

EEO Counselor Skills

Part II

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Counselor Reports

The **Critical Tool**
in
Resolving
and
Processing
Federal EEO Complaints

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The EEO Counselor's Report is Legally Important

To determine:

- Timeliness of the initial contact with an EEO Official and timeliness of the filing of a formal complaint
- Possible acceptance of an untimely complaint
- When an aggrieved had a "reasonable suspicion" of discrimination

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The EEO Counselor's Report is Legally Important (cont'd)

- To determine the issue(s) actually raised in counseling
- To determine whether the complainant evidenced an intent to file a complaint

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The EEO Counselor's Report is Legally Important (cont'd)

- To analyze the allegations raised in the formal complaint
- To provide a complete record

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The EEO Counselor's Report is Legally Important (cont'd)

- To provide pertinent facts in the case
- To provide accurate information to the complainant
- To provide claims of compensatory damages

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The Effective Counselor's Report

In accordance with Chapter 2, MD-110, one of the critical responsibilities of the EEO Counselor is to "Prepare a report significant to determine that required counseling actions have been taken and resolve any jurisdictional questions that may arise."

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Jurisdictional Questions?

- Failure to state a claim, stating a pending or already decided claim
- Timeliness, or matter not like or related to counseled matters
- Claim pending or decided by U.S. District Court, in which complainant a party
- Claim raised in another formal forum
- Claim that is moot or preliminary notice
- Complainant cannot be located

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Jurisdictional Questions? (cont'd)

- Complainant's failure to respond to informational request(s) or failure to otherwise proceed with complaint process
- Spin-off complaint (regarding process)
- Abuse of process
 - Numerous filings
 - Claims similar or identical to resolved matters
 - Evidence of circumventing other administrative processes

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The Effective Counselor's Report

The EEO counselor's report is the central document in the formal complaint file, depended upon by the:

- Agency EEO Officer
- Investigator
- EEOC Office of Federal Operations
- EEOC Administrative Judge, and
- In the event of in civil action.

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The Effective Counselor's Report (cont'd)

Following **traditional** counseling, at a minimum the counselor's report **must** contain:

- A precise description of the claim(s) and basis(es) identified by the complainant (the WHO, WHAT, WHEN, WHERE and WHY)
- Pertinent documents reviewed/gathered
- Specific information concerning the timeliness of counselor contact
- If timeliness is a factor, complainant's explanation for delay of counselor contact
- An indication as to whether an attempt to resolve the complaint was made.

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The Effective Counselor's Report (cont'd)

Where an election of **ADR** terminated counseling, the counselor's report **must** include:

- A precise description of the claim(s) and basis(es) identified by the complainant
- Pertinent documents reviewed/gathered
- Specific information concerning the timeliness of counselor contact
- If timeliness is a factor, complainant's explanation for the delay of counselor contact,
- A statement that ADR was elected and the parties did not reach resolution.

NOTE: ADR discussions are confidential. Offers and statements made by parties cannot be used against either party if resolution attempts fail.

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The Effective Counselor's Report (cont'd)

Required Elements

Informational elements required by the EEOC in the counselor's report, as described in Appendix G of MD-110, are:

1. The name, employment status, telephone and address information, and representational status of the complainant.
2. Chronology of counseling.
3. The basis(es) of discrimination.
4. Description of the claims presented to the Counselor.
5. The remedy requested by the complainant.
6. The Counselor's checklist of rights and responsibilities.
7. A summary of the supporting allegations.

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The Effective Counselor's Report (cont'd)

Required Elements for Resolution Attempts

1. Persons contacted.
2. Documents reviewed.
3. Summary of resolution efforts.
4. ADR process notification.

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Contributors to an Ineffective and Inadequate Report

- Lack of specificity
- Disorganized material
- Inclusion of irrelevant material
- Failure to identify information sources
- Inclusion of confidential material
- Inclusion of **Counselor opinions**
- Answering the wrong questions
- Failure to identify resolution attempts
- Recommendations and comments on the merits of the case
- Failure to identify date(s) of the act(s) or action(s) at issue

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HELPFUL RESOURCES

- EEOC MD-110
 - Appendix A (Counseling Techniques)
 - Appendix B (EEO Counselor Checklist)
 - Appendix L (Examples of models for establishing a prima facie case of discrimination)
 - Appendix G (Required Elements of the Counselor's Report)
- Your Agency EEO Guidelines
- Your agency Collective Bargaining Agreement, if applicable
- Your agency Human Resources Guidelines
- www.eeoc.gov
- www.osc.gov
- www.mspb.gov
- www.flra.gov

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