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DISTRICT ATTORNEY

OF THE  
COUNTY OF NEW YORK  
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27-12-05 RCVD 8793

December 22, 2005

Ernest F. Hart, Esq.  
Chair  
Equal Employment Practices Commission  
City of New York  
40 Rector Street, 14<sup>th</sup> Floor  
New York, NY 10006

**Re: Audit of Equal Employment Opportunity Program**

Dear Mr. Hart:

Enclosed is this office's response to the Equal Employment Practices Commission audit of our EEO program for the period of January 2003 through December 31, 2004. The audit has been informative, and we look forward to using it to strengthen our EEO program.

Sincerely,

Frederick J. Watts  
Administrative Assistant District Attorney

FJW:jt  
Enc.

C: Abraham May Jr., Executive Director —  
Eric Matusewitch, PHR, CAAP, Deputy Director

## Response to Preliminary Determination Pursuant to Audit of the New York County District Attorney's Office Equal Employment Opportunity Program

Below is the response to the Preliminary Determination Pursuant to the Audit of the New York County District Attorney's Office (DANY) Equal Employment Opportunity Program. The response focuses on the areas where the Equal Employment Practices Commission (EEPC) found DANY not to be in compliance with EEPC standards. The response follows the format and headings of the audit. DANY is committed to maintaining a strong Equal Employment Opportunity program, and stands ready to incorporate valuable information we have learned in the audit process.

### Plan Dissemination --Internally

1. After the commencement of the audit, but prior to its completion, we became aware that DANY's EEO pamphlet required an updating of the contact information for outside agencies. Our most recent version of the pamphlet (attached); includes updated addresses telephone numbers, and web sites.

2. DANY agrees to update its EEO policy statement and all related materials to include all protected classes under the New York City and New York State Human Rights Laws, *with the exception* of those with "prior arrest or conviction."

As a law enforcement agency, we feel strongly that a person's encounter with the criminal justice system may be highly relevant in determining that person's ability to hold a position in a law enforcement office. This office's prosecutorial work makes it the custodian of highly confidential information about sensitive matters, often involving violent crime. It is critical to the integrity of our investigations, and the safety of our witnesses and other employees, that our staff be trusted with sensitive information. We therefore cannot consent to the notion that one's criminal history is irrelevant in determining one's suitability to work here.

As do other law enforcement offices, we conduct background investigations on each employee. We make case by case determinations as to whether the employee's background and criminal history is consistent with working with sensitive and confidential information and materials that are routinely handled by members of this office. The nature and level of the employee's responsibilities are key factors to consider when evaluating whether an arrest or criminal conviction would impact the public's trust in a person's ability to function in a law enforcement capacity. Consultation with the Law Department supported this approach.

In sum, we will revise office written policies to include all protected classes outlined in the latest City EEO policy, with the exception of persons with prior a arrest or conviction. Consistent with City practice at the Department of Investigation, the New

York City Police Department, and the other District Attorney's Offices, eliminating persons with arrest and conviction records from "protected classes" is appropriate for protecting the safety of employees and the public, and the integrity of law enforcement.

3. All EEO complainants are notified of the outcome of the matter, either in writing, or in a face to face meeting with the EEO officer. DANY agrees that going forward, regardless of whether there is a face to face meeting with the complainant, the person bringing the complaint shall be notified of the outcome in writing.

All persons accused of wrongdoing in EEO complaints are contacted directly by the EEO officer. In instances of a finding of no wrongdoing, it appears unwarranted to make such notifications in writing.

DANY feels it unnecessary to have its EEO officer submit its final determination to the agency head for review and approval. The EEO officer is an Assistant District Attorney with 22 years of prosecutorial and management experience. The EEO officer has held a high level executive position for more 14 years. The District Attorney has given authority over EEO matters to this experienced executive prosecutor. To require as a matter of routine that the elected District Attorney review EEO complaints is inconsistent with efficient management of this agency. It bears noting that prosecutors handling rape and murder cases (as did the EEO officer prior to becoming the EEO officer) routinely handle those matters without personal involvement of the District Attorney. It would seem illogical that the District Attorney would turn his attention to EEO complaints, when more serious pressing issues require his attention.

4. This has been corrected. (See attached, by way of example of recent postings). We will continue to handle office vacancy postings as the EEPC counsels.

#### **Affirmative Action and Reasonable Accommodation for Persons with Disabilities**

1. DANY currently publishes its EEO policy and materials in a variety of ways including bulletin board postings; pamphlets; employee handbooks; and training class handouts. DANY will endeavor to provide these materials in the "alternative formats" indicated in the Citywide EEO policy. That policy gives no specific guidance as to what might be acceptable formats, or how best to create and distribute such materials. DANY will contact the Department of Citywide Administrative Services for further guidance.

2. DANY's Americans with Disabilities Act Grievance Procedure is adequate, in our view, to allow those needing a reasonable accommodation to seek one. Thus, the current policy affords all staff an avenue to bring accommodations issues to the EEO officer's attention, and to seek redress. In addition, the office's employee manuals indicate that any issue involving the building or building systems may be reported to Operations for attention. Likewise, any technology issues will be reported to Operations,

or Management Information Systems. Both office departments report to the EEO officer, and thus all accommodation issues will come to the attention of the EEO officer.

Although the mechanisms are already in place to report accommodation requests, DANY accepts that a reasonable accommodation policy and procedure may better serve the needs of the office. We will thus incorporate a provision in our policy patterned after that which appears in the City's EEO policy.

Finally, DANY is willing to explore participation in the Section 55-A Program. However, virtually all titles in this office are non-competitive, and this may impact the office's eligibility to participate in the program. Moreover, it bears emphasizing that this office, without any assistance or prompting from the City, developed a longstanding voluntary relationship with a not for profit agency where we are able to employ adults with developmental disabilities. The office is proud of the fruitful relationship we enjoy with Job Path, and feel that this relationship demonstrates a commitment to providing equal employment opportunities.

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

In response to the EEPC observations that certain DANY staff require additional training, the office has contacted Jyll Townes of DCAS, and is making arrangements for EEO trainers, and coordinators to receive DCAS training.

The office nonetheless observes that the EEPC audit did not give sufficient weight to the training and experience of DANY staff who handle EEO matters. The EEPC audit states that the training is called for to "ensure...a uniform body of knowledge..." The audit fails to give sufficient weight to the fact that the EEO officer, and another Assistant District Attorney who conducts training, are experienced attorneys with extensive legal training in litigation and employment law. Moreover, two of the EEO coordinators are also experienced attorneys. It is the law that is the basis for the "uniform body of knowledge" that makes up EEO training. The audit does not give adequate weight to the fact that DANY staff handling EEO matters are experienced attorneys fully conversant in the law. Most significantly, the EEO officer and two EEO coordinators' depth of investigative training and experience stemming from their decades of prosecutorial experience is not given adequate weight in the audit. The expertise this office's EEO personnel bring to investigating an EEO complaint is superior, and in our view, not adequately documented or valued in the audit.

### **EEO Officer Reporting Arrangement**

The District Attorney has given the EEO officer full authority to act on all EEO matters. That authority is accompanied by the discretion to seek consultation with the District Attorney as needed. The EEO officer's 23 years as a practicing attorney, 22

years as a prosecutor, and 14 years as an executive, makes the District Attorney's delegation of those duties to the EEO officer a reasonable exercise of his discretion. In response to recommendations in the audit, the EEO officer agrees to appropriately document meetings with the District Attorney on EEO matters.

### **Special Problems**

1. The audit recommends that DANY have an EEO officer dedicate 100% of his time to EEO matters. Although a laudable goal in an ideal world, such would not be an appropriate use of taxpayer resources. The Office's budget has declined substantially since 2002, and we have been asked to maintain vital services associated with our core mission: insuring public safety and the fair administration of justice. The office simply does not have the resources to employ a full time EEO officer. To do so would, of necessity, require us to give less attention to key public safety initiatives. Moreover, as was documented in the audit process, the office has handled only four EEO complaints in the two year audit period. Certainly, additional resources are not required to handle this volume.

This office's EEO program, of course, is made up of more than handling complaints. The office seeks to appropriately staff all EEO functions, beyond the time given by the EEO officer. The audit, in our view, does not adequately acknowledge the significant resources dedicated to the EEO program. The office employs 5 full time legal staff/recruiters, in addition to our full time Personnel Director, all whose work is vital to maintaining a strong EEO program. The office has designated 5 EEO coordinators and 2 trainers to handle EEO education and elevate general awareness of EEO in the workplace. Thus, significant office resources, beyond the time of the EEO officer, are allocated by DANY to insure a strong EEO program.

2. The performance evaluation instruments used by this office have categories "Professional Judgment" and "Interpersonal Relations." These categories capture all aspects of the employees' interactions with both his colleagues and the public. The current evaluation instruments effectively allow the office to rate staff in areas of EEO.

3. The office will continue to do all that it can to make staff aware of the EEO program, and the identities of all responsible for implementing the program. The names of all EEO coordinators and officers are included in all posted and distributed materials, and the EEO officer personally speaks at every EEO training session.

It is disappointing that 44% of the staff replied to the survey that they do not know the name of the EEO officer. However, the EEPC survey does indicate that over 90% of the respondents acknowledge having been given EEO materials and training -- all which include the names of the EEO officers and coordinators. The facts thus suggest that while some staff do not know the name of the EEO officer, they have the materials and training to easily learn who the EEO officer is, and access EEO services.

## Conclusion

This office will use the EEPC's data and insights to evaluate, and strengthen our EEO program. We will diligently introduce the changes agreed to above.

# NOTICE OF VACANCY

Trial Division Analyst  
Trial Bureau 70

## DUTIES

- 1) Performs computerized data searches relevant to specific cases assigned within the trial bureau.
- 2) Using principally computer resources, conducts background investigations on defendants, suspects and witnesses to uncover addresses, vehicle and driving records, credit data, assets and other information needed in investigations.
- 3) Obtains arrest and court data from other jurisdictions on line and gathers information pertaining to civil and criminal litigation from State and Federal jurisdictions.
- 4) Performs paralegal tasks as assigned.

## QUALIFICATIONS

- 1) Bachelor's degree required.
- 2) One year paralegal experience required, preferably in trial preparation.
- 3) Proficiency in Microsoft Office applications, including internet, knowledge of Citynet systems.
- 4) Ability to work independently and manage multiple short-term projects.
- 5) Strong communication, organizational and interpersonal skills are essential.

## SALARY

\$35,166 or a \$2,228 promotional guarantee.  
\$1,344 increase after one year of successful performance.

Resumes should be forwarded to Donna Welling,  
Personnel Director, Room 749, by November 1, 2005.

**Equal Opportunity Employer**

# NOTICE OF VACANCY

## DAT Coordinator COMPLAINT ROOM

### DUTIES

- 1) Reviews DAT packages to ensure accuracy and completion.
- 2) Assigns DATs and related work to appropriate staff.
- 3) Enters and maintains DAT information in Tracking System.
- 4) Notifies police officers of Complaint Room appearances to draft complaints.
- 5) Assists DANY personnel with DATs.
- 6) Acts as liaison with NYPD in tracking missing DAT packages.
- 7) Works with DAT Unit supervisor to ensure efficient management of unit operations.
- 8) Performs related duties.

### QUALIFICATIONS

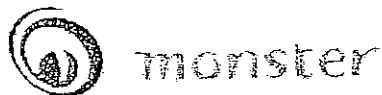
- 1) Bachelor's degree required.
- 2) Prior criminal justice or paralegal experience required.
- 3) Knowledge of the Office a plus.
- 4) Proficiency in Microsoft Office required.
- 5) Strong communication, organization and interpersonal skills essential.
- 6) Must be detail oriented.
- 7) Ability to work under pressure.

### SALARY

\$ 33,213 or \$1,654 promotional guarantee.  
\$1,455 increase after 1 year of successful performance.

Resumes or applications should be forwarded to Donna Welling,  
Personnel Director, Room 749, by May 13, 2005.

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## New York City

### Supervising Custodial/Maintenance Worker

Company:	Manhattan District Attorney's Office	Location:	New York, NY
Salary/Wage:	USD 34,384.00 /year	Status:	Full Time, Employee
Job Category:	Building and Grounds Maintenance	Relevant Work Experience:	1+ to 2 Years
Career Level:	Experienced (Non-Manager)	Education Level:	High School or equivalent

#### Job Description

The Manhattan District Attorney's Office has an immediate opening for a Supervising Custodial/Maintenance Worker in its Operations Unit. Candidates must possess a high school diploma or GED. Supervising experience preferred. Excellent organization, interpersonal and supervisory skills required. Knowledge of cleaning equipment and techniques required. Valid driver's license and knowledge of computers a plus. Duties include training and supervising custodial staff. Coordinating and scheduling projects and performing general housekeeping tasks. Maintaining and organizing stock levels in store room and supply closet. Maintaining custodial equipment and service equipment as necessary. Performing related tasks. Excellent vacation and benefits package. Salary is \$34,384.

Resumes should be forwarded to [danyresumes@dany.nyc.gov](mailto:danyresumes@dany.nyc.gov) or faxed to 212-335-9542.

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#### Contact Information

Company: Manhattan District Attorney's Office

Email: [danyresumes@dany.nyc.gov](mailto:danyresumes@dany.nyc.gov)

Fax: 212-335-9542

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