



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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October 26, 2005

Honorable Robert M. Morgenthau
District Attorney, New York County
One Hogan Place
New York, NY 10013

Re: Resolution #05/13-901/Preliminary Determination Pursuant to the Audit of the New York County District Attorney's Office's (DANY) Equal Employment Opportunity Program from January 2003 through December 31, 2004

Dear Mr. Morgenthau:

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, women and other protected classes. (New York City Charter, Chapter 36, sections 831(d)(2) and (5).)

The Charter defines city agency as any "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." The New York County District Attorney's Office is funded by the City of New York and is therefore considered a city agency pursuant to Chapter 36, section 831(a) of the New York City Charter.

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 programs for minority group members, women and other protected classes. The audit measures DANY's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the 1996 Citywide EEO Policy. All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the 2005 Citywide EEO Policy. The relevant sections of these guidelines and documents are cited in

parenthesis, where applicable, at the end of each recommendation. In addition, DANY recently informed the Commission that its EEO policies will incorporate most of the 2005 Citywide EEO Policy.

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

Scope and Methodology

Audit methodology included a review of DANY's Equal Employment Opportunity Policy and a review of responses to a Commission Document and Information Request Form. EEPC auditors also conducted in-depth, on-site interviews with the EEO Officer and two EEO Coordinators. In addition, EEPC auditors interviewed twelve supervisors to determine awareness of their rights and responsibilities under the agency's EEO Policy. The results of these interviews are attached. (Appendix 1)

A survey of 1221 people employed by DANY during the audit period was distributed. Two hundred and seventy-nine people (22.8%) responded. The results of these surveys are discussed in the proceeding pages and also attached. (Appendix 5)

Description of the Agency

Pursuant to Article 13 of the State Constitution, District Attorneys are constitutional officers elected every four years. Section 927 of the County Law imposes upon District Attorneys the duty to protect the public by investigating and prosecuting criminal conduct in the counties in which they hold office.

Personnel Activity During the Audit Period

During the audit period, 332 people were hired: 238 Caucasians, 30 African-Americans, 29 Hispanics, and 35 Asians. One hundred and ninety-seven of the hires were women. Two hundred and fifty-nine people were promoted during the period in review: 143 Caucasians, 45 African-Americans, 41 Hispanics, and 30 Asians. One hundred and sixty of those promoted were women.

DANY reports that 8 employees were involuntarily separated during the audit period: 4 Caucasians, 2 African-Americans, and 2 Hispanics. Two of those individuals were women.

Between January 1, 2003 and December 31, 2004, the total number of DANY employees decreased by 6.6%, going from 1355 to 1266. There were small percentage increases for Hispanics (13.5% to 13.7%), Asians (7.7% to 7.9%), and women (53.6% to 54.3%). The percentage of African-Americans declined slightly (18.5% to 18.1%). (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

Four internal discrimination complaints were filed during the audit period: 1 was based on gender, 1 was based on race, 1 was based on retaliation, and one was based on race and national origin. All four complaints received no probable cause determinations. No complaints were pending at the end of the audit period.

Two external discrimination complaints were filed during the period in review: 1 was based on age and 1 was based on national origin. Both complaints were "closed with no finding" by the U.S. Equal Employment Opportunity Commission.

PRELIMINARY DETERMINATION

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

Plan Dissemination – Internally

DANY is in compliance with the following requirements:

1. The agency has issued an EEO Policy Statement, Sexual Harassment Prevention Policy Statement, Americans with Disabilities Act Policy Statement, and an Internal Discrimination Complaint Procedure.

2. Those Statements and Procedure are distributed about once a year to agency staff. In addition, those documents are contained in the agency's EEO Pamphlet and Legal Staff and Support Staff Handbooks (EEO Program sections). The latter two documents, in turn, are part of the new hire package. Eleven of the 12 supervisors (91.7%) interviewed by EEPC auditors indicated they had a copy of DANY's EEO Policies.

3. DANY's EEO Policies are posted on agency bulletin boards at its two locations: One Hogan Place and 80 Centre Street. The EEO Officer and the human resources department conduct periodic checks of those boards. In addition, 76.4% of survey respondents indicated that the EEO Policy Statement is posted on agency bulletin boards.

DANY is not in compliance with the following requirements:

1. Although DANY's Support Staff and Legal Staff Employee Handbooks (EEO Program sections) contain the correct addresses and telephone numbers of the human rights agencies, the agency's EEO Pamphlet contains an out-of-date address and telephone number for the U.S. Equal Employment Opportunity Commission (EEOC). Corrective action is required.

Recommendation: DANY's EEO Pamphlet should be revised to reflect the current address and telephone number for the U.S. Equal Employment Opportunity Commission.

2. The agency's EEO Policy Statement and Internal Discrimination Complaint Procedure do not contain the current list of "protected classes" under the New York City and New York State Human Rights Laws. Specifically, those documents fail to indicate that it is illegal to discriminate on the basis of: gender (including "gender identity"), military status, prior arrest or conviction, marital status, genetic predisposition or carrier status, or status as a victim of domestic violence, a sex offense or stalking. Corrective action is required.

Recommendation: The agency's EEO Policy Statement and Internal Discrimination Complaint Procedure should be revised to include all of the protected classes under the New York City and New York State Human Rights Laws.

3. DANY's Internal Discrimination Complaint Procedures lack several important components contained in the City's Discrimination Complaint Procedures Implementation Guidelines (DCPIG, 1993). Specifically, DANY's document does not require: 1) the EEO investigator's confidential written report be submitted to the agency head for his or her signature (to signify review and approval), and 2) the respondent(s) be notified in writing of the disposition of the case. Corrective action is required.

Recommendation: DANY's Internal Discrimination Complaint Procedures should be revised to include the following requirements of the City's Discrimination Complaint Procedures Implementation Guidelines: 1) the EEO investigator's confidential written report be submitted to the agency head for his or her signature (to signify review and approval), and 2) the respondent(s) should be notified in writing of the disposition of the case.

4. The nine internal job vacancy notices submitted by DANY do not contain the EEO tag line. Corrective action is required.

Recommendation: All agency recruitment literature, including internal job postings, should indicate that DANY is an equal opportunity employer. (Sect. IV, Citywide EEO Policy)

Plan Dissemination – Externally

DANY is in compliance with the following requirement:

The five job advertisements submitted by DANY (placed in the *New York Times*, *Daily News*, *Chief-Leader*, and *Monster.com*) indicate that the agency is in equal opportunity employer.

Affirmative Action and Reasonable Accommodation for Persons with Disabilities

DANY is in compliance with the following requirements:

1. The EEO Officer has been appointed the ADA Coordinator.
2. DANY has made a number of reasonable accommodations for persons with disabilities. The EEO Officer cited the following examples: the agency reconfigured the offices

of two assistant district attorneys in wheelchairs, and changed the work shifts of, and provided voice recognition software to, some other disabled employees.

3. DANY's offices are located in buildings maintained by the Department of Citywide Administrative Services (DCAS). DANY retained an architectural firm to do an accessibility study of its two locations. The study found a number of ADA problems involving, among other things, bathrooms and lighting. DANY has been working with DCAS to correct those problems. In addition, 81% of survey respondents indicated DANY has made facilities accessible for persons with disabilities.

DANY is not in compliance with the following requirements:

1. The EEO Officer told EEPC auditors that the agency's EEO policies are not available in alternate formats for persons with disabilities. Corrective action is required.

Recommendation: The agency should follow Section VB of the Citywide EEO Policy and ensure that its EEO policies are available in "appropriate alternate formats to employees with disabilities."

2. Although DANY has issued an Americans With Disability Act Grievance Procedures (for the resolution of complaints alleging violation of Title II of the ADA), the agency has not issued a reasonable accommodation procedure for persons with disabilities. Corrective action is required.

Recommendation: DANY should adopt and tailor the City's Reasonable Accommodation Policy and Procedure, available at www.nyc.gov/html/dcas.

DANY is in partial compliance with the following requirement:

Although DANY participates in the "Job Path" Program (a non-profit program that assists adults with developmental disabilities in securing employment in the community), the agency does not participate in the Section 55-A Program. The Citywide 55-A Program Coordinator (DCAS) told EEPC auditors that all city agencies—including non-mayoral agencies—that have competitive city titles are eligible to and should participate in this program. The Coordinator also indicated that a number of non-mayoral agencies are participating in that program. Corrective action is required.

Recommendation: DANY should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the Department of Citywide Administrative Services.

EEO Complaint and Investigation System

DANY is in compliance with the following requirements:

1. The agency has appointed individuals of both genders (a male EEO Officer, three male EEO Coordinators, and two female EEO Coordinators) to receive and investigate discrimination complaints.

2. The EEO Officer maintains and updates a monthly discrimination complaint log.

DANY is in partial compliance with the following requirement:

Although the EEO Officer took some courses on employment law at the Practicing Law Institute, Rutgers University, and Cornell University's School of Industrial and Labor Relations (EEO Studies Program), he did not receive a certificate in EEO Studies from Cornell or attend DCAS's training for EEO professionals. The EEO Officer also informed EEPC auditors that the EEO Coordinators have received less EEO training than he; they attended some Cornell University courses but did not receive certificates. In addition, the two EEO Counselors interviewed by EEPC auditors stated that they need additional EEO training to properly discharge their duties. Corrective action is required.

Recommendation: Since knowledgeable EEO professionals are essential to the success of the EEO Program, and to ensure that EEO professionals have a uniform body of knowledge, the EEO Officer and EEO Coordinators should be scheduled for training conducted by DCAS (Office of Citywide EEO) or enrolled in training conducted by another appropriate agency or school, such as the EEO Studies Program of Cornell University's School of Industrial and Labor Relations. The EEO professionals should obtain the certificate or otherwise complete the program at the institutions selected by DANY. (Sect. VB, Citywide EEO Policy)

EEO Training

DANY is in compliance with the following requirement:

DANY has developed a plan to provide EEO training to all new and existing employees. The EEO Officer and the Director of Support Staff Training (who completed DCAS's training for EEO professionals) developed the training, which includes components on preventing harassment and discrimination and the Americans with Disabilities Act. The EEO training is conducted by the two officials listed above and an Assistant District Attorney. In addition, 91.7% of supervisors interviewed by EEPC auditors and 87.2% of survey respondents indicated that they had received sexual harassment prevention training at DANY.

DANY is not in compliance with the following requirement:

According to the EEO Officer, the Assistant District Attorney who conducts EEO training with him has received "similar training"; he (Assistant D.A.) has not completed the certificate program in EEO Studies from Cornell University's School of Industrial and Labor Relations or attended DCAS's training for EEO professionals. Corrective action is required.

Recommendation: The Assistant District Attorney who conducts EEO training should be scheduled for training conducted by DCAS or enrolled in training conducted by another

appropriate agency or school, such as the EEO Studies Program at Cornell University's School of Industrial and Labor Relations. The Assistant D.A. should obtain the certificate or otherwise complete the program at the institution selected by DANY.

EEO Officer Reporting Arrangement

DANY is in compliance with the following requirement:

The EEO Officer reports to the agency head on EEO matters.

DANY is not in compliance with the following requirement:

The EEO Officer informed EEPC auditors that he does not keep agendas or notes of his meetings on EEO matters with the agency head. Corrective action is required.

Recommendation: It is the Commission's position that appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding EEO decisions should be maintained.

EEO Officer Responsibilities

DANY is in compliance with the following requirement:

The EEO Officer is actively involved in the recruitment process; he discusses recruitment sources and strategies with the Director of Legal Hiring, and "influences" the recruitment decisions of the latter official.

Recruitment

DANY is in compliance with the following requirement:

The EEO Officer "constantly" analyzes the agency's workforce to determine if women and/or minorities are underrepresented in particular job categories. As a result of his analysis, the agency has engaged in targeted recruitment for minority attorneys since the 1980s: DANY recruits at historically black colleges, and attends minority conferences and job fairs.

Special Problems

1. The EEO Officer told EEPC auditors that he devotes just 20% of his time to EEO matters; the balance is devoted to his duties as the Administrative Assistant District Attorney. In that capacity, he oversees the following divisions: personnel, payroll, operations, fiscal, library, records, support staff training, and MIS. Corrective action is required.

Recommendation: It is the Commission's position that agencies with at least 750 employees should have full-time EEO Officers. DANY had 1266 employees at the end of the audit period.

2. DANY uses 5 performance evaluation forms for all staff (supervisory and non-supervisory): the Appeals Bureau Evaluation Worksheet, the Investigator Evaluation Worksheet, the Trial Division/Narcotics/Investigation Division Worksheet, the Financial Crimes Bureau Worksheet, and the Support Staff Evaluation Worksheet. None of those evaluation forms contain a rating for EEO performance. In addition, all 7 of the supervisors/managers to whom the question applied told EEPC auditors that their performance evaluation does not include an EEO rating section. Corrective action is required.

Recommendation: The agency's performance evaluation forms should be revised to include a rating for the EEO performance of supervisors/managers. The agency may adopt the relevant rating ("Utilizing Human Resources") contained in the citywide managerial performance evaluation form.

3. Forty-four percent of survey respondents indicated they do not know who is the EEO Officer. Corrective action is required.

Recommendation: All employees should receive written notification of the identity, location, and telephone number of the agency's EEO Officer. (Sect. IV, Citywide EEO Policy)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. DANY's EEO Pamphlet should be revised to reflect the current address and telephone number for the U.S. Equal Employment Opportunity Commission.
2. The agency's EEO Policy Statement and Internal Discrimination Complaint Procedure should be revised to include all of the "protected classes" under the New York City and New York State Human Rights Laws.
3. DANY's Internal Discrimination Complaint Procedures should be revised to include the following requirements of the City's Discrimination Complaint Procedures Implementation Guidelines: 1) the EEO investigator's confidential written report should be submitted to the agency head for his or her signature (to signify review and approval), and 2) the respondent(s) should be notified in writing of the disposition of the case.
4. All agency recruitment literature, including internal job postings, should indicate that DANY is an equal opportunity employer. (Sect. IV, Citywide EEO Policy)
5. The agency should ensure that its EEO policies are available in "appropriate alternate formats to employees with disabilities." (Sect. VB, Citywide EEO Policy)
6. DANY should adopt and tailor the City's Reasonable Accommodation Policy and Procedure, available at www.nyc.gov/html/dcas/html/resources/eoo.html.
7. DANY should participate in the Section 55-A Program. At a minimum, the agency should obtain and distribute Program brochures issued by the Department of Citywide Administrative Services.

8. The EEO Officer and EEO Coordinators should be scheduled for training conducted by DCAS (Office of Citywide EEO) or enrolled in training conducted by another appropriate agency or school, such as the EEO Studies Program at Cornell University's School of Industrial and Labor Relations. The EEO professionals should obtain the certificate or otherwise complete the program at the institutions selected by DANY. (Sect. VB, Citywide EEO Policy)
9. The Assistant District Attorney who conducts EEO training should be scheduled for training conducted by DCAS or enrolled in training conducted by another appropriate agency or school, such as the EEO Studies Program at Cornell University's School of Industrial and Labor Relations. The Assistant District Attorney should obtain the certificate or otherwise complete the program at the institution selected by DANY.
10. It is the Commission's position that appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding EEO decisions should be maintained.
11. It is the Commission's position that agencies with at least 750 employees should have full-time EEO Officers.
12. The agency's performance evaluation forms should be revised to include a rating for the EEO performance of supervisors/managers. The agency may adopt the rating ("Utilizing Human Resources") contained in the citywide managerial performance evaluation form.
13. All employees should receive written notification of the identity, location, and telephone number of the agency's EEO Officer. (Sect. IV, Citywide EEO Policy)

In addition to the above recommendations, during the compliance process, the Commission requires that the agency 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 DANY's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in City guidelines, we respectfully request your response to the aforementioned preliminary determinations.

Your response should indicate what corrective actions your agency will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. As your EEO Officer informed us during the exit meeting of October 19, 2005, you have already implemented some of our recommended corrective actions. Please specify those

corrective actions in your response. 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 the recommendations for corrective actions during a compliance period not to exceed six months, this Commission must 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 want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission auditors during the course of this audit. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,

A handwritten signature in dark ink, appearing to read 'E. Hart', is written over a faint, circular embossed seal or stamp.

Ernest F. Hart, Esq.
Chair

APPENDIX - 1

DISTRICT ATTORNEY - NEW YORK SUPERVISOR SURVEY RESULTS

1. Are you familiar with your agency's EEO Policy? Please describe it.
(11) Yes (1) No
2. Are you familiar with your rights and responsibilities under your agency's EEOP? What are they?
(10) Yes (2) No
3. Do you have a copy of your agency's EEO Policies?
(11) Yes (0) No (1) Do not know
4. Do you have a copy of your agency's discrimination complaint procedure?
(11) Yes (0) No (1) Do not know
5. Have you ever reaffirmed or stated the agency's commitment to EEO during staff meetings?
(3) Yes (9) No
5. Do you inform employees (when necessary) that they have a right to file a discrimination complaint with the agency's EEO Officer?
(8) Yes (4) No
7. Have you received your agency's EEO and Sexual Harassment Policy Statements?
(10) Yes (0) No (2) Do not remember
3. Are your EEO and sexual harassment policies available on your computer?
(1) Yes (2) No (9) Do not know
3. If so, do you find accessing the policies difficult?
(0) Yes (0) No (12) N/A
3. Have you received preventive sexual harassment training from your agency?
(11) Yes (1) No (0) Do not remember
1. Did all the employees in your unit receive sexual harassment prevention training?
(11) Yes (0) No (1) Do not know
2. If you have been employed for less than five years, did you receive a new employee orientation session?
(3) Yes (0) No (9) greater than 5 years
3. Do you participate in new employee orientation sessions?
(3) Yes (9) No

(SUPERVISOR RESULTS CONTINUED

- 4. (If yes to either) Do new employee orientation sessions include information on your agency's EEO policies?
(2) Yes (1) No (8) No orientation (0) Do not know

- 5. Are you involved in the interviewing process for new employees?
(10) Yes (2) No

- 6. If yes, did your agency provide you with training and a structured interview guide for interviewing new hires?
(7) Yes (3) No

- 7. Do you know who your agency's EEO Officer is? What is his/her name?
(12) Yes (0) No _____

- 8. Has the EEO Officer met with you, either as an individual or in a group setting, to discuss your rights and responsibilities under the city's EEO policy?
(9) Yes (2) No (1) Do not remember

- 9. Does your performance evaluation include a section where you are rated on your EEO performance?
(0) Yes (7) No (5) No evaluation

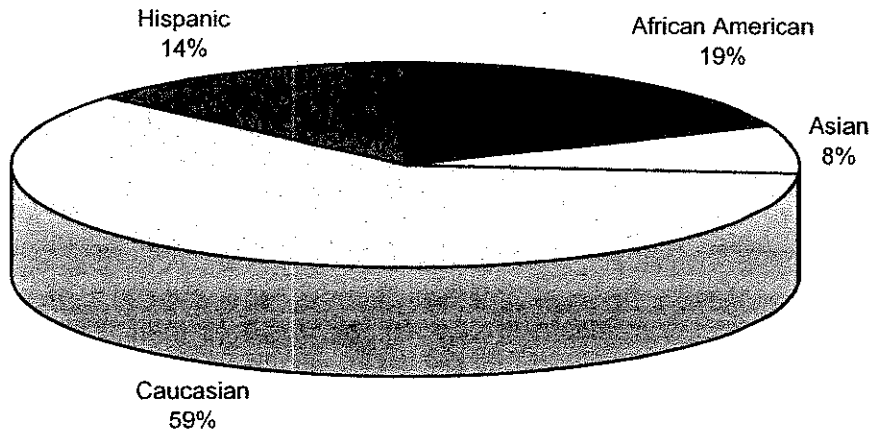
- 10. Were you informed that EEO performance will be part of your overall performance evaluation and will be considered in determining your eligibility for promotions and merit increases?
(0) Yes (0) No (12) N/A

- 11. Do you feel you have enough training to respond knowledgeably to an employee who complains about discrimination or harassment?
(12) Yes (0) No

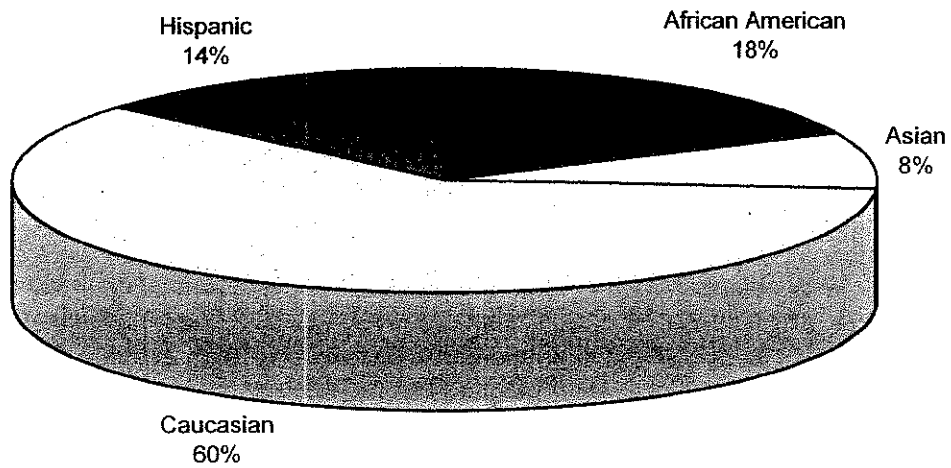
- 12. Do you have any additional comments about EEO in your agency?
(4) Yes (8) No

Appendix - 2

District Attorney-New York Workforce by Ethnicity



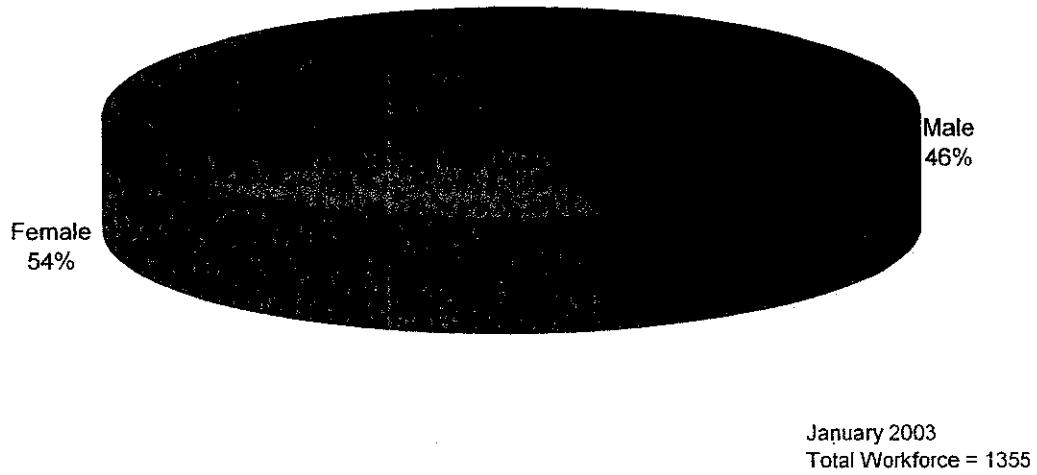
January 2003
Total Workforce = 1355



December 2004
Total Workforce = 1266

Appendix - 3

District Attorney-New York Workforce by Sex



APPENDIX – 4

The following tables indicate personnel activity during the audit period, January 1, 2003 through December 31, 2004.

NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE Hires by Sex and Race

Total: 332

MALE	FEMALE	TOTAL	CAUCASIAN	AFRICAN-AMERICAN	HISPANIC	ASIAN	TOTAL
135	197	332	238	30	29	35	332

NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE Promotions by Sex and Race

Total: 259

MALE	FEMALE	TOTAL	CAUCASIAN	AFRICAN-AMERICAN	HISPANIC	ASIAN	TOTAL
99	160	259	143	45	41	30	259

Source: Audit data supplied by DANY

APPENDIX - 5

District Attorney-New York Survey Results

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (157) No (121)
2. Is your agency's EEO policy statement posted on the agency bulletin boards?
Yes (191) No (59)
3. Is your agency's Sexual Harrassment Policy Statement posted on the agency bulletin boards?
Yes (182) No (61)
4. Were you given the EEO Policy Statement?
Yes (167) No (16) Do not remember (91)
5. Were you given the Sexual Harassment Policy Statement?
Yes (221) No (13) Do not remember (42)
6. Do you have a copy of the Discrimination Complaint Procedures?
Yes (124) No (63) Do not remember (90)
7. Do you agree with the principles of Affirmative Action?
Yes (178) No (66)
8. Do you know what your agency's EEO Plan is?
Yes (100) No (178)
9. Do you know how to obtain your agency's EEO Plan?
Yes (155) No (121)
10. Did your supervisor hold meetings with staff to discuss the agency's EEO policies?
Yes (67) No (128) Do not remember (80)

B. EEO COMPLAINTS

11. Do you know how to file an EEO Complaint?
Yes (137) No (138)
12. If you had a discrimination complaint, would you bring it to your agency's EEO Officer?
Yes (165) No (30) Undecided (78)

DAILY SURVEY RESULTS CONTINUED

13. Did you ever file a discrimination complaint with the EEO Office?

(If No, please skip to question #17)

Yes (10) No (267)

14. What was the basis of the complaint? _____

15. Were you satisfied with the manner in which your complaint was managed?

Yes (2) No (7)

16. Was your manager or supervisor supportive of your right to file a complaint?

Yes (4) No (4) N/A (0)

C. SEXUAL HARASSMENT

17. Did you receive Sexual Harassment Prevention training? (If No, please skip to question #19)

Yes (239) No (35)

18. Did you find this training helpful?

Very (0) Somewhat (98)
Not really (35) Waste of time (33)

19. Would you prefer to file a sexual harassment complaint with an office outside your agency instead of your agency's EEO office?

Yes (102) No (164)

D. JOB ADVANCEMENT

20. Do you see job postings on agency bulletin boards for vacant positions prior to the application deadline?

Yes (236) No (23) Do not remember (14)

21. Do you believe your agency practices equal employment opportunity?

Yes (222) No (46)

AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

22. Has your agency made facilities accessible for persons with disabilities?

Yes (206) No (48)

DAILY SURVEY RESULTS CONTINUED

23. Did you ever ask for an accommodation for a physical or mental disability?

Yes (29) No (231)

24. If so, did the agency accommodate you?

Yes (18) No (6)

OPTIONAL

25. What is your race/ethnicity? _____

26. What is your sex?

Male (91) Female (132)