination without recall at any time during their employment. Intermittent employees do not have grievance rights with the State Grievance Review Committee or State Grievance Appeal Panel.

DWS-ARK-850 (Rev. 07-05)

I have read the above conditions preliminary to receiving an Intermittent Appointment, and have full understanding of the limitations and rights as relates to an Intermittent Appointment.

Cost Center Name _____

EMPLOYEE NAME (PLEASE PRINT)

EMPLOYEE SIGNATURE

DATE

SUPERVISOR NAME (PLEASE PRINT)

SUPERVISOR SIGNATURE

DATE

To DWS Employees:

The personal conduct of all Agency employees is a major factor in the proper and efficient delivery of DWS services to all client groups and in maintaining a good working environment. Likewise, fair and equitably administered disciplinary practices is a significant factor in the morale and productivity of Agency employees. Most employees perform their duties in a professional and efficient manner as well as conduct themselves in a manner which reflects credit upon themselves and the Agency. Unfortunately, however, some employees resort to unacceptable behavior requiring that disciplinary action be taken. It is for this reason that written disciplinary rules and procedures are necessary for employees in order to ensure that fair and impartial disciplinary action is taken on a consistent and non-discriminatory basis when willful and inexcusable breaches of Agency rules, policies and procedures occur.

All employees have a right to know what can and cannot be done, their rights and privileges, and the consequences of unacceptable behavior and rule violations.

It is the purpose of the attached document to furnish you with relevant information concerning Agency disciplinary rules and procedures and the consequences of willful infractions and/or violations. You should familiarize yourself with these rules and procedures and discuss any questions you may have with your supervisor.

Artee Williams
Director

(Detach this portion after employee discussion and signature and return to Personnel Administration.)

My supervisor has discussed the Agency Disciplinary Policy, Rules, and Procedures for Employees with me and I have been given an opportunity to ask any questions I may have. I have also been furnished a copy of the disciplinary rules for my personal reference.

Cost Center Name _____

EMPLOYEE NAME (PLEASE PRINT)

EMPLOYEE SIGNATURE

DATE

SUPERVISOR NAME (PLEASE PRINT)

SUPERVISOR SIGNATURE

DATE

INTERMITTENT EMPLOYEE GRIEVANCE PROCEDURE

If an intermittent employee believes they have been the victim of racial, sexual, or religious harassment/discrimination they should report this to the Agency Grievance Officer immediately. Once the grievance is reported, the grievance officer should investigate the matter just as any other grievance.

Racial, sexual, and religious harassment/discrimination are the only grievances available to the intermittent employee. If upon separation - for any reason - the intermittent employee has not reported past racial, sexual or religious harassment/discrimination they have ten (10) working days from the date of separation to do so. If not reported within ten (10) working days, the intermittent employee has waived any right to file a grievance.