

OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

- Letter of Preliminary Determination July 16, 2009
  - Agency Response August 17, 2009
  - EEPC's Response August 28, 2009
-



## EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14<sup>th</sup> Floor, New York, New York 10006

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*Counsel*

July 16, 2009

Roberto Velez

Chief Administrative Judge

Office of Administrative Trials & Hearings

40 Rector Street, 6<sup>th</sup> Floor

New York, NY 10006

Re: Resolution # 09/19-868/Preliminary Determination Pursuant to the Audit of the Office of Administrative Trials & Hearings (OATH) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through December 31, 2006.

Dear Mr. Velez:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members and women. (New York City Charter, Chapter 36, sections 36(d)(2) and (5).)

Pursuant to Chapter 35, Section 814(a)(12) of the New York City Charter, the City established the Citywide Equal Employment Opportunity Policy (EEOP), a set of uniform standards and procedures designed to ensure the equality of opportunity for municipal government employees and job applicants, and, consistent with federal, state and local laws, identified other groups for protection from discrimination in employment by city agencies.

The Charter defines city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This letter contains the preliminary determinations of the EEPC pursuant to its audit of compliance by the Office of Administrative Trials & Hearings (OATH) during the twenty-four month period from January 1, 2005 through December 31, 2006. Requests for corrective actions and/or recommendations are included where the EEPC has determined that the OATH has failed to comply in whole or in part with the City's EEO Policy.

All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the EEO Policy, which, in accordance with section 815 of the City Charter, holds agency heads responsible for the effective implementation of Equal Employment Opportunity. Therefore, the Office of Administrative Trials & Hearings should incorporate these recommendations in its agency-specific EEO Plan. The relevant sections of the City's EEO Policy are cited in parenthesis at the end of each recommendation. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment plans for minority group members and women.

The purpose of this audit is to evaluate the agency's compliance with the City's EEO Policy, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

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### **Scope and Methodology**

Audit methodology included a review of responses to an EEPC Document and Information Request Packet. EEPC auditors also conducted in-depth, on-site interviews with the OATH's EEO officer, EEO counselor, and career counselor. Since the OATH's employees are included in the Department of Citywide Administrative Services' (DCAS) headcount, the EEPC did not conduct voluntary employee surveys.

### **Description of the Agency**

The Office of Administrative Trials and Hearings is the City's central independent tribunal with authority to conduct adjudicatory hearings for all mayoral and non-mayoral city agencies. The OATH was created in 1979 by mayoral executive order and established as a charter agency in 1988. The Mayor appoints the Chief Administrative Law Judge. The Chief Judge appoints other Administrative Law Judges to five-year terms. The agency's caseload includes public employee disciplinary and disability hearings, license and regulatory hearings, conflicts of interest proceedings, hearings on contract matters, Loft Law hearings, and other adjudications as provided by state and local law.

The Administrative Judicial Institute provides professional practice seminars and contributes to best practices for administrative law judges through internal research and development, and partnerships with regional, statewide and national administrative justice agencies. The Institute draws upon the expertise of a broad range of administrative law judges and scholars who contribute their skills and experience to the development of curricula and training programs including those on cultural competence.

The Center for Mediation Services mediates workplace disputes referred by EEO officers, Disciplinary Advocates, Labor Management, attorneys, and OATH Administrative Law Judges. The Center is exploring and making available the use of other appropriate dispute resolution processes for City managers, Union representatives, Personnel officers, City managers, EEO officers and other City government personnel to manage and efficiently resolve conflicts in the workplace. The Center's aim is to assist the City government personnel by providing resources to reach durable resolutions to conflicts.

### **Personnel Activity During the Audit Period**

During the audit period, 10 people were hired: 5 Caucasians, 1 African-American, and 4 Hispanics. Of the individuals hired, 6 were female. Three people were promoted during the audit period: 2 Caucasians and 1 Asian. Of the employees promoted, none were female. (Appendix 1).

The OATH reports that 9 full-time employees were voluntarily separated during the audit period: 6 Caucasians, 2 African-Americans, and 1 Hispanic. Four of those individuals were female.

As of December 2006, the OATH employed 27 people: 13 Caucasians, 6 African Americans, 7 Hispanics, and 1 Asian. Fifteen of the employees were women (56%). Between December 2005 and December 2006, the total number of OATH employees increased by 8% going from 25 to 27. The number of women increased from 13 to 15 (15%) and Hispanics increased from 4 to 7 (75%). (Appendices 2 and 3).

On August 12, 2008, Mayor Bloomberg signed legislation into law consolidating the Environmental Control Board (ECB) under jurisdiction of the OATH. The ECB is the second largest administrative tribunal and it hears cases involving violations of NYC's quality-of-life laws. As a result of the consolidation, the number of OATH employees increased from 27 to 449 employees.

### **Discrimination Complaint Activity During the Audit Period**

No discrimination complaints, internal or external, were filed during the period in review.

### **PRELIMINARY DETERMINATION**

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit.

#### **Plan Dissemination – Internally**

The OATH is in compliance with the following requirements:

1. The EEO Policy statement, EEO Policy and EEO Policy Handbook and addendums were distributed to all employees in May 2005, during the audit period. The policies were last distributed to all employees in January 2007 with paychecks.
2. The Citywide EEO Policy, EEO Policy Handbook and addendum are posted on the agency bulletin board in the office kitchen area. The EEO Officer continually checks and maintains the boards to ensure that the EEO information is clearly posted and current.
3. All employees are advised of the City's EEO policies, the employees' rights and responsibilities under such policies, and the discrimination complaint procedures during new employee orientation which is conducted by the DCAS. The DCAS also distributes the EEO Policy Handbook and addendum which is included in the new hire packet during new employee orientation.

The OATH is in partial compliance with the following requirement:

In May 2005, the agency head distributed an agency-wide memorandum and EEO Policy Statement to all employees reiterating his commitment to EEO, advising employees of the name and phone number of the career counselor and the name of the EEO officer, however, the EEO Policy statement does not list all of the protected classes. Corrective action required.

Recommendation: The agency head should update his EEO Policy Statement to include all the protected classes.

#### **Plan Dissemination – Externally**

The OATH is in compliance with the following requirement:

Five job vacancy notices (agency attorney, administrative law judge, computer service technician, college aide, and agency attorney intern) submitted by the agency to the EEPC indicate that the Office of Administrative Trials & Hearings is an equal opportunity employer.

The OATH is not in compliance with the following requirement:

Three job advertisements placed in El Diario, New York Amsterdam News, and New York Times for administrative law judge do not indicate that the OATH is an equal opportunity employer. Corrective action is required.

Recommendation: All agency recruitment literature should include the EEO tag line indicating that the OATH is an equal opportunity employer. (Sect. IV, EEOP)

#### **EEO and Reasonable Accommodation for Persons with Disabilities**

The OATH is in partial compliance with the following requirements:

1. During the audit period, there were no requests for reasonable accommodations. Although the agency appointed a disability rights coordinator; no documentation notifying employees of the name, location and phone number of the disability rights coordinator was found. Corrective action is required.

Recommendation: To ensure that all employees are aware of the person responsible for handling reasonable accommodation requests, the OATH should notify all employees in writing of the name, location, and telephone number/email address of the disability rights coordinator.

2. The OATH participates in the Section 55-A Program and keeps records of all participants. During the audit period, there were no program participants. Although EEPC auditors were informed that the Section 55-A Program pamphlet is distributed during periodic EEO trainings and is also included in the new hire packet, which is distributed to employees during orientation, the new hire packet provided for EEPC review, did not contain that pamphlet. Corrective action is required.

Recommendation: To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet and distributed to all employees. (Sect. IIB, EEOP)

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The OATH is in compliance with the following requirement:

OATH's office located at 40 Rector Street is accessible to, and useable by, persons with disabilities. The front entrance to the building is wheelchair accessible, there are Braille signs in the elevators, and there are wide stalls and grab bars in the bathrooms. In addition, all courtrooms have wide walkways and witness stands are ramped for wheelchair access. Access to the courtroom for the judicial staff is also ramped.

The OATH is not in compliance with the following requirement:

The OATH's EEO Policy and EEO Policy Statement were not available in audiocassette or other format for persons with disabilities.

Recommendation: The OATH should ensure that its EEO Policies and procedures are available in formats accessible to applicants and employees with disabilities, e.g., large print, audio cassette or Braille). (Sect. VII, EEOP)

### **EEO Complaint and Investigation System**

The OATH is in compliance with the following requirements:

1. The EEO Officer maintains a monthly log of discrimination complaints filed against the agency.

2. The OATH's EEO officer and EEO counselor have completed the basic training course for EEO professionals conducted by the Department of Citywide Administrative Services (DCAS).
3. The agency has identified its EEO staff by posting their names and numbers in the agency head EEO Policy statement, and on bulletin boards.
4. During and after the audit period, a female (EEO officer) and male (EEO counselor) were available for complaint intake and investigation.

### **EEO Training**

#### The OATH is in compliance with the following requirement:

The OATH provides EEO training on an ongoing basis. During the audit period, 16 supervisors and 2 new employees received EEO training which was conducted by Jyll Townes of the DCAS.

### **Selection and Recruitment**

#### The OATH is in compliance with the following requirements:

1. All OATH personnel involved in the recruitment and hiring process have received DCAS's structured interview training.
2. Job vacancy notices for the Administrative Law Judge position was advertised in periodicals with large minority readership, such as *El Diario* and the *Amsterdam News*.

#### The OATH is not in compliance with the following requirement:

The OATH's response to the EEPC's Document and Information Request Form indicated that adverse impact studies for the OATH is done by DCAS; however no study for the agency has been conducted. According to the OATH's EEO plan for fiscal years 2005 and 2006, the agency pledged to examine all devices used to select candidates for employment, promotion or separation to determine adverse impact and take appropriate actions to diminish adverse impact. The EEO officer has reviewed the agency's interview log system to access the agency's hiring practices, but no formal adverse impact study was conducted. Corrective action is required.

Recommendation: Since the EEOP requires that agencies assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group, the OATH should conduct a formal adverse impact study. OATH should use, and may modify the DCAS' online program for this purpose. (Section IV, EEOP).

## **Promotional Opportunities**

The OATH is in compliance with the following requirements:

The OATH has appointed an individual familiar with civil service and provisional jobs to serve as career counselor. A memo was distributed to all employees listing the name and phone number of the counselor.

The OATH is not in compliance with the following requirement:

During the period in review, the OATH did not conduct performance evaluations. Corrective action is required.

Recommendation: All staff, managerial and non managerial, should receive an annual performance evaluation. (Sect.VII, EEOP)

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## **EEO Officer Reporting Arrangement**

The OATH is in compliance with the following requirement:

The EEO officer reports directly to the agency head on EEO matters and meets with him on a regular basis. These meetings are documented.

## **EEO Officer Responsibilities**

The OATH is in compliance with the following requirements:

1. The EEO Officer meets regularly with the EEO counselor to review his work and to keep him abreast on EEO developments. Documentation of these meetings was provided to EEPC auditors.
2. The EEO Officer spends approximately 5% of her time on EEO matters; the remaining time is devoted to her duties as Office Manager.

## **Supervisory Responsibility in EEO Plan Implementation**

The OATH is in partial compliance with the following requirements:

In a memo from the agency head, managers and supervisors were directed to conduct documented meetings with staff, at least once a year, to reaffirm their commitment to the Citywide EEOP and discuss the right of employees to file discrimination complaints with the EEO officer. However, no documentation of these meetings was uncovered during the audit. Corrective action is required.

Recommendation: It is the position of the DCAS ("Model Agency EEO Commitment Memo," available on the DCAS website) and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should reiterate their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings should be documented.

### **Special Problems/Contingencies**

The OATH is not in compliance with the following requirement:

No quarterly or annual EEO reports were sent to the EEPC during the period in review. During the audit, however, the EEO officer submitted copies of these reports to the EEPC. Corrective action is required.

Recommendation: Three quarterly reports and one annual report should be submitted to the EEPC no later than thirty days following the reporting period. (Sect. VII, EEOP)

### **SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS**

1. The agency head should update his EEO Policy statement to include all the protected classes.
2. All agency recruitment literature should include the EEO tag line indicating that the OATH is an equal opportunity employer. (Sect. IV, EEOP)
3. To ensure that all employees are aware of the person responsible for handling reasonable accommodation requests, the OATH should notify all employees in writing of the name, location, and telephone number/email address of the disability rights coordinator. (Sect. VB, EEOP)
4. To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet and distributed to all employees. (Sect. IIB, EEOP)
5. The OATH should ensure that its EEO Policies and procedures are available in formats accessible to applicants and employees with disabilities, e.g., large print, audio cassette or Braille). (Sect. VC, EEOP)
6. Since the EEOP requires that agencies assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group, the OATH should conduct a formal adverse impact study. OATH should use, and may modify the DCAS' online program for this purpose. (Section IV, EEOP).
7. All staff, managerial and non managerial, should receive an annual performance evaluation.

8. It is the position of the DCAS ("Model Agency EEO Commitment Memo," available on the DCAS website) and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should reiterate their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings should be documented.
9. Three quarterly reports and one annual report should be submitted to the EEPC no later than thirty days following the reporting period. (Sect. VB, EEOP)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

### **Conclusion**

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the Office of Administrative Trials and Hearings compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your office will take, and which recommendations it intends to incorporate into its Equal Employment Opportunity Plan, where appropriate, to comply with the City's Equal Employment Opportunity Policy. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's Equal Employment Opportunity Plan.

In closing, we thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,

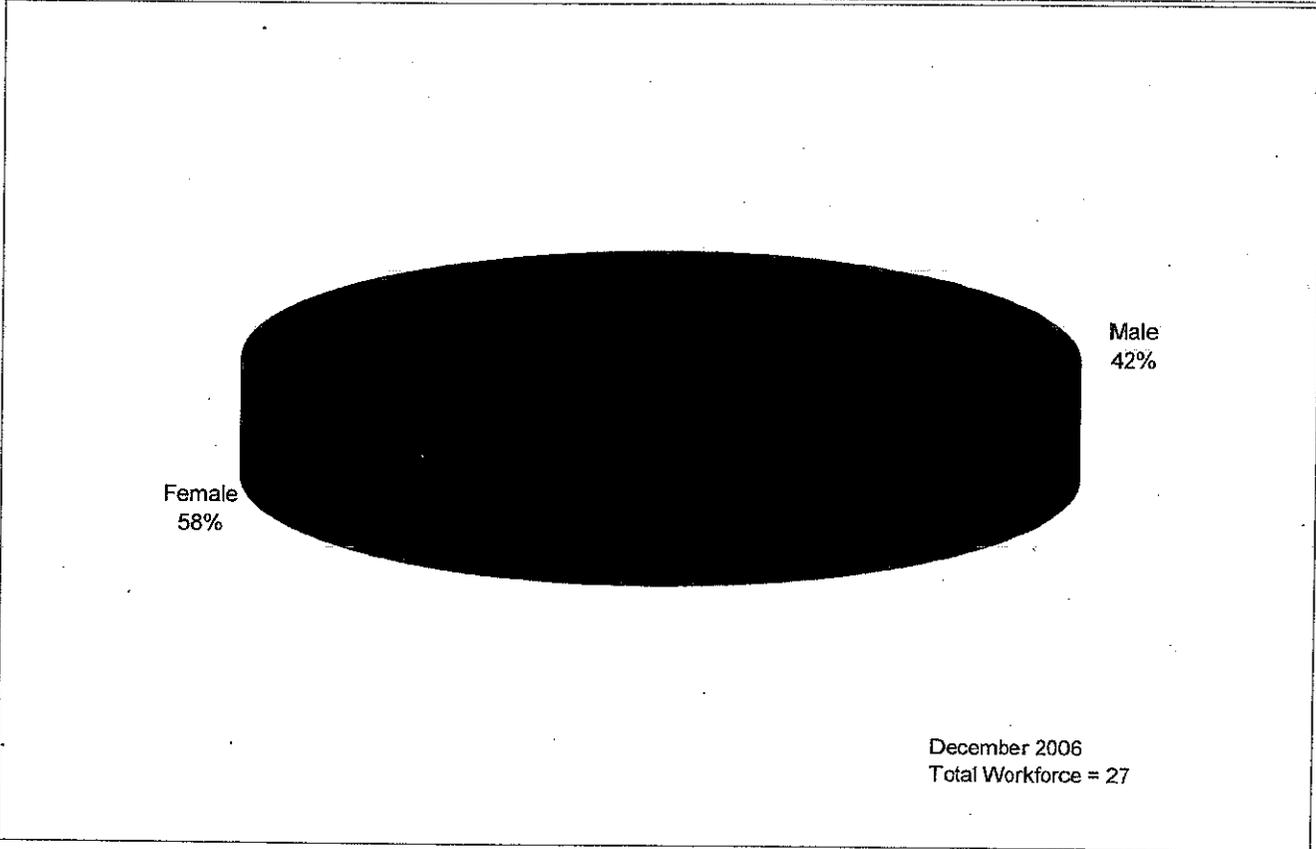
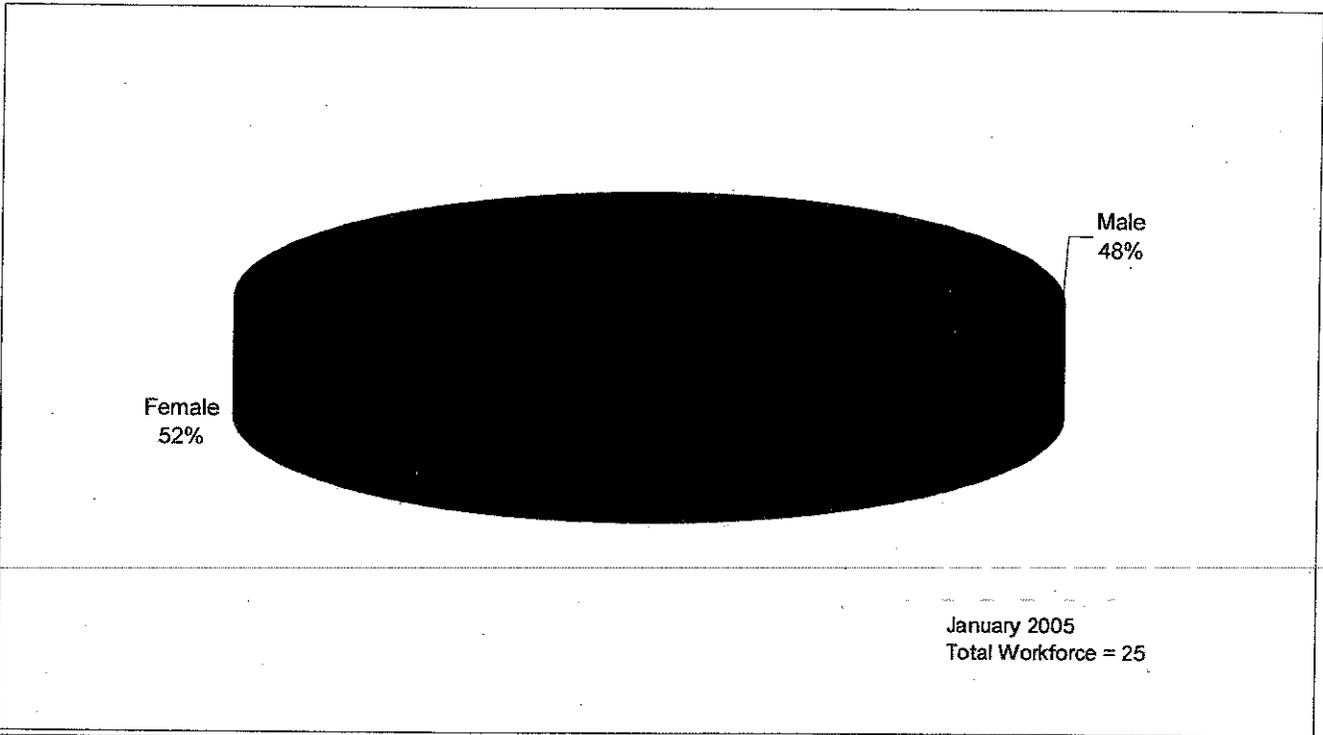


Cesar A. Perez, Esq.

Chair

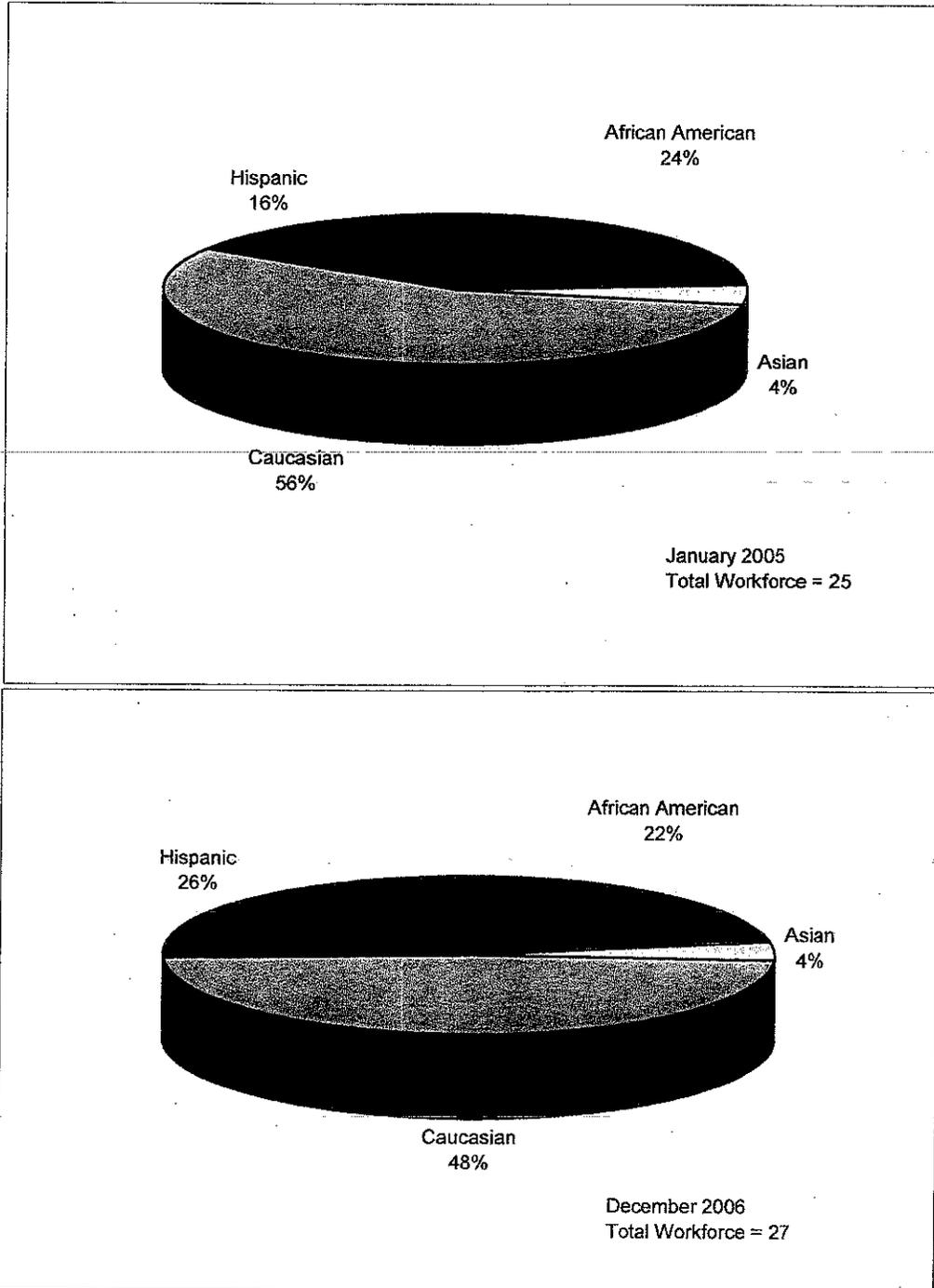
## Appendix - 2

### Office of Administrative Trials and Hearings Workforce by Sex



Appendix - 3

Office of Administrative Trials and Hearings  
Workforce by Ethnicity





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THE CITY OF NEW YORK  
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

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NYC.GOV/OATH

ROBERTO VELEZ  
CHIEF ADMINISTRATIVE LAW JUDGE

August 17, 2009

Cesar A. Perez, Esq.  
Chair  
Equal Employment Practices Commission  
40 Rector Street, 14<sup>th</sup> Floor  
New York, NY 10006

Re: Resolution # 09/19-868/Preliminary Determination Pursuant to the Audit of the Office of Administrative Trials and Hearings (OATH) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2005 through December 31, 2006.

Dear Mr. Perez:

Pursuant to Chapter 36 of the New York City Charter and the preliminary determinations relating to EEPC's audit of the Office of Administrative Trials and Hearings compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, this letter serves to respond to the preliminary determinations.

Based on the Preliminary Determination Pursuant to the Audit of OATH, the following are the nine recommended corrective actions and our remedies:

1. The agency head should update his EEO Policy statement to include all the protected classes.

Corrective action OATH will take: The Chief Judge will update the agency's EEO Policy statement to include all the protected classes.

2. All agency recruitment literature should include the EEO tag line indicating that the OATH is an equal opportunity employer. (Sect. IV, EEOP)

Corrective action OATH will take: All agency recruitment literature will include the EEO tag line indicating that the OATH is an equal opportunity employer. OATH intends to incorporate this action into its Equal Employment Opportunity Plan.

3. To ensure that all employees are aware of the person responsible for handling reasonable accommodation requests, the OATH should notify all employees in writing of the name, location, and telephone number/email address of the disability rights coordinator. (Sect. VB, EEOP)

Corrective action OATH will take: OATH will notify all employees in writing of the name, location, and telephone number/email address of the disability rights coordinator. OATH intends to incorporate this action into its Equal Employment Opportunity Plan.

4. To ensure that all employees are made aware of the Program, the Section 55-A Program pamphlets issued by the DCAS should be included in the new hire packet and distributed to all employees. (Sect. IIB, EEOP)

Corrective actions OATH will take: OATH will include the Section 55-A Program pamphlets issued by the DCAS in the new hire packet and will distribute it to all employees. OATH intends to incorporate this action into its Equal Employment Opportunity Plan.

5. The OATH should ensure that its EEO Policies and procedures are available in formats accessible to applicants and employees with disabilities, e.g., large print, audio cassette or Braille). (Sect. VC, EEOP)

Corrective action OATH will take: OATH will ensure that its EEO Policies and procedures are available in formats accessible to applicants and employees with disabilities. OATH intends to incorporate this action into its Equal Employment Opportunity Plan.

6. Since the EEOP requires that agencies assess the manner in which candidates are selected for employment, to determine whether there is any adverse impact upon any particular racial, ethnic, disability or gender group, the OATH should conduct a formal adverse impact assessment. OATH should use, and may modify the DCAS' online program for this purpose. (Section IV, EEOP).

Corrective action OATH will take: OATH will conduct a formal adverse impact study. OATH intends to incorporate this action into its Equal Employment Opportunity Plan.

7. All staff, managerial and non managerial, should receive an annual performance evaluation.

Corrective actions OATH will take: OATH will conduct performance evaluations of all staff, managerial and non-managerial.

8. It is the position of the DCAS ("Model Agency EEO Commitment Memo," available on the DCAS website) and the EEOC that at least twice a year during normal staff meetings, managers and supervisors should reiterate their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office. These meetings should be documented.

Corrective action OATH will take: OATH managers and supervisors will, at least twice a year during normal staff meetings, reiterate their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office; OATH managers and supervisors will document these meetings.

9. Three quarterly reports and one annual report should be submitted to the EEPC no later than thirty days following the reporting period. (Sect. VB, EEOP)

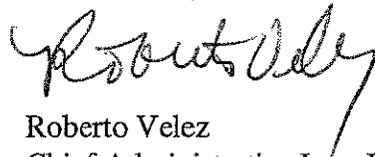
Corrective action OATH will take: OATH will submit annual and quarterly EEO reports to the EEPC no later than thirty days following the reporting period. OATH intends to incorporate this action into its Equal Employment Opportunity Plan.

In addition to the above corrective actions, during the compliance process, the Chief Judge will distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit. The distributed memorandum will also re-emphasize the Chief Judge's commitment to the agency's Equal Employment Opportunity Program.

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If you require additional information or clarification, please contact OATH's EEO Officer, Frank Ng, at 212-442-4941.

Sincerely,



Roberto Velez  
Chief Administrative Law Judge



# EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

40 Rector Street, 14<sup>th</sup> Floor New York, NY 10006

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*Counsel*

August 28, 2009

Roberto Velez  
Chief Administrative Law Judge  
Office of Administrative Trials and Hearings  
40 Rector Street, 14<sup>th</sup> Floor  
New York, New York 10006

Re: Final Determination/Initiation of Audit Compliance

Dear Mr. Velez:

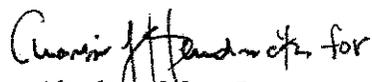
Thank you for your August 17<sup>th</sup> Response to our June 16<sup>th</sup> Letter of Preliminary Determination pursuant to our audit of the Office of Administrative Trials and Hearings' (OATH) Equal Employment Opportunity Program from January 1, 2005 to December 31, 2006.

We have reviewed your response and we are pleased to see that you concur with, and will implement the nine recommended corrective actions pursuant to the referenced audit. Consequently, in lieu of a letter of Final Determination, we are prepared to initiate the City Charter-mandated audit compliance process.

The EEPCC's Counsel/Compliance Director Judith Garcia Quiñonez, Esq., or her designee, will contact your EEO Officer, Mr. Frank Ng, to initiate the audit compliance process.

We look forward to working with you and your staff to ensure an effective Equal Employment Opportunity Program in the Office of Administrative Trials and Hearings.

Sincerely,

  
Abraham May, Jr.  
Executive Director

c: Judith Garcia Quiñonez, Esq., Counsel/Compliance Director  
Frank Ng, EEO Officer, OATH