



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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September 9, 2011

Robert T. Johnson, District Attorney

Bronx County

198 East 161st Street

Bronx, New York 10451

Re: Resolution #11/13-902: Preliminary Determination Pursuant to the Audit of Compliance by the Bronx County District Attorney's Office (DABC) with its Equal Employment Opportunity Policy from July 1, 2007 through June 30, 2010.

Dear District Attorney Johnson:

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 831(d)(2) and (5).)

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..." The Office of the Bronx County District Attorney (DABC) 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. This audit measures the DABC's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Federal, State and City Human Rights Laws. All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the DABC's Equal Employment Opportunity (EEO) Policy and

Discrimination Complaint Procedure. In addition, this Commission is empowered by Section 831 of the City Charter to recommend 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 standards cited above, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included an analysis of the agency's responses to an EEPC Document and Information Request Form. The EEPC conducted electronic interviews with the DABC's EEO Administrator/Disability Rights Coordinator/55a Coordinator, six EEO Counselors/Investigators, and Agency Counsel. The EEPC also conducted an interview with the agency's EEO Administrator. In addition, 859 employees received an electronic link to the *EEPC's Employee Survey*; 207 people (24%) responded. Also, 75 supervisors/managers received an electronic link to the *EEPC's Supervisor/Manager Survey*; 39 people (52%) responded. Survey findings are attached (Appendix 5).

Description of the Agency

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

Personnel Activity During the Audit Period

According to data provided by the DABC, during the audit period 276 people were hired: 126 Caucasians, 71 African-Americans, 59 Hispanics, 18 Asians, and 2 Multi/other. Of the individuals hired, 167 were female. 120 individuals were promoted during the audit period: 26 Caucasians, 44 African Americans, 43 Hispanics, 3 Asians, and 4 Multi/other; 79 were female. (Appendix 4)

The DABC reports that 31 employees were involuntarily separated during the audit period: 14 African Americans, 7 Caucasians, and 10 Hispanics; 24 were female. Between July 1, 2007 and June 30, 2010, the total number of employees decreased from 822 to 794. The number of Asian employees increased from 32 to 34, Caucasians increased from 329 to 345, Hispanics decreased from 211 to 190, African Americans decreased from 221 to 201, and the number of employees that were Multi/other decreased by 29 to 24. The number of female employees decreased from 494 to 478. (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

The DABC reports that six internal discrimination complaints were filed during the audit period; 3 complaints, based on sexual harassment, received a probable cause determination.

Four external discrimination complaints based on sexual harassment and age discrimination were filed with the Equal Employment Opportunity Commission and the NYS Division on Human Rights and were still pending during the audit period. There were no pending internal complaints during the audit period.

Legal Activity

According to the agency, there was one EEO settlement for \$55,000 within the past 5 years. Another EEO lawsuit, filed in 2009 based on sexual harassment, was pending.

PRELIMINARY DETERMINATION

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

EEO Policy

The DABC is in compliance with the following requirements:

1. The agency distributed its EEO Policy to all new employees during new hire orientation. The new hire packet included the EEO Policy and Policy Statement, Sexual Harassment Prevention Policy, Reasonable Accommodations Policy and Discrimination Complaint Procedure. In addition, 95% of the respondents to the *EEPC's Supervisor/Manager Survey* indicated they received a copy of the agency's EEO Policy Statement and 87% indicated the agency's Discrimination Complaint procedure was included with the EEO policy.
2. The EEO policies and policy statements are posted in areas that are accessible to all employees. Eighty-three percent of the respondents to the *EEPC's Employee Survey* said that the EEO Policy is posted on the agency's bulletin boards or kept in an area otherwise accessible to employees. In addition, 95% of the respondents to the *EEPC's Supervisor/Manager Survey* indicated the policy can be found in the HR office; 90% said it can be found on the intranet; and 67% said the policy is most accessible on the intranet.
3. The agency's EEO policy included an up to date list of protected classes and information on external agencies that handle complaints.

EEO Training Standards

The DABC is in compliance with the following requirements:

The agency has developed a plan to ensure that all new and existing employees receive EEO and Sexual Harassment training. During the audit period, all employees received online EEO training on preventing sexual harassment and preventing employment discrimination conducted by New Media Learning. The agency implemented this mandatory online EEO training for all employees. In addition, 71% of the respondents to the *EEPC's Employee Survey* indicated they received EEO training within the past 2 years. Also, 72% of the respondents to the *EEPC's*

Supervisor/Manager Survey indicated they completed the Department of Citywide Administrative Services' (DCAS) Division of Citywide EEO Computer Based Training.

Discrimination Complaint and Investigation Procedures

The DABC is in compliance with the following requirements:

1. The DABC has established Discrimination Complaint procedures. The agency's EEO Counselors/Investigators received and investigated discrimination complaints in conformance with these procedures.
2. Five of the agency's 6 EEO Counselors/Investigators completed the basic training course for EEO professionals conducted by the Department of Citywide Administrative Services (DCAS). One EEO Counselor/Investigator received online EEO training conducted by New Media Learning which included a component on preventing employment discrimination.
3. The EEO Administrator maintains a monthly log of discrimination complaints filed against the agency.
4. The agency has identified its EEO Professionals by posting their names and contact information in the agency's EEO Policy and on the agency's intranet.

The DABC is not in compliance with the following requirement:

Complaint # 2008-02 did not contain a written notice to respondent regarding the outcome of the investigation. Corrective action required.

Recommendation: All parties should be notified in writing of the outcome of a complaint. (Complaint Procedures section, page 7, DABC EEO Policy)

Selection and Recruitment System

The DABC is in compliance with the following requirements:

1. The agency conducted annual performance evaluations for managerial and non-managerial employees during the audit period. In addition, 83% of the respondents to the EEPC's *Employee Survey Questionnaire* indicated that they received annual performance evaluations within the past 3 years. Also, 56% of the respondents to the EEPC's *Supervisor/Manager Questionnaire* indicated that they received their last performance evaluation within the past year.
2. All five job vacancy notices posted during the audit period indicated that the office of the Bronx District Attorney is an Equal Opportunity Employer.

3. The agency provided structured interview training for employees who conducted job interviews. In addition, 68% of the respondents to the *EEPC's Supervisor/Managers Survey* indicated they received training, a guide, or both.
4. The agency included minority colleges and job fairs on its list of recruitment resources (i.e. Northeastern Black Law Student Association, Howard University School of Law, and the Southeastern Minority Job Fair).

The DABC is in partial compliance with the following requirement:

The three job advertisements posted in the Chief and The New York Post included the EEO tag line; however, the 2 job ads for Video Services Technician and Purchasing Assistant posted on careerbuilder.com did not include the EEO tag line. Corrective action required.

Recommendation: All agency recruitment literature should indicate that the agency is an equal opportunity employer. (EEPC/Sect. 831, City Charter)

EEO Professionals

The DABC is in compliance with the following requirements:

1. EEO professionals of both genders are available to investigate discrimination complaints. The agency appointed 3 female and 3 male EEO Counselors/Investigators who investigate discrimination complaints. An EEO Administrator oversees the EEO Program to insure that EEO complaints are handled correctly and in a timely fashion by these six EEO Counselors/Investigators. In addition, 69% of the respondents to the *EEPC's Employee Survey* indicated they know who the agency's EEO Officer is.
2. The EEO Administrator meets with EEO Counselors/Investigators twice a year and on an "as needed" basis to review their work and keep them abreast of internal and external EEO developments. Notes and agendas of these meetings are kept.
3. The EEO Administrator reports to the agency head on EEO matters.

The DABC is partial compliance with the following requirements:

1. Although the EEO Administrator reports to the agency head on EEO matters, the agency's organizational chart does not indicate this reporting relationship. The EEO Administrator/Officer title is not indicated on the chart. Corrective action is required.

Recommendation: The agency should update its organization chart to reflect the reporting relationship of the EEO Administrator and agency head. (EEPC/Sect. 831, City Charter)

2. Although the EEO Administrator meets with the agency head, notes or an agenda of meetings with the agency head when discussing EEO operational decisions were not kept. Corrective action required.

Recommendation: It is the Commission's position that appropriate documentation of meetings and other communications between the EEO Administrator and the agency head regarding decisions that impact the administration of the agency's EEO program be maintained. (EEPC/Sect. 831, City Charter)

EEO for Persons with Disabilities

The DABC is in compliance with the following requirements:

1. The agency participated in the Section 55-A program. Information about the 55-a program was provided during orientation with the new hire package and accessible in the HR office. Currently there is one program participant.
2. The DABC's response to the EEPC's accessibility for persons with disabilities checklist indicated that its offices at 265 E. 161st Street (92 employees), 198 E. 161st Street (448 employees), and 215 E. 161st Street (262 employees), are accessible to, and useable by persons with disabilities. Each facility has a street accessible entrance, ramp access, wheelchair accessible elevators, Braille and a bell in the elevators, wide restroom stalls, grab bars, and low sink or bathroom fixtures. The DABC's Crime Victims Assistance Unit Satellite office at 4101 White Plains Road has 3 employees at the facility and has a street accessible entrance, ramp access, wide restroom stalls, grab bars, and low sink or bathroom fixtures. The facility does not have an elevator, but has a lift to access the 3rd floor offices. The agency indicated that if an employee with a disability is hired, the employee would be stationed at any of the agency's ground floor offices accessible to individuals with disabilities.
3. The agency provided reasonable accommodations for two employees during the audit period. Accommodations for a schedule change and a transfer to another bureau were granted.
4. The agency is committed to providing alternate format for persons with disabilities (i.e. audio tape) of its policies to employees and applicants upon request.

The DABC is in partial compliance with the following requirements:

Although the agency's EEO Policy indicates the agency's EEO Administrator as the person who handles reasonable accommodation requests, 77% of the respondents to the *EEPC's Employee Survey* stated that they do not know who the *Disability Rights Coordinator* (the person responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state, and local laws, as well as City and agency policies pertaining to persons with disabilities) is. Corrective action required.

Recommendation: To ensure that all employees are aware of the person responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities, the agency should re-distribute to all employees in writing the name, location, and telephone number of this person. (EEPC/Sect. 831, City Charter)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. All parties should be notified in writing of the outcome of a complaint. (Complaint Procedures, page 7, DABC EEO Policy)
2. All agency recruitment literature should indicate that the agency is an equal opportunity employer. (EEPC/Sect. 831, City Charter)
3. The agency should update its organization chart to reflect the reporting relationship of the EEO Administrator and agency head. (EEPC/Sect. 831, City Charter)
4. It is the Commission's position that appropriate documentation of meetings and other communications between the EEO Administrator and the agency head regarding decisions that impact the administration of the agency's EEO program be maintained. (EEPC/Sect. 831, City Charter)
5. To ensure that all employees are aware of the person responsible for handling reasonable accommodation requests and ensuring compliance with all federal, state, and local laws, as well as City and agency policies, pertaining to persons with disabilities, the agency should re-distribute to all employees in writing the name, location, and telephone number of this person. (EEPC/Sect. 831, City Charter)

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 DABC's compliance with its Equal Employment Opportunity Policy, as well as Commission policies and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

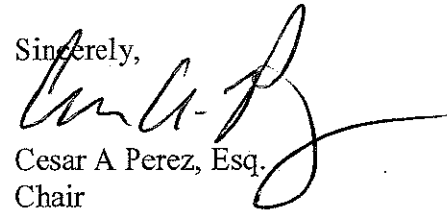
Your response should indicate what corrective actions your office will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. As your staff informed us during the exit meeting, you have already implemented some of our recommended corrective actions. Please specify these corrective actions in your response, and include any documentation as addenda to your formal response to the Preliminary Determination.

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 EEO Plan.

In closing, we want to 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 - 1

Bronx County District Attorney's Office

EMPLOYEE SURVEY RESULTS

Employees = 859 Survey Respondents = 207 24%

A. GENERAL OVERVIEW

1. Equal Employment Opportunity (EEO) guarantees the right of all persons to be accorded full and equal consideration on the basis of merit, regardless of protected group status. Do you agree with this principle?
 Yes (185) No (2)
2. Do you know who your agency's EEO Officer is?
 Yes (143) No (64)
3. Is the City's EEO Policy posted on your agency's bulletin boards or kept in an area otherwise accessible to employees?
 Yes (172) No (32)
4. Were you given a copy of the EEO Policy Handbook - About EEO: What You May Not Know?
 Yes (164) No (41)
5. Do you believe your agency practices equal opportunity (i.e. ensures fairness in all aspects of employment including hiring, selection, promotions, etc.)?
 Yes (171) No (31)
6. How often has your manager or supervisor reaffirmed the agency's commitment to the principle of Equal Employment Opportunity during staff meetings within the past year?
 Two or more times (77) One time (45) At no time (77)
7. How often has your manager or supervisor reaffirmed employees' right to file a discrimination complaint with the agency's EEO Officer during staff meetings within the past year?
 Two or more times (52) One time (42) At no time (107)
8. When hired, were you advised of the EEO policies, and of your rights and responsibilities under such policies?
 Yes (116) No (11) Do not remember (79)

B. EEO COMPLAINTS

9. Do you know how to file an EEO complaint?
 Yes (136) No (70)
10. If you had an EEO complaint, would you bring it to your agency's EEO Office?
 Yes (132) No (7) Undecided (67)
11. Would you prefer to file an EEO complaint with an office outside your agency rather than your agency's EEO Office?
 Yes (64) No (63) Undecided (80)
12. During the past 3 years, did you file a complaint with your agency's EEO Office?
 Yes (0) No (206)
13. Was your manager or supervisor supportive of your right to file a complaint?
 Yes (6) No (4) Not Applicable (196)

C. EEO TRAINING

14. During the past 2 years, did you receive EEO training?
 Yes (148) No (53)
15. How informative was this training?
 Very informative (66) Somewhat informative (77)
 Not really informative (9) Not Applicable (53)

BXDA SURVEY RESULTS CONTINUED

D. JOB PERFORMANCE/ADVANCEMENT

16. Does your agency use training and development programs in order to improve job performance and/or career opportunities?
Yes (137) No (32) I do not know (36)
17. Were vacant positions advertised on bulletin boards or other areas accessible to employees in a timely manner?
Yes (114) No (24) Do not remember (67)
18. The Personnel Rules and Regulations of the City of New York and the Guidelines for Evaluating Managerial Performance in NYC Agencies require that all employees (managerial and non-managerial) receive at least one performance evaluation a year. Have you received annual performance evaluations within the past 3 years?
Yes (172) No (23) Employed for less than 12 mos (10)
19. Did your evaluation contain recommendations for improving your job performance?
Yes (119) No (38) Not Applicable (49)
20. Did your evaluation contain recommendations for career advancement with your agency?
Yes (39) No (94) Not Applicable (72)
21. Do you know the name of the person in your agency that is responsible for providing career counseling?
Yes (41) No (100)

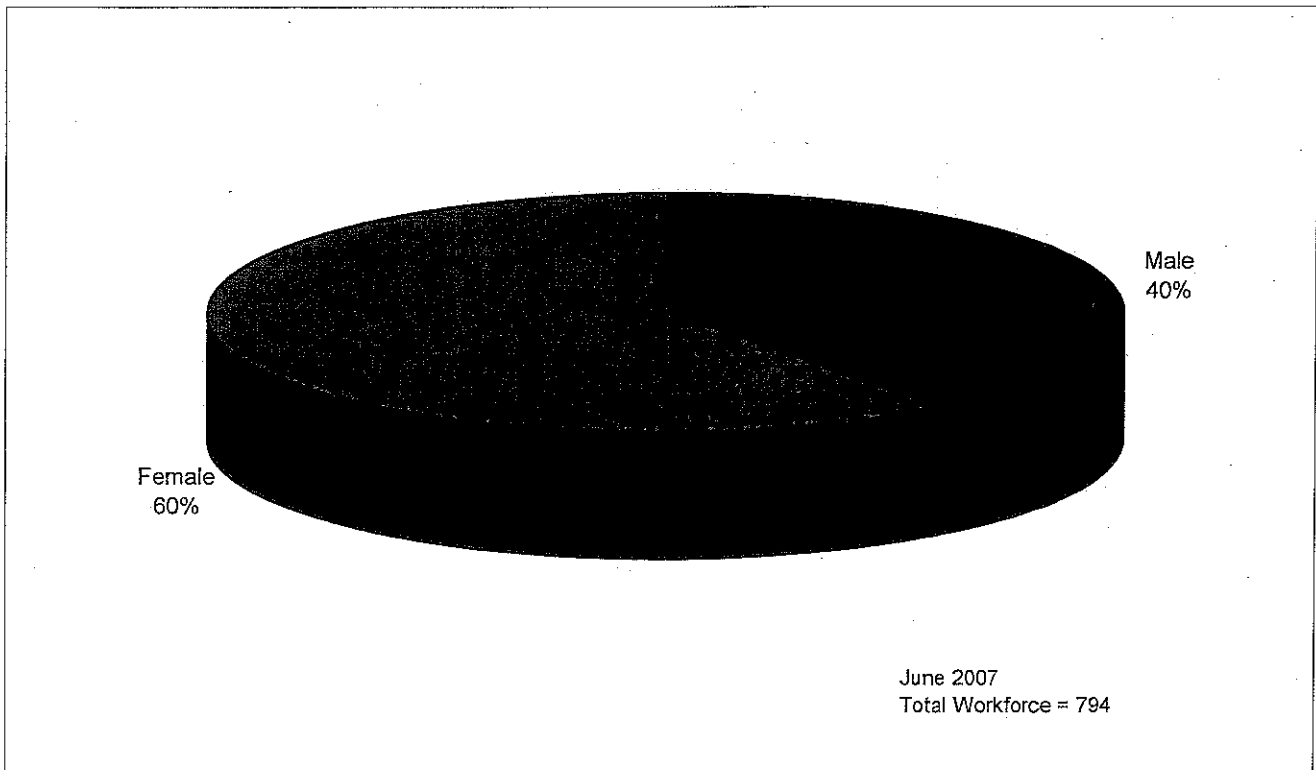
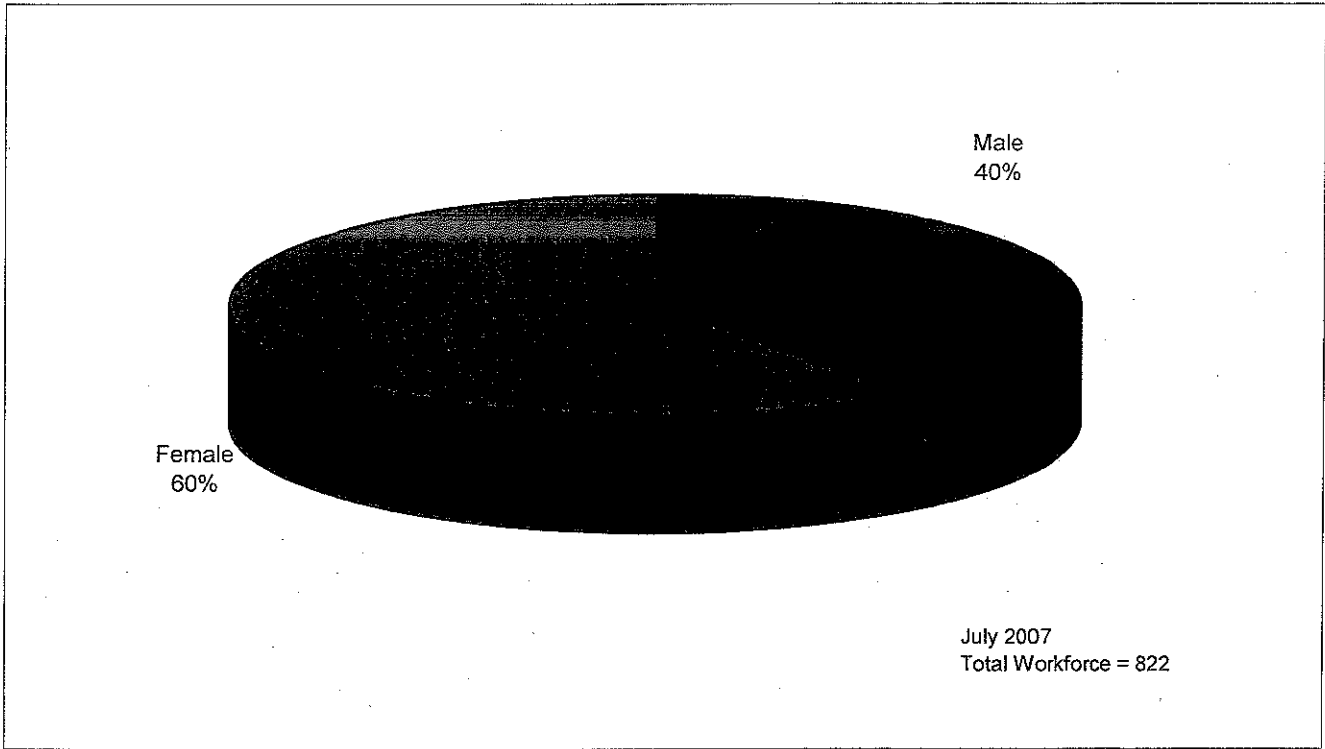
E. SPECIFIC PROTECTIONS

22. Do you know who your agency's Disability Rights Coordinator is?
Yes (46) No (160)
23. Agencies are required to take appropriate action to reasonably accommodate qualified employees and applicants with disabilities, and those who are victims of domestic violence, sex offenses, or stalking, to enable to them to perform their jobs or enjoy equal benefits and privileges of employment. Agencies are also required to provide reasonable accommodations for the religious observances, beliefs and practices of an employee or applicant. During the past 3 years, did you ask for a reasonable accommodation due to any of the above?
Yes (23) No (182)
24. Was your accommodation granted?
Yes (22) No (0)

OPTIONAL INFORMATION

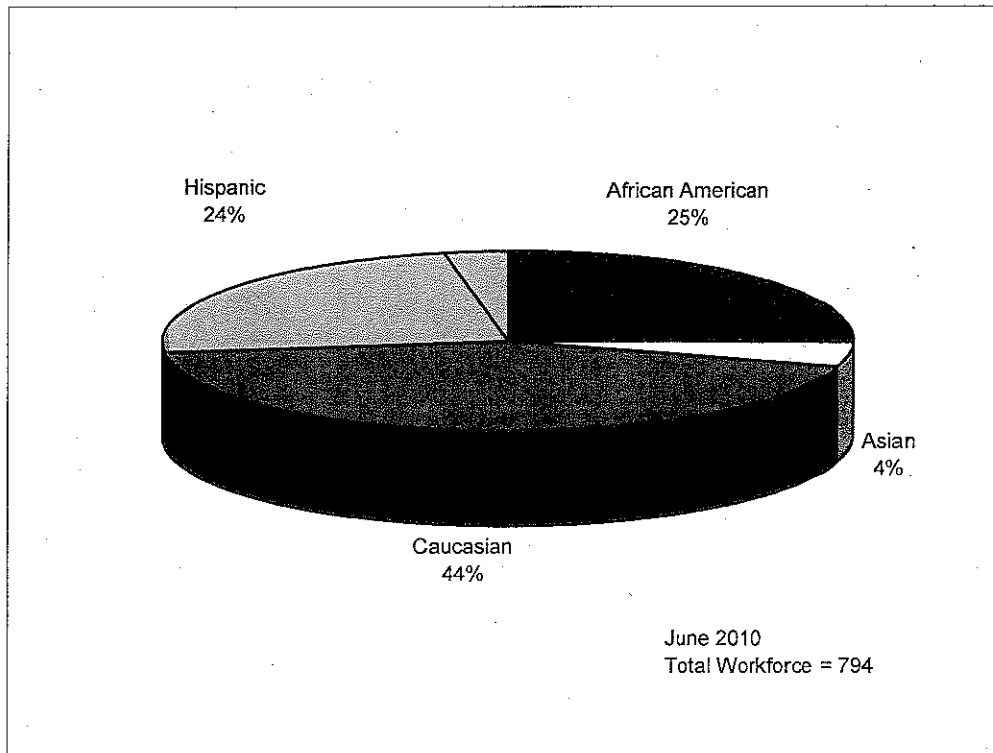
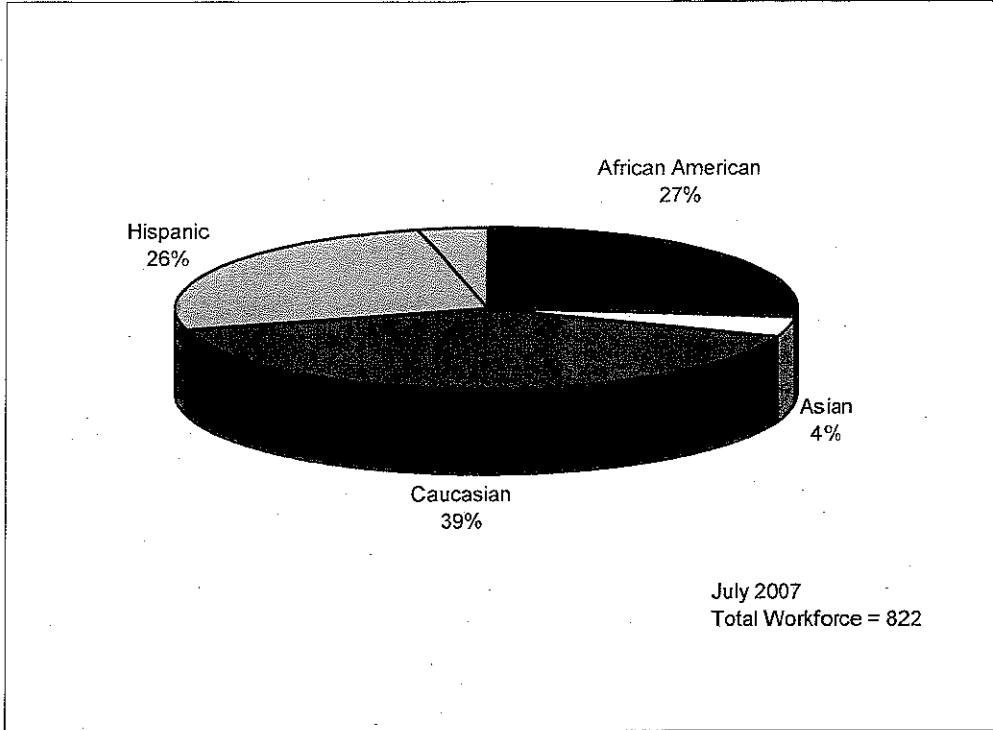
25. Race/Ethnicity
- | | |
|--------------------------------------|-------------------------------------|
| Asian or Pacific Islander (0) | Hispanic (49) |
| American Indian or Alaska Native (0) | White (not of Hispanic origin) (86) |
| Black (not of Hispanic origin) (32) | Other (8) |
26. Gender
- | | |
|-----------|--------------|
| Male (79) | Female (109) |
|-----------|--------------|

Appendix - 2
Bronx County District Attorney's Office
Workforce by Sex



Appendix - 3

Bronx County District Attorney's Office
Workforce by Ethnicity



APPENDIX – 4

The following table indicates personnel activity during the audit period, July 1, 2007 to June 30, 2010

Bronx County District Attorney's Office

Hires by Sex and Ethnicity

Total Hires: 276

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Multi/Other	Total
109	167	276	126	68	59	18	2	276

Promotions by Sex and Ethnicity

Total Promotions: 120

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Multi/Other	Total
41	79	120	26	44	43	3	4	120

Separations by Sex and Ethnicity

Total Separations: 31

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Multi/Other	Total
7	24	31	7	14	0	0	0	31

Source: BXDA

Bronx County District Attorney's Office

SUPERVISOR/MANAGER QUESTIONNAIRE RESULTS

Total Supervisors = 75 Completed Questionnaire = 39 (52%)

1. Which of the following are you?
 Supervisor (20) Manager (18)
2. How many employees are under your supervision?
 Less than 5 (7) 11 to 20 (5)
 6 to 10 (8) 21 or more (19)
3. How long have you worked for this agency?
 3yrs or less (1) Over 3 yrs (38)
4. Each agency head may distribute a statement in support of Equal Employment Opportunity to all employees. Have you received a copy of your agency's EEO Policy Statement?
 Yes (37) No (2) Do not remember (0)
5. In your agency, where can the City's EEO Policy be found?
 In the EEO Office (10) In my office (21)
 In the HR/Personnel Office (37) I do not know (0)
 On the Intranet (35)
6. Of the choices indicated, which is most easily accessible to you?
 The EEO Office (0) Your Office (10)
 The HR/Personnel Office (3) Not applicable (0)
 The Intranet (26)
7. Is the Discrimination Complaint Procedure included with the EEO Policy?
 Yes (34) No (0) Do not know (5)
8. Do you know the name of your agency's EEO Officer?
 Yes (36) No (3) Do not know (0)
9. Did the EEO Officer meet with you to discuss your EEO rights as an employee?
 Yes (18) No (19)
10. Did the EEO Officer meet with you to discuss your EEO responsibilities as a supervisor or manager?
 Yes (22) No (16)
11. Did you complete the Department of Citywide Administrative Services' (DCAS) Division of Citywide EEO Computer based Training?
 Yes (28) No (5) Not Applicable (5)
12. In your role as a supervisor/manager, how many times have you discussed the agency's commitment to the principle of Equal Employment Opportunity during staff meetings within the past year?
 Two or more times (13) One time (11) At no time (14)
13. In your role as a supervisor/manager, how many times have you discussed with employees their right to file a discrimination complaint with the agency's EEO Officer during staff meetings within the past year?
 Two or more times (3) One time (15) At no time (21)
14. Did you receive sexual harassment prevention training from your agency?
 Yes (28) No (11)
15. Did all of the employees that you supervise receive sexual harassment prevention training?
 Yes (21) No (3) Do not know (14)

SUPERVISOR/MANAGER QUESTIONNAIRE CONTINUED

16. When you were hired, did you receive an orientation session that included a review of the City's EEO Policy?

Yes (10) No (12) Do not remember (16)

17. Do you participate in orientation sessions for new employees?

Yes (15) No (23)

18. Do new employee orientation sessions include information on the City's EEO Policy?

Yes (25) No (0) Do not know (14)

19. Do you interview candidates for positions in your agency?

Yes (31) No (8)

20. If you are involved in interviewing job applicants, did your agency provide you with training and/or a guide that outlines illegal or discriminatory questions and includes instructions for conducting a structured interview?

Training (5) Both training and guide (8)
Guide (8) Neither (9)
I do not interview applicants (9)

21. Were you informed that fulfillment of your EEO responsibilities will be part of your overall performance evaluation and will be considered in determining your eligibility for promotions and merit increases?

Yes (11) No (26)

22. When was your last performance evaluation?

Within the past year (22) Over a year ago (12) I have not received one (5)

23. Does your performance evaluation include an EEO component? (A section that rates your ability to make employment decisions based on merit and equal consideration, or treat others in an equitable and impartial manner.)

Yes (15) No (18)

24. Do you conduct formal evaluations of the employees under your supervision annually?

Yes (35) No (4)

25. Do you believe the agency has provided sufficient training to supervisors/managers on their responsibilities in assisting employees who may complain about discrimination or harassment?

Yes (32) No (7)

OPTIONAL INFORMATION

26. Race/Ethnicity

Asian or Pacific Islander (0) Hispanic (11)
American Indian or Alaskan Native (0) White (13)
Black (2) Other (3)

27. Gender

Male (13) Female (19)