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Chair

October 6, 2014

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Commissioners

Michael McSweeney
City Clerk, Clerk of the Council
NYC Office of the City Clerk
141 Worth Street
New York, New York 10013

Charise L. Hendricks, PHR
Executive Director

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Deputy Director/Agency Counsel

Re: Preliminary Determination: Audit, Evaluation and Monitoring of the City Clerk's *Discrimination Complaint and Investigation Procedures* from January 1, 2012 to December 31, 2013.

253 Broadway
Suite 602
New York, NY 10007

Dear Mr. McSweeney:

212. 615. 8939 tel
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On behalf of the members of the Equal Employment Practices Commission (Commission or EEP), thank you and your agency for the cooperation extended to our staff during the course of this audit and evaluation. This letter contains the Commission's findings and preliminary determinations pertaining to the period covering January 1, 2012 to December 31, 2013.

Chapter 36, Section 831(d)(5) of the New York City Charter empowers this Commission to audit and evaluate the employment practices and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for women and minority employees and applicants seeking employment. Sections 831(d)(2) and 832(c) authorize this Commission to make a determination that any agency's plan, program, procedure, approach, measure or standard does not provide equal employment opportunity, require appropriate corrective action and monitor the implementation of the corrective action it prescribes.

The City Clerk, which may herein be referred to as "the agency," falls within the Commission's purview under Chapter 36, Section 831(a) of the New York City Charter, which delineates 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 Commission has adopted *Uniform Standards for EEPC Audits*¹ and *Minimum Equal Employment Opportunity Standards for Community Boards* to assess agencies' practices and policies. These standards are founded upon and consistent with federal, state and local laws, regulations, procedures and policies including, but not limited to, the Citywide Equal Employment Opportunity Policy - Standards and Procedures to be Utilized by City Agencies; the New York City Human Rights Law (NYC Administrative Code, §§8-107(1)(a) and (d), 8-107.13, and 8-107.1); the Equal Employment Opportunity Commission's Instructions to Federal Agencies for EEO, Management Directive 715; the Americans with Disabilities Act and its Accessibility Guidelines; and the equal employment opportunity requirements of the New York City Charter. Prescribed corrective actions are consistent with the aforementioned parameters.

Since this Commission is empowered to review and recommend actions which each agency should consider including in its annual plan of measures and programs to provide equal employment opportunity (Annual EEO Plan), the audited agency should incorporate required corrective actions in its current EEO Program and prospective Annual EEO Plans.

Scope and Methodology

This Commission's audit methodology includes collection and analysis of the documents, records and data the agency provides in response to the EEPC preliminary interview questionnaires and document/information requests, which are sent to EEO professionals and others involved in EEO program administration. EEO professionals (including, but not limited to, past or current EEO Officers, Deputy or Co-EEO Officers, EEO Counselors, EEO Trainers, EEO Investigators, Disability Rights Coordinators,) and others involved in EEO program administration such as the General Counsel are given a two-week deadline to complete and return their individual questionnaires and requested documents. Applicable information from the agency's *Annual EEO Plans and Quarterly EEO Reports* are also reviewed.

The Commission's EEO Program Analysts also conduct additional research, follow-up discussions, and/or interviews with EEO professionals, when appropriate.

Description of the Agency

The Office of the City Clerk/Clerk of the City Council is responsible for attesting to all laws enacted by the City Council and keeping the transcript of proceedings of the City Council. As the City Clerk, the agency has charge of all papers and documents of the City and attests to leases and deeds of the City property, grants, agreements, bonds, tax notes, and other forms of obligations of the City. Aside from these functions, the City Clerk maintains two separate and important bureaus under its jurisdiction: the Lobbying Bureau and the

¹ Corresponding audit/analysis standards are numbered throughout the document.



**Equal Employment
Practices Commission**

Marriage Bureau. The Lobbying Bureau is responsible for the enforcement of the City's Lobbying Law, including the registration of lobbyists, the receipt of periodic reports from lobbyists on their lobbying activities, as well as the audit of those reports. The Marriage Bureau provides Marriage Licenses, Domestic Partnership registration, civil Marriage Ceremonies, registration of Marriage Officiants, copies and amendments of Marriage Records issued by the City Clerk since 1930, and Certificates of Non-Impediment.

PRELIMINARY DETERMINATIONS AFTER AUDIT AND ANALYSIS

Following are the corresponding audit standards for each subject area along with the EEPC's findings and required corrective actions, where appropriate:

I. ISSUANCE, DISTRIBUTION AND POSTING OF EEO POLICIES:

Determination: The agency is in compliance with the standards for this subject area.

1. Issue a general EEO Policy statement or memo reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, and attaching, or providing employees pertinent electronic links to, an EEO Policy/Handbook.
 - The agency did not provide documentation that a general EEO Policy statement or memo reiterating a commitment to EEO was issued during the audit period.

NOTE: The agency head issued a memo on May 8th, 2014 reiterating commitment to EEO, declaring the agency's position against discrimination on any protected basis, advising employees of the names and contact information of EEO professionals, as well as notifying staff that the agency would be distributing the city EEO policy, *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies*, and related addendum, as well as the EEO Policy Handbook, *About EEO: What You May Not Know*, and related addendum.

2. Distribute/Post a paper or electronic copy of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* – or an agency EEO Policy that conforms to city, state and federal laws – for use by managers, supervisors, and legal, human resources and EEO professionals. Include, or attach as addenda: a policy against sexual harassment; uniform and responsive procedures for investigating discrimination complaints and providing reasonable accommodations; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for the agency's EEO professionals, as well as federal, state and local agencies that enforce laws against discrimination.



**Equal Employment
Practices Commission**

- ✓ The agency posted paper copies of the *Equal Employment Opportunity Policy, Standards and Procedures to Be Utilized by City Agencies* near both the time clock and the cafeteria bulletin board at the agency office. This included a policy against sexual harassment; uniform and responsive procedures for providing reasonable accommodations; an up-to-date list of protected classes under NYC and NYS Human Rights Laws; and current contact information for federal, state and local agencies that enforce laws against discrimination. The agency did not demonstrate it distributed the policies and procedures during the audit period.

NOTE: The agency distributed the *Equal Employment Opportunity Policy: Standards and Procedures to be Utilized by City Agencies*, EEO handbook, *About EEO: What You May Not Know*, and addenda on May 8th, 2014. This distribution also included contact information for the agency's EEO professionals, the *Guidelines for Implementation of the City of New York's Discrimination Complaint Procedures*, *Top 10 Things to Know About EEO*, 55-a Program brochure, and *Office of the City Clerk's Reasonable Accommodation Procedure*.

II. TRAINING-DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURE:

Determination: The agency is in compliance with the standards for this subject area.

1. Establish and implement an EEO training plan for new and existing employees to ensure that all individuals who work within the agency, including managers and supervisors, receive training on unlawful discriminatory practices under local, state and federal EEO laws; EEO rights and/or responsibilities; discrimination complaint and investigation procedures; prevention of sexual harassment; and reasonable accommodation procedures.
 - The agency reported that all employees were required to complete the *Citywide Diversity and Equal Employment Opportunity Computer Based Training* program which included training on unlawful discriminatory practices under local, state and federal EEO laws; EEO rights and/or responsibilities; prevention of sexual harassment; and reasonable accommodation procedures. The agency had not implemented a policy to document completion of EEO training by staff members during the audit period.

NOTE: As of September 19, 2014, the agency established a procedure to record successful completion of EEO training for all new employees and compiled documentation indicating successful completion of EEO training by all staff members in the past.

III. DISCRIMINATION COMPLAINT AND INVESTIGATION PROCEDURES:

Summary of Complaint Activity: The City Clerk reported that no employment discrimination complaints were filed during the audit period. As a result, this Commission could not conduct a robust analysis of the agency's complaint and investigation procedures, but concluded the following based on the information and forms submitted.

Determination: The agency is in compliance with the standards for this subject area.

1. Include in the complaint file a *Discrimination Complaint Form* or a complaint that captures the facts (including pertinent dates) that identify the respondent(s) with reasonable specificity and provide the essence of the circumstances which gave rise to the alleged discrimination.
 - ✓ The agency's *Complaint of Discrimination Based upon Anonymous/Oral Complaint* form allowed an investigator to capture the facts, which identify the respondent(s) with reasonable specificity, and provide the essence of the circumstances which gave rise to the alleged discrimination.
2. Serve the respondent with a notice of the complaint that includes the respondent's right to respond to the allegations, and right to be accompanied by a representative of his/her choice. Maintain in the complaint file documentation regarding the service of notice on the respondent.
 - ✓ The agency's *Notice of Discrimination Complaint* form included the respondent's right to respond to the allegations, and the right to be accompanied by a representative of his/her choice.
3. Issue and maintain written confirmation when a complaint is withdrawn or resolved by agreement of the parties.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the principal EEO Professional issue a written report when a discrimination complaint is withdrawn and when resolution is agreed upon by both the complainant and respondent.
4. Take thorough notes, of words spoken and facts provided, during each interview. Include these notes in each complaint file. Word processed notes are preferred.
 - ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the interviewer "take thorough notes, as close to verbatim as possible, during each interview" and "review with witnesses the points contained in the notes to confirm their accuracy and determine whether the interviewee has anything to add."



**Equal Employment
Practices Commission**

5. Issue a Confidential Written Report within 90 days of the date the discrimination complaint was filed, although the investigation shall be commenced immediately.

- ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that a confidential written report be issued within 30 days of the date a discrimination complaint is filed.

6. In rare circumstances where a complaint investigation cannot commence immediately, or where a confidential report cannot be issued within 90 days, a note shall be made in the complaint file explaining the reason for the delay and projecting a time frame for completion of the report. The complainant and respondent shall be notified of the delay in writing.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area

7. Generate a report labeled "Confidential" consisting of Facts, Analysis, Conclusion, Recommendation, and Agency Head's Review at the conclusion of each complaint investigation.

- ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the principal EEO Professional prepare a confidential written report as a result of an investigation and submit the report to the agency head for review.

8. The agency head reviews the EEO professional's report; promptly issues a written/electronic determination adopting, rejecting, or modifying the recommended action; and signs each final determination (via writing or electronically) to indicate it has been reviewed and adopted.

- ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that the agency head review the EEO Professional's report; promptly issue a written/electronic determination adopting, rejecting, or modifying the recommended action; and sign each determination (via writing or electronically) to indicate it has been reviewed and adopted.

9. In order for the agency to demonstrate it has a responsive procedure for investigating discrimination complaints, in accordance with the City Human Rights Law, the complaint procedure requires written communication informing the complainant and respondent of the conclusion and outcome of a complaint investigation

- ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required written communication



informing the complainant and respondent of the outcome of an investigation once it had concluded.

10. Internal discrimination complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.

- ✓ The agency followed the *Guidelines for the Implementation of City of New York's Discrimination Complaint Procedures* which required that complaint files contain written indication of their outcomes and corrective action(s) taken as a result of the determination.

11. Notify the complainant and respondent in writing when the investigation by the EEO professional has been transferred because of the filing of an external complaint.

- ✓ The agency followed the *Equal Employment Opportunity Policy: Standards and Procedures to be Utilized by City Agencies*, which required that the principal EEO Professional notify the complainant and the parties who are the subject of the complaint in writing that the investigation by the principal EEO Professional has been transferred because of the filing of the external complaint.

12. Establish a complaint tracking and monitoring system that permits the agency to identify the location, status, and length of time elapsed in the EEO complaint process, the issues and the bases of the complaints, the aggrieved individuals, and other information necessary to analyze complaint activity to identify trends.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

13. Maintain EEO-related files in a secure area to ensure confidentiality.

- ✓ EEO-related files were kept in a locked file cabinet inside a secure room under the supervision of the principal EEO Professional. Medical records were kept in a separate confidential file under the supervision of the Disabilities Rights Coordinator.

14. Establish a procedure where the EEO professional, HR professional (or personnel responsible for employee discipline), and General Counsel review an employee's record for prior incidents of discriminatory conduct as part of the external complaint process.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

IV. EEO AND REASONABLE ACCOMMODATIONS FOR EMPLOYEES/ APPLICANTS FOR EMPLOYMENT WITH DISABILITIES:



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Practices Commission**

Determination: The agency is in compliance with the standards for this subject area.

1. Ensure that information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures are made available in appropriate alternative formats (i.e., large print, audio tape and/or Braille) upon request to employees and applicants for employment with disabilities.
 - ✓ The principal EEO Professional confirmed that the agency was prepared to provide information regarding employee rights and obligations, and the complaint, investigation and reasonable accommodation procedures in appropriate alternative formats upon request to employees and applicants for employment with disabilities. No requests for alternative formats of the EEO policies were made during the audit period.
2. Document reasonable accommodation requests and their outcomes.
 - ✓ The *Office of the City Clerk's Reasonable Accommodation Policy and Procedure* included a form to document requests for reasonable accommodation. The agency received and granted one request for reasonable accommodation during the period under review. This request and outcome was documented by the Disabilities Rights Coordinator.

**V. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES -
EEO PROFESSIONALS:**

Determination: The agency is in compliance with the standards for this subject area.

1. Appoint a principal EEO Professional to implement EEO policies and standards within the agency. The principal EEO Professional is trained and knowledgeable regarding city, federal and state EEO laws; the requirements of the agency's EEO policies, standards and procedures; and the prevention, investigation, and resolution of discrimination complaints.
 - ✓ The agency appointed an EEO Officer as its principal EEO Professional, to implement EEO policies and standards within the agency. The EEO Officer received *Basic Training for Equal Employment Opportunity Representatives* from the Department of Citywide Administrative Services in April, 2006, and updated training via the *Division of Citywide Equal Employment Opportunity Computer Based Training* in July 2009.
2. Appoint at least one EEO professional of each gender to receive discrimination complaints and conduct investigations.



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Practices Commission**

- ✓ The agency appointed at least one EEO professional of each gender, one male EEO Officer and one female EEO Counselor/Investigator, to receive discrimination complaints and conduct investigations.
3. The principal EEO Professional works cooperatively and closely with the General Counsel in the implementation of the EEO policies and related procedures.
- ✓ The principal EEO Professional and General Counsel maintained a collaborative relationship in implementing the agency's EEO policies and procedures. The General Counsel was available and prepared to give legal advice to the principal EEO Professional on how to best respond to internal discrimination complaints.
4. The principal EEO Professional ensures that employees receive EEO training; supervises the EEO-related activities of other EEO professionals; ensures that EEO policies and complaint procedures are posted at each site where the agency conducts business; ensures that EEO policies and procedures are available in alternative formats (i.e., large print, audio tape and/or Braille); and provides guidance and assistance to agency managers, supervisors and human resource professionals in addressing issues relating to equal employment opportunity.
- ✓ The principal EEO Professional supervised EEO related activities of other EEO professionals by ensuring that they had the most updated information on all EEO policies and overseeing the agency's response to reasonable accommodation requests, provided assistance to other staff on EEO matters, and ensured that EEO policies and complaint procedures were posted at the agency. Other responsibilities included investigating discrimination complaints and reporting the findings. (See Sections II.1. Note regarding employee training, and IV.1. for alternative format availability.)
5. The principal EEO Professional will monitor, analyze and report significant trends in the nature and disposition of discrimination complaint activity to provide the agency insight into the extent to which the agency is meeting its obligations under city, state and federal anti-discrimination laws and regulations.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area.

6. The principal EEO Professional reports directly to the agency head (or an approved direct report other than the General Counsel) in order to exercise the necessary authority and independent judgment to fulfill EEO responsibilities.
- The principal EEO Professional reported directly to the agency head on EEO related matters, however, the organizational chart for the audit period did not reflect the reporting relationship between the principal EEO Professional and the agency head.



NOTE: The current organizational chart, submitted on September 19, 2014, reflects the reporting relationship between the principal EEO Professional and the agency head.

VI. RESPONSIBILITY FOR IMPLEMENTATION OF COMPLAINT INVESTIGATION PROCEDURES – GENERAL COUNSEL:

Determination: The agency is in compliance with the standards for this subject area.

1. The General Counsel assists the agency head in identifying and determining appropriate responses to EEO issues; and is responsible for the investigation of, and response to, external EEO complaints.
 - ✓ The General Counsel provided consultation to the agency head on suitable responses to EEO issues that arose during the audit period. In addition, the General Counsel was responsible for investigating and responding to external EEO complaints.
2. The General Counsel works with the principal EEO Professional in the implementation of the agency's EEO policies and related procedures; is available to consult on internal EEO investigations; and informs the principal EEO Professional when external complaints or litigation involving EEO matters are brought against the agency.
 - ✓ The General Counsel provided consultation to the principal EEO Professional on the implementation of the agency's EEO policies and procedures and was responsible for providing consultation on internal EEO investigations as needed. In addition, the General Counsel was responsible for informing the principal EEO Professional when an EEO related external complaint was brought against the agency.
3. The General Counsel reviews the agency's annual number of EEO complaints and the agency's obligations as a result of corrective actions required under court decrees and/or governmental audits on an annual basis.

NOTE: The agency reported no employment discrimination complaints were filed internally or externally and no court decrees were in effect during the audit period. Therefore, the Commission did not conduct further analysis in this area.

4. The General Counsel tracks dispositions of external complaints and reports trends, issues and problems to agency leadership for appropriate action.

NOTE: Since no complaints were filed during the audit period, the Commission did not conduct further analysis in this area.



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Practices Commission**

VII. FINAL ACTION FOR AGENCY HEAD:

After implementation of the EEPC's corrective actions, if any:

1. The agency head distributes a memorandum informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Final Action: Distribute a memorandum signed by the agency head informing employees of the changes implemented in the EEO program pursuant to the EEPC's audit/analysis and re-emphasizing the agency head's commitment to the EEO program.

Conclusion

Pursuant to Chapter 36 of the New York City Charter, your agency has the *option* to respond to this *preliminary determination*, but must respond to our Final Determination if corrective action is required.

Optional Response to preliminary determination: If submitted, your optional response should indicate, with attached documentation, what steps your agency has taken or will take to implement the prescribed corrective actions, and must be received in our office within 14 days from the date of this letter. No extensions will be granted for the *option* to respond to the *preliminary determination*.

(Optional Conference) During the Optional Conference, we will discuss the immediate steps your agency should take and address questions regarding your agency's implementation of the prescribed corrective action(s).

(No Response Option) If your agency does not respond to this preliminary determination within 14 days, it will become the EEPC's Final Determination.

Mandatory Response to Final Determination: Following this preliminary determination, the EEPC will mail a Final Determination where we may modify or eliminate the corrective actions based on verified information; identify remaining action which requires further monitoring in order to ensure implementation; and assign a mandatory compliance-monitoring period of up to 6 months for this purpose. Pursuant to Chapter 36 of the New York City Charter your agency must respond to our Final Determination within 30 days. Your response to the Final Determination will initiate the compliance monitoring period.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's EEO Program Analysts during the course of our audit and analysis.



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Respectfully Submitted by,

A handwritten signature in cursive script that reads "Emily Nell".

Emily Nell, EEO Program Analyst

Approved by,

A handwritten signature in cursive script that reads "Charise L. Hendricks".

Charise L. Hendricks, PHR
Executive Director

cc: Jose Gonzalez, Principal EEO Professional