

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAM WRIGHT, JR.,

Plaintiff,

v.

CARI M. DOMINGUEZ,

Chair,

U.S. Equal Employment Opportunity Commission,

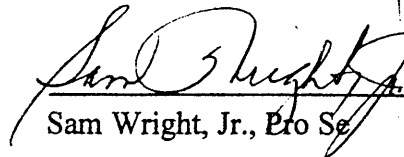
Defendant.

Civil Case Number 1:03CV00837 CKK

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Plaintiff hereby responds to Defendant's Motion to Dismiss. For the reasons set out in the accompanying Memorandum Of Points and Authorities In Opposition To Defendant's Motion To Dismiss, Plaintiff respectfully requests that this Honorable Court deny Defendant's Motion to Dismiss.

Respectfully submitted,


Sam Wright, Jr., Pro Se

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAM WRIGHT, JR.,

Plaintiff,

v.

CARI M. DOMINGUEZ,

Chair,

U.S. Equal Employment Opportunity Commission,

Defendant.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

I. STATEMENT OF FACTS

Defendant omits relevant facts in Defendant's statement of facts. After Plaintiff filed his fourteen individual and class complaints against the U.S. Equal Employment Opportunity Commission (EEOC or Commission), the EEOC entered into an agreement with a private citizen to represent himself as administrative judge and to adjudicate Plaintiff's complaints. See Plaintiff's Exhibit 1. The Commission offered and paid the private citizen monetary compensation for the private citizen to issue a decision on Plaintiff's complaints. See Plaintiff's Exhibit 2.

The private citizen represented himself as an administrative judge and issued an ACKNOWLEDGMENT AND ORDER FOR CLASS CERTIFICATION. In this document, the private citizen writes, "This is to acknowledge receipt of the above class complaint." The document caption contains a single complaint number. See Plaintiff's Exhibit 3. Plaintiff filed a timely response that clearly explains "The Agency has not made Plaintiffs aware of the agency numbers assigned to each of the fourteen complaints. Plaintiffs cannot proceed without knowing

which of the fourteen complaints is before Richard H. Fine.” In this response, Plaintiff requested a copy of the contract between the private citizen and the EEOC, a copy of the document or documents that designate the private citizen as an administrative judge, and a copy of each and every document that provides the private citizen with the authority to adjudicate Plaintiff’s complaint. See Plaintiff’s Exhibit 4. Plaintiff received no response from the private citizen or the Commission.

II. STANDARD OF REVIEW

The standard of review for a motion to dismiss or for summary judgment is well established by Conley v. Gibson, 355 U.S. 41, 45-46 (1957). “In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears **beyond doubt** (emphasis added) that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” Defendant’s counsel suggests that the standard is *reasonable doubt*.¹ Defendant’s counsel is mistaken.

III. ARGUMENT

Plaintiff addresses the subjects raised by Defendant in the MOTION TO DISMISS in the order presented in the motion. Beginning on page 15 of this memorandum, Plaintiff proves this Honorable Court with irrefragable evidence that establishes Defendant’s guilt in the instant case with absolute certainty.

A. JURISDICTION

Title VII and the Administrative Procedure Act (APA) contain this Court’s grant of jurisdiction for the instant case. Further, sovereign immunity is waived.

1. Title VII

¹ Motion To Dismiss, page 3.

Defendant argues "Title VII does not afford this Court subject matter jurisdiction over Plaintiff's claims against Chair Dominguez."² Defendant is mistaken. Defendant admits, "Title VII, as amended by the Equal Employment Opportunity Act of 1972, contains three grants of jurisdiction applicable to the EEOC: Section 706(f)(3), 42 U.S.C. § 2000e-5(f)(3); Section 707(b), 42 U.S.C. § 2000e-6(b), and Section 717(c), 42 U.S.C. § 2000e-16(c)."³

Defendant issued a final order for Plaintiff's fourteen class complaints. In the final order Defendant acknowledges that this Court has subject matter jurisdiction. The final order reads, in relevant part, "You also have the right to file a civil action in an appropriate United States district court."⁴ Defendant knows that the necessary grant of subject matter jurisdiction is found in Section 717(c), 42 U.S.C. § 2000e-16(c) and Section 706(f)(3), 42 U.S.C. § 2000e-5(f)(3).

The remainder of Defendant's argument regarding Title VII is Defendant's counsel's unsupported, naked assertions that characterize the case at bar and as such do not support dismissal or summary judgment.

2. Sovereign Immunity

Next Defendant argues that monetary damages from Defendant are barred unless there is a waiver of sovereign immunity. There is a waiver of sovereign immunity and the waiver is unequivocally expressed. The waiver of sovereign immunity is found in the First Amendment to the Constitution of the United States.

The First Amendment to the Constitution establishes the following rights: (1) freedom of religion, (2) freedom of speech, (3) freedom of the press, (4) the right to peaceably assemble, and (5) the right to petition the government for a redress of grievances. The last phrase in the series

² Motion To Dismiss, page 4.

³ Motion To Dismiss, page 5.

⁴ Motion To Dismiss, Exhibit 2, Final Order, page 3, paragraph 2.

of Rights makes it clear that every citizen has the constitutionally protected Right to petition the Government for a redress of grievances. Black's Law Dictionary defines:

petition as a formal written application to a court requesting judicial action on a certain matter.

redress as satisfaction for an injury or damages sustained.

grievance as an injury, injustice or wrong which gives ground for complaint.

complaint as a pleading which sets forth a claim for relief.

complainant as one who applies to the courts for legal redress by filing a complaint.

A citizen's formal written application to a court requesting judicial action on a certain matter (a **petition**) that sets forth a claim for relief and satisfaction for an injury (**redress**), injustice or wrong sustained (**grievance**) *is the filing of a lawsuit*. The right to petition the Government for a redress of grievances includes a citizen's right to file a lawsuit against the Government. This right is stated plainly, specifically, and unequivocally in the First Amendment to the Constitution of the United States. Thus, when a citizen of the United States sues the Government, or any Government official, the Constitution forbids the defense of sovereign immunity.

Since this country was born, a person who files a lawsuit or complaint has been referred to as a petitioner. One of the first governing documents that *We the People* used was the Articles of Confederation. A portion of Article IX of the Articles of Confederation reads:

The United States in Congress assembled shall also be the last resort on appeal in all disputes and differences now subsisting or that hereafter may arise between two or more States concerning boundary, jurisdiction, or any other cause whatever; which authority shall always be exercised in the manner following: — Whenever the legislative or executive authority or lawful agency of any State in controversy with another shall present a *petition* to Congress *stating the matter in question and praying for a hearing*, notice thereof shall be given by order of Congress to the legislative or executive authority of the other State in controversy, and a day assigned for the appearance of the parties by their lawful agents, who shall then be directed to appoint, by joint consent, commissioners or judges to constitute a court for hearing and determining the matter in question; but if they cannot agree, Congress shall name three persons out of each of the United States, and from the list of such persons each party shall alternately strike out one, the petitioners beginning, until the number shall be reduced to thirteen . .

In the Articles of Confederation, a State presented its appeal of a dispute against another State in the form of a petition. In the Marbury v. Madison, 5 U.S. 137, 163 (Cranch) (1803) Chief Justice Marshall points out that "In Great Britain the king himself *is sued in the respectful form of a petition*, and he never fails to comply with the judgment of his court."

In the 1793 Supreme Court case of *Chisholm v. Georgia*, Volume 2 of the United States Reports, page 419, Mr. Justice Wilson said,

"It will be sufficient to observe briefly, that the sovereignties in Europe, and particularly in England, exist on feudal principles. That system considers the Prince as the sovereign, and the people as his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject, either in a Court of Justice or elsewhere. That system contemplates him as being the fountain of honor and authority; and from his grace and grant derives all franchises, immunities and privileges; it is easy to perceive that such a sovereign could not be amenable to a Court of Justice, or subjected to judicial control and actual constraint. It was of necessity, therefore, that suability became incompatible with such sovereignty. Besides, the Prince having all the Executive powers, the judgment of the Courts would, in fact, be only monitory, not mandatory to him, and a capacity to be advised, is a distinct thing from a capacity to be sued. The same feudal ideas run through all their jurisprudence, and constantly remind us of the distinction between the Prince and the subject. No such ideas obtain here; at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty.

From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ. Sovereignty is the right to govern; a nation or State-sovereign is the person or persons in whom that resides. In Europe the sovereignty is generally ascribed to the Prince; here it rests with the people; there, the sovereign actually administers the Government; here, never in a single instance; our Governors are the agents of the people, and at most stand in the same relation to their sovereign, in which regents in Europe stand to their sovereigns. Their Princes have personal powers, dignities, and pre-eminences, our rulers have none but official; nor do they partake in the sovereignty otherwise, or in any other capacity, than as private citizens."

In the 1816 Supreme Court case of *Martin v. Hunter's Lessee*, Volume 14 of the United States Reports, page 304, Mr. Justice Story said,

“The constitution of the United States was ordained and established, not by the states in their sovereign capacities, but emphatically, as the preamble of the constitution declares, by 'the people of the United States.' There can be no doubt that it was competent to the people to invest the general government with all the powers which they might deem proper and necessary; to extend or restrain these powers according to their own good pleasure, and to give them a paramount and supreme authority. The government, then, of the United States, can claim no powers which are not granted to it by the constitution, and the powers actually granted, must be such as are expressly given, or given by necessary implication.”

Further support that the phrase “petition the Government for a redress of grievances” includes the right to bring a lawsuit is found in *Alabama Exchange Bank v. United States*, 373 F.Supp. 1221, 1222, 1224 (1974). “This cause is submitted on the Defendant’s motion to dismiss a suit by the Plaintiff seeking to secure its lien on property of a taxpayer seized and sold by the Government for payment of taxes.” “The Government apparently argues that the statute should be construed to deprive the lien holder of his right to petition for redress of his grievances.” In this case, the Federal Court acknowledges clearly that the right to petition for redress of grievances includes the right to bring a lawsuit. Surely if a bank, which, of course, is not a citizen, has the right to petition for a redress of grievances, then every citizen must have that identical right.

The doctrine of sovereign immunity is based on common law. In the 1938 case of *Erie R. v. Tompkins*, 304 U.S. 817, 822 Justice Brandeis points out that there is no federal common-law. The Constitution of the United States, in Article VI, declares “This Constitution . . . shall be the supreme Law of the Land.” Common law doctrines must take a back seat to the Constitution. The Constitution requires this Court to uphold the Constitution. A United States citizen’s Right to sue the Government for wrongs committed is a right retained by the People that is not

surrendered to the Government. It is undeniable that the First Amendment to the Constitution of the United States contains a waiver of sovereign immunity.

3. Administrative Procedure Act

The APA in § 702 reads, in relevant part, “A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party.” In the action at bar, Plaintiff seeks relief other than money damages and claims that “the APA does not permit the EEOC to use attorney-examiners to conduct hearings on Federal employee EEO complaints (Amended Complaint ¶ 11), that the Defendant fails to comply with the requirements of the APA to the detriment of Plaintiff (Amended Complaint ¶ 14),” that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority, that Defendant assigned Plaintiff’s EEO complaints to a private citizen, that Defendant has no proper rule, regulation, order, or instruction that provides for the adjudication of Plaintiff’s EEO complaints by a private citizen, and that Defendant refuses to provide an administrative law judge. Plaintiff alleges that he suffers a legal wrong because of Defendant’s actions and is adversely affected within the meaning of a relevant statute and is therefore entitled to judicial review. Thus, the APA contains a grant of jurisdiction.

4. Exhaustion of Administrative Remedies

Defendant suggests that Plaintiff has not exhausted his administrative remedies. Plaintiff exhausted his administrative remedies. Defendant issued a Final Order indicating final agency action. See Defendant's Motion To Dismiss, Exhibit 2, Final Order, page 3, paragraph 2.

B. Plaintiff States a Claim Upon Which Relief Can Be Granted

The remainder of Defendant's counsel's arguments are directed at the merits of Plaintiff's allegations. For the Court's convenience, Plaintiff provides the following responses to clearly establish that Plaintiff states a claim upon which relief can be granted.

1. EEOC practices violate the APA

Counsel argues that EEOC's practices do not violate the APA. Counsel is mistaken. Plaintiff will provide two circumstances where EEOC practices violate the APA. First, Plaintiff alleges that "Defendant entered into a contract with a private citizen to adjudicate Plaintiff's EEO complaints (Amended Complaint ¶ 27)," that "Defendant assigned Plaintiff's EEO complaints to the private citizen (Amended Complaint ¶ 28)," that "Defendant has no proper rule, regulation, order, or instruction that provides for the adjudication of Plaintiff's EEO complaints by a private citizen (Amended Complaint ¶ 32)." Defendant does not deny these allegations and Defendant does not claim that Defendant promulgated any regulations that permit a private citizen to adjudicate Plaintiff's EEO complaints. "Procedural inadequacies surrounding the administrative decision deprive it of any presumption of correctness to which it otherwise might be entitled." St. John's Hickey Memorial Hospital v. Califano, 599 F.2d 803, 814 (1979).

Second, the legislative history of the Equal Employment Opportunity Act of 1972, 86 Stat. 103, House Report No. 92-238, shows that "in an effort to secure an accurate estimate of the projected costs of this legislation to satisfy the requirements of clause 7 of rule XIII the General Subcommittee on Labor, through its chairman, the Honorable John H. Dent, sought the views of

the Equal Employment Opportunity Commission.” The EEOC’s responded by letter dated April 22, 1971. The EEOC writes,

“Using these figures as a base, the staffing requirements for implementation of the hearing procedures encompassed by the cease and desist powers have been projected on the basis of an adjudication of 15 cases per year for each hearing examiner and the preparation and presentation of 29 cases per year for each trial attorney.”

“The assumptions regarding the number of cases that a hearing examiner and a trial attorney will handle per year are based upon approximations of the average length of an adjudication of a title VII violation based upon the estimated degree of complexity involved in such cases.”

“It may well evolve that these approximations are not realistic; the estimates that each hearing examiner will be able to hear 15 cases per year and that each trial attorney can prepare 20 cases per year are derived from NLRB experience and may not hold true for Title VII litigation.”

William H. Brown, III, signs this letter. Congress created the hearing examiner position in the APA. On March 27, 1978, Congress changed the hearing examiner title to administrative law judge.⁵ The EEOC’s response proves that the EEOC understood that hearing examiners then and administrative law judges now are required for the hearing that it conducts. Yet, the EEOC fails and refuses to use administrative law judges.

2. EEOC’s practices violate Title VII

Defendant’s counsel concedes that, the regulations found at 29 C.F.R. § 1614 outline the federal sector EEO complaint process.⁶ Title VII, Section 717 grants the Defendant the authority to “issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section.” The Defendant’s responsibilities do not extend to pre-complaint counseling or imposing a condition on the statutory right to file a complaint of discrimination. The EEOC’s responsibilities include only the prevention of discrimination, the

⁵ Public Law 95-251, 92 Stat. 183, March 27, 1978.

⁶ Motion To Dismiss, page 9.

elimination of discriminatory practices, and the adjudication of complaints of discrimination. Pre-complaint processing is not the prevention of discrimination, is not the elimination of discriminatory practices, and is not the adjudication of a complaint of discrimination. In fact, at the conclusion of the pre-complaint process a federal employee receives a notice of the right to file a discrimination complaint.⁷ The complaint process begins with the filing of a complaint of discrimination; not with the pre-complaint interviews.

The EEOC's complaint responsibilities are addressed in the legislative history of the Equal Employment Opportunity Act of 1972 (P.L. 92-261), House Report No. 92-238. It reads, in relevant part, "The Equal Employment Opportunity Commission will be authorized by the statute to hear complaints of discrimination in Federal employment and establish appropriate procedures for an impartial adjudication of the complaints." Defendant has no complaint responsibilities before a federal employee files a complaint. The Defendant may only exercise the authority granted by Congress. The Defendant exceeds the authority granted by Congress in establishing the EEO counselor requirement and thus, the requirement is unlawful and violates Title VII.

Defendant attempts to justify the use of "administrative judges and mandatory pre-complaint counseling" by arguing that they were part of the process used by the U.S. Civil Service Commission (CSC) and the EEOC retained these two provisions after Congress transferred authority from the CSC to the EEOC.⁸ This Court ought not to find this argument persuasive. In the legislative history of the Equal Employment Opportunity Act of 1972 (P.L. 92-261), House Report No. 92-238, Congress addresses the complaint process in use by the CSC. "A critical defect of the Federal equal employment program has been the failure of the complaint process.

⁷ 29 C.F.R. § 1614.105(d).

⁸ Motion To Dismiss, page 10.

That process has impeded rather than advanced the goal of the elimination of discrimination in Federal employment. The defect, which existed under the old complaint procedure, was not corrected by the new complaint process. The new procedure, intended to provide for the informal resolution of complaints, has, in practice, denied employees adequate opportunity for impartial investigation and resolution of complaints.” Congress found that the very process that the Defendant emphatically defends is a critical defect of the Federal EEO process and impedes the elimination of discrimination. “Federal agencies such as defendant EEOC are under a particularly compelling mandate to adhere strictly to the requirements of Title VII.” Terry v. Gallegos, 926 F.Supp. 679, 715 quoting Berio v. EEOC, 1979 WL 127 *6 (D.D.C.1979).

In Brown v. General Services Administration, et al, 425 U.S. 820, 832 (1976) the Supreme Court does recognize certain preconditions attached to the right to file a civil action in a federal district court. However, the EEO counselor is not among the recognized preconditions. The preconditions identified by the Supreme Court are:

“Initially, the complainant must seek relief in the agency that has allegedly discriminated against him. He then may seek further administrative review with the Civil Service Commission or alternatively, he may, within 30 days of receipt of notice of the agency’s final decision, file suit in federal district court without appealing to the Civil Service Commission. If he does appeal to the Commission, he may file suit within 30 days of the Commission’s final decision. In any event, the complainant may file a civil action if, after 180 days from the filing of the charge or the appeal, the agency or Civil Service Commission has not taken final action.”

3. EEOC’s practices violate due process

It appears that Defendant’s counsel argues that Plaintiff is not entitled to due process before the EEOC. Defendant’s counsel is mistaken. Defendant refers to “administrative judges” throughout the Motion to Dismiss. The truth is that an official position or official title of “administrative judge” does not exist. Administrative judge is the internal organizational title

given to the official position of attorney-examiner. See Plaintiff's Exhibit 5. The U.S. Code, Title 5, § 5105 forbids the EEOC from using the title "administrative judge" outside of the internal communications of the EEOC. Still, the EEOC habitually refers to its attorney-examiners as administrative judges in communications outside of the agency as it does in the case at bar. Defendant uses the title of administrative judge to intentional mislead federal employees, Congress, and the Courts to believe that the EEOC is, in fact, complying with the APA (i.e. so that people will believe that administrative judges are the same as administrative law judges).

Title 5, § 4103(a) of the U.S. Code requires the EEOC to properly train its attorney-examiners. Defendant admits "The EEOC does not provide standard training to newly hired Administrative Judges or Supervisory Administrative Judges." See Plaintiff's Exhibit 6.

The EEOC's attorney-examiners are in the GS-905 General Attorney Series. See Plaintiff's Exhibit 5. This position may not adjudicate administrative procedure act hearings. It may only adjudicate "cases arising under contracts or under the regulations of a Federal Government agency when such regulations have the effect of law, and rendering decisions or making recommendations for disposition of such cases." See Plaintiff's Exhibit 7, page 2. **Federal employee EEO complaints do not involve hearings arising under contracts or under the regulations of a Federal Government agency when such regulations have the effect of law.**

The GS-930 Hearings and Appeals Series description reads "This series includes positions that involve the adjudication of cases that typically include the conduct of formal or informal hearings that accord appropriate due process, arising under statute or under the regulations of a Federal agency when the hearings are not subject to the Administrative Procedure Act; or involve the conduct of appellate reviews of prior decisions." See Plaintiff's Exhibit 7, page 2. In

order to afford due process in its hearings, the EEOC must provide administrative law judges or trained employees in the correct position classification. Defendant provides neither administrative law judges nor trained employees in the correct position classification.

4. Defendant refuses to permit complaints of discrimination pursuant to E.O. 11478

“Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, . . .”⁹ This sentence in Title VII clearly permits a complaint of discrimination to be brought pursuant to Executive Order 11478. Defendant refuses to permit a complaint of discrimination to be brought pursuant to Executive Order 11478.

The regulations at 29 C.F.R. § 1614 govern the Federal sector EEO process. 29 C.F.R. § 1614.103(a) describes the complaints of discrimination covered by this part. It reads “Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved individual is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of handicap) or the Equal Pay Act (sex-based wage discrimination) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.” Executive Order 11478 is not mentioned in this list.

Executive Order 11478, Section 1 reads “It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit

discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.”

Executive Order 11478 prohibits discrimination in “every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.” The EEOC does not recognize discrimination in “every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.” EEOC decisions are based solely on Title VII, the ADEA, the Rehabilitation Act, or the Equal Pay Act.

29 C.F.R. § 1614.107 Dismissals of complaints reads, in relevant part, “Prior to a request for a hearing in a case, the agency shall dismiss an entire complaint that fails to state a claim under 1614.103 or 1614.106(a) or states the same claim that is pending before or has been decided by the agency or Commission.” 29 C.F.R. § 1614.103 does not permit complaints of discrimination brought pursuant to Executive Order 11478. Clearly, Plaintiff has the statutory right to bring a complaint of discrimination pursuant to Executive Order 11478 and clearly Defendant does not permit complaints of discrimination to be brought pursuant to Executive Order 11478. Thus, Defendant denies Plaintiff due process and access to the administrative adjudicatory process for complaints brought pursuant to Executive Order 11478.

⁹ Title VII, Section 717(c).

C. Defendant's position establishes this case in favor of Plaintiff

Defendant's counsel argues that the EEOC is not required to use administrative law judges as due process considerations do not attach to an EEOC hearing because EEOC hearings are not adjudications, but, rather, "fall clearly on the investigative side." In support of this position, counsel relies on the Supreme Court case of *Hannah*. Counsel is deliberately perpetrating a fraud upon this Court.

A more in-depth examination of the *Hannah* decision discloses that it condemns the EEOC's practices and does not provide any measure of support for counsel's argument. "As is apparent from this brief sketch of the statutory duties imposed upon the Commission, its function is purely investigative and fact-finding. It does not adjudicate. It does not hold trials or determine anyone's civil or criminal liability. It does not issue orders. Nor does it indict, punish, or impose any legal sanctions."¹⁰ "[W]hen governmental agencies adjudicate . . . it is imperative that those agencies use the procedures which have traditionally been associated with the judicial process."¹¹ "The best example is provided by the administrative regulatory agencies. Although these agencies normally make determinations of a quasi-judicial nature, they also frequently conduct purely fact-finding investigations. When doing the former, they are governed by the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 1000-1011, and the parties to the adjudication are accorded the traditional safeguards of a trial."¹² The EEOC does adjudicate¹³, does hold hearings¹⁴, does determine civil liability of Federal agencies¹⁵, does issue orders¹⁶, and does impose legal sanctions¹⁷. See Plaintiff's Exhibit 8.

¹⁰ *Hannah* at 440-441.

¹¹ *Hannah* at 442.

¹² *Hannah* at 445.

¹³ "Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record." 29 C.F.R. § 1614.109(a).

¹⁴ "When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section." 29 C.F.R. § 1614.109(a).

With the passage of the Equal Employment Opportunity Act of 1972, Congress intended that Defendant's hearings be adjudicatory. This congressional intent is found throughout the legislative history of the Equal Employment Opportunity Act of 1972, 86 Stat. 103, House Report No. 92-238. "Administrative tribunals are better equipped to handle the complicated issues involved in employment discrimination cases." "Administrative tribunals are better suited to rapid resolution of such complex issues than are Courts." As this Court knows, a tribunal is a body that adjudicates matters. "The Equal Employment Opportunity Commission will be authorized by the statute to hear complaints of discrimination in Federal employment and establish appropriate procedures for an impartial adjudication of the complaints." "To correct this entrenched discrimination in the Federal service, it is necessary to insure the effective application of uniform, fair and strongly enforced polices." "The present law and the proposed statute do not permit industry and labor organizations to be the judges of their own conduct in the area of employment discrimination. There is no reason why government agencies should not be treated similarly."

As discussed supra, the EEOC, in a letter in response to Congress, writes,

"Using these figures as a base, the staffing requirements for implementation of the hearing procedures encompassed by the cease and desist powers have been projected on the basis of an adjudication of 15 cases per year for each hearing examiner and the preparation and presentation of 29 cases per year for each trial attorney."

"The assumptions regarding the number of cases that a hearing examiner and a trial attorney will handle per year are based upon approximations of the average length of an adjudication of a title VII violation based upon the estimated degree of complexity involved in such cases."

¹⁵ "Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the agency." 29 C.F.R. 1614.109(i).

¹⁶ "The administrative judge shall serve all orders to produce evidence on both parties." 29 C.F.R. § 1614.109(f).

¹⁷ 29 C.F.R. § 1614.109(f)(3)(i) through (v).

Further support is found in Title VII. Section 717 was added to Title VII indicating that the previous sections of Title VII can be applicable regarding Section 717. Section 705 reads, in relevant part, “. . . shall appoint, in accordance with the provisions of title 5 [United States Code] governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges [hearing examiners], and employees as he deems necessary to assist it in the performance of its functions . . .” Clearly, Congress intended for the EEOC to conduct adjudicatory hearings.

The EEOC makes determinations of a quasi-judicial nature. Its regulations establish that the EEOC’s hearings are adjudications. *Hannah* instructs that the APA governs determinations of a quasi-judicial nature. Defendant does not use administrative law judges as required by the APA. Thus, the EEOC fails to provide due process, is in violation of Title VII, is in violation of the APA, and is in violation of the Constitution of the United States. *Hannah*, the Constitution of the United States, the APA, Title VII, and the EEOC’s regulations together provide irrefragable evidence against Defendant.

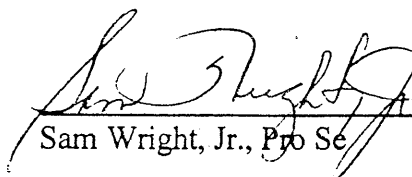
Plaintiff has provided not only an abundance of facts to defeat Defendant’s Motion To Dismiss, but also the evidence that proves Defendant’s guilt beyond any doubt. In the Amended Complaint, Plaintiff demands a trial by jury. After a jury trial, as a matter of law, Plaintiff can request a directed verdict. Plaintiff has no desire to needlessly expend judicial resources. Plaintiff attempted to resolve the issues presented in the instant case with Defendant prior to instituting this action. Defendant refused to correct the EEOC’s behavior. After serving the Complaint, Plaintiff contacted AUSA Lisa Barsoomian in an attempt to reach a settlement. Plaintiff was informed that Defendant is not interested in a settlement.

IV. CONCLUSION

The declaration by Jean Watson in support of the Motion To Dismiss is of no support for Defendant's arguments. As the Director of the EEOC's Office of Equal Opportunity since 2002, Ms. Watson is in a position to know whether or not the Commission has promulgated, in accordance with the APA, a rule or regulation governing a private citizen conducting a hearing on a Federal employee's EEO complaint. Ms. Watson's declaration is strangely silent on this issue. She explains why it is done, but does not provide any evidence that it is being done in accordance with the APA. The fact that Ms. Watson is unaware of any provision of any law prohibiting the use of administrative judges is of no consequence and proves nothing. Ms. Watson also violates the prohibition on using the title administrative judge on official documents.

The Amended Verified Complaint is the equivalent of an affidavit because it is verified in accordance with 28 U.S.C § 1746. Plaintiff provides sufficient factual detail to establish that there are many sets of facts that entitle Plaintiff to relief, Plaintiff provides sufficient evidence to establish that Plaintiff can prove that Defendant has no proper rule for a private citizen to conduct EEOC hearings, and that there are genuine issues as to material facts. Viewing the facts, and the inferences to be drawn from the facts, in the light most favorable to the Plaintiff, Defendant is not entitled to judgment as a matter of law. For the reasons cited herein Defendant's Motion To Dismiss must be denied.

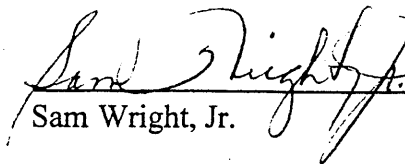
Respectfully submitted,



Sam Wright, Jr., Pro Se

CERTIFICATE OF SERVICE

I certify on this 6th day of July 2003 that I sent via first class mail, postage prepaid, a copy of PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS and MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS to Ms. Lisa Barsoomian, Assistant United States Attorney, U.S. Attorney's Office, 555 Fourth Street, N.W., Washington, D.C. 20530.



Sam Wright, Jr.

EXHIBIT 1

LAW OFFICES OF
RICHARD H. FINE

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Rockville, Maryland 20850

TELEPHONE 301-340-2020

FACSIMILE 301-340-8217

March 19, 2003

Mr. Melvin Hirshman
Bar Counsel
Attorney Grievance Commission of Maryland
100 Community Place, Suite 3301
Crownsville, Maryland 21032-2027

Re: Your File No. 2003-0-1130
Complainant: Mr. Sam Wright, Jr.

Dear Mr. Hirschman:

I am in receipt of your letter dated March 13, 2003.

I am a contract Administrative Judge performing work for the U.S. Equal Employment Opportunity Commission (EEOC) on a case-by-case basis. In regards to Mr. Wright, I was contracted by the EEOC to issue a decision on certification of the class complainant filed by Mr. Wright and all members of the proposed class.

The contract in this matter was issued by the EEOC as Purchase Order No. 3FO0000021. A copy has been appended to this letter for your review.

I have asked the contract Project Monitor at the EEOC, Donald Names, to provide supporting documentation regarding their authority to contract for administrative judge services in response to the complaint filed with your office by Mr. Wright. Mr. Names has written directly to you, however, I am also appending a copy of his letter as part of my response to the complainant.

I am available to provide additional information, as required, to resolve this matter.

Sincerely,



Richard H. Fine

RHF:cp

EXHIBIT 2

IMPORTANT: Mark all packages and papers with contract and/or order numbers.

8

DATE OF ORDER 12/04/2002		2. CONTRACT NO. (If any)		6. SHIP TO:	
ORDER NO. 3FO0000021		4. REQUISITION/REFERENCE NO. 3FO0000019		a. NAME OF CONSIGNEE	
ISSUING OFFICE (Address correspondence to) PROCUREMENT MANAGEMENT DIVISION US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 1801 L STREET, NW, ROOM 2505 Washington DC 20507				b. STREET ADDRESS SPECIFIED HEREIN	
7. TO: NAME OF CONTRACTOR		c. CITY		d. STATE	e. ZIP CODE
COMPANY NAME RICHARD H FINE, P.C.		f. SHIP VIA		8. TYPE OF ORDER	
STREET ADDRESS 25 WEST MIDDLE LANE		REFERENCE YOUR: Please furnish the following on the terms and conditions specified on both sides of this order and on the attached sheet, if any, including delivery as indicated.		b. DELIVERY - Except for billing instructions on the reverse, this delivery order is subject to instructions contained on this side only of this form and is issued subject to the terms and conditions of the above-numbered contract.	
CITY ROCKVILLE	e. STATE MD	f. ZIP CODE 20850			
ACCOUNTING AND APPROPRIATION DATA ee Line Item Detail		10. REQUISITIONING OFFICE OFFICE OF FEDERAL OPERATIONS			

1. BUSINESS CLASSIFICATION (Check appropriate box(es)) ☒ a. SMALL ☐ b. OTHER THAN SMALL ☐ c. DISADVANTAGED ☐ d. WOMEN-OWNED				
2. F.O.B. POINT Destination		14. GOVERNMENT B/L NO.	15. DELIVER TO F.O.B. POINT ON OR BEFORE (Date)	16. DISCOUNT TERMS 10 days % 20 days % 30 days % days %
13. PLACE OF a. INSPECTION b. ACCEPTANCE				

17. SCHEDULE (See reverse for Rejections)

ITEM NO. (a)	SUPPLIES OR SERVICES (b)	QUANTITY ORDERED (c)	UNIT (d)	UNIT PRICE (e)	AMOUNT (f)	QUANTITY ACCEPTED (g)
SEE LINE ITEM DETAIL						
18. SHIPPING POINT		19. GROSS SHIPPING WEIGHT		20. INVOICE NO.		17(h) TOT. (Cont. pages)
21. MAIL INVOICE TO: ACCOUNTS PAYABLE						
a. NAME FINANCIAL MANAGEMENT DIVISION						
b. STREET ADDRESS (or P.O. Box) US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, 1801 L STREET, NW						
c. CITY WASHINGTON		d. STATE DC	e. ZIP CODE 20507		\$2,035.00	17(i)

22. UNITED STATES OF AMERICA BY (Signature) <i>Cassandra Bates</i>	23. NAME (Typed) CASSANDRA BATES TITLE CONTRACTING/ORDERING OFFICE
---	--

Funding Summary

3FO0000021

SAM WRIGHT, JR.

4 of 8

03 - -01 - FO - -2534 - -INTGRIEV - FO - - - -FO - - -

\$2,000.00

Reference Requisition: 3FO0000019

2003 - -01 - FO - -2100 - -INTGRIEV - FO - - - -FO - - -

\$35.00

Reference Requisition: 3FO0000019

Total Funding: \$2,035.00

STATEMENT OF WORK

I. BACKGROUND

The U.S. Equal Employment Opportunity Commission (EEOC) requires the services of an Administrative Judge to issue a decision on certification of the class complaint filed by, *Sam Wright, Jr., et al v. EEOC*, EEOC Complaint No. 200200076.

The work is to be performed pursuant to 29 C.F.R. § 1614.204(a) through (e), 1614.204(g), and EEOC Management Directive MD-110. The proposed effort includes a determination as to whether the complaint meets the prerequisites of a class complaint under 29 C.F.R. § 1614.204(a)(2), or whether instead the complaint should be dismissed because it does not meet those prerequisites or for any of the reasons listed in 29 C.F.R. § 1614.107. The proposed effort may also include any other functions required to be performed by the Administrative Judge pursuant to 29 C.F.R. § 1614.204(b), (d), (e), and (g).

The proposed effort may require a total of approximately 40 hours of work. The Administrative Judge (hereafter "the Contractor") shall conduct all proceedings in accordance with 29 C.F.R. § 1614.204, EEOC Management Directive MD-110, and Paragraph II of this Statement of Work, entitled "Performance."

The contractor's hourly rate shall not exceed \$50.00. Allowable costs incurred by the contractor as a result of performance under this purchase order shall consist of direct labor expenses, and other miscellaneous expenses.

The schedule for completion of work under this purchase order is 90 days from the contractor's receipt of the complaint file. If a decision will not be issued by the contractor within the above mentioned schedule, the contractor shall submit a written request for an extension to the Project Monitor **no less than 30 days** prior to the due date stating that good cause exists for extending the time for issuing the decision. The Project Monitor will grant or deny the request within **5 working days** after reviewing the request.

II. PERFORMANCE

The contractor shall "issue a decision on certification of the class complaint," as the term is used in this Statement of Work; may make a post-certification review of an agency's Notice to class members; and if a proposed settlement occurs during the pendency of the certification determination process, shall review the settlement. The principal steps in the contractor's determination may include:

1. **Reading and analyzing class complaint and accompanying documents.** The class complaint and accompanying documents will be sent to the contractor by the EEOC as soon as a purchase order is awarded.

2. **Issuing an Order and/or Acknowledgment.** Within 10 days after receipt of the class complaint and accompanying documents, the contractor must determine whether additional information relevant to the issue of certification is required from either or both parties. See 29 C.F.R. §1614.204(d)(1). If the contractor determines that additional information is required, the contractor within 10 days after receipt of the class complaint shall issue an Acknowledgment and Order, which 1) acknowledges the assignment of the complaint, and 2) directs either the complainant or agency, or both, to submit additional information relevant to the issue of certification. The contractor will give the parties a deadline (e.g., 15 days, 20 days) by which to submit the information. The contractor shall inform the parties that they are to serve their submissions on one another and on the contractor, and that each party has an additional 10 days from receipt of a submission to file a response. If the contractor determines that no additional information is required, the contractor within 10 days after receipt of the class complaint shall issue an Acknowledgment only.

3. **Issuing a decision and transmitting the record.** The contractor shall issue a decision to accept or dismiss the class complaint in writing unless the complaint is settled, or otherwise does not result in a decision through no fault of the contractor. A Certificate of Service shall accompany the decision. The decision shall be issued within 90 days from the contractor's receipt of the class complaint, unless the contractor has granted extensions of time to parties for reasons consistent with 29 C.F.R. § 1614.204(d), and for good cause shown. Reasons for any and all delays beyond the 90 day time frame must be set out fully in the contractor's decision.

The contractor shall distribute copies of the record produced during the determination process to the parties within 90 calendar days from the contractor's receipt of the class complaint.

The agency transmittal shall be addressed as follows:

U.S. Equal Employment Opportunity Commission
Attn: Director - Office of Equal Opportunity
1801 L Street NW, Room 9020
Washington, D.C. 20507

4. **Post-decision action.** Pursuant to 29 C.F.R. §1614.204(e), as explained further in EEOC MD-110, Chapter 8, NOTIFICATION - § 1614.204(e), the contractor may be required to decide whether to issue a stay in the distribution of any notice notifying class members of the certification of the class complaint.

5. **Review proposed resolution.** If a proposed settlement occurs during the pendency of the certification determination process, the contractor shall review and issue a decision concerning the fairness, adequacy and reasonableness of the proposed resolution of the complaint. See 29 C.F.R. § 1614.204(g).
6. **Period of performance.** The period of performance under this purchase order shall be from the effective date of order through twelve (12) months thereafter.
7. **Progress reports.** Periodically, the contractor may be required to submit a progress report to the Project Monitor. The contractor shall provide copies of the Acknowledgment and Order, notices of extensions granted, and correspondence that may require support from OEO to the Project Monitor.

III. COMPENSATION AND CLAIM FOR PAYMENT

The contractor shall submit a claim for payment within 30 calendar days after issuing a decision, or after issuing the document that records a resolution of the complaint. The contractor's claim for payment shall be submitted to the Project Monitor. The claim shall include a statement of all expenses and travel costs incurred. The claim must be accompanied by a copy of the decision that the contractor transmitted to the parties. If no decision has been issued on the complaint, the claim must be accompanied by the settlement agreement or other document which ended the conduct of the hearing.

The contractor shall not exceed the grand total indicated on the face page of the purchase order. The Government is not obligated to reimburse the contractor for costs incurred in excess of the Not-To-Exceed grand total specified in the purchase order. If the contractor foresees a cost overrun due to circumstances beyond the contractor's control, the contractor shall stop work immediately and notify the Procurement Management Division's Contract Officer (at the telephone number shown on the purchase order). Any additional costs, such as those which might arise as a result of an increase in the number of hours of work, must be authorized by the Contract Officer. Unless the Contract Officer authorizes costs beyond the amount indicated on the face page of the purchase order in writing, the contractor will not be entitled to payment.

If the complaint is settled, or otherwise does not result in a decision through no fault of the contractor, the contractor shall be compensated for work actually performed.

Project Monitor is:

Don Names, Director
Special Services Staff
EEOC - Office of Federal Operations
1801 L Street, NW
Washington, DC 20507
(202) 663-4591

EXHIBIT 3

LAW OFFICES OF
RICHARD H. FINE

25 West Middle Lane
Rockville, Maryland 20850

TELEPHONE 301-340-2020

FACSIMILE 301-340-8217

December 17, 2002

Sam Wright, Jr.
168 Peyton Road
Sterling, VA 20165

David G. Liss, Esquire
Assistant Legal Counsel
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

Re: Sam Wright, Jr., et al.,
Class Agent v. EEOC
Agency No. 200200076

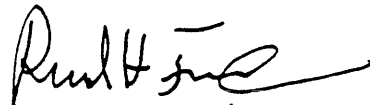
Dear Messrs. Wright & Liss:

I have received Mr. Wright's class complainant from the Equal Employment Opportunity Commission. I am an independent Administrative Judge assigned to conduct the proceedings in the matter. The appended ACKNOWLEDGMENT AND ORDER FOR CLASS CERTIFICATION is to advise all parties of the procedures that will be followed in this matter.

I direct your attention to paragraph II regarding your submission, including supporting documentation, as to whether or not the complaint meets certification requirements under 29 C.F.R. 1614.204(a). Your response is due not later than January 10, 2003.

In addition to the telephone number listed above, I may also be reached on my direct line at (301) 838-3241.

Sincerely,



Richard H. Fine
Administrative Judge

RHF:cp

Encl.

Copy to: Donald Names, EEOC (OFO)

BEFORE ADMINISTRATIVE JUDGE RICHARD H. FINE

In the Certification of:
Sam Wright, Jr., et al, Class Agent
v.
Cari M. Dominguez
Chair,
Equal Employment Opportunity
Commission, Agency

Agency No. 200200076

ACKNOWLEDGMENT AND ORDER FOR CLASS CERTIFICATION

This is to acknowledge receipt of the above class complaint. EEOC Regulation 29 C.F.R. § 1614.204 and Chapter 8 of EEOC Management Directive 110, November 9, 1999 (EEO MD-110) govern the conduct of class complaints. The regulations and EEO MD-110 are available on the Commission's website at www.eeoc.gov.

Pursuant to 29 C.F.R. § 1614.204(c), the subject class complaint was filed against the [agency]. The complaint was forwarded to this office for a decision regarding certification of the complaint as a class action. The Administrative Judge whose name appears below has been assigned to preside over this complaint. Failure to follow the orders of the Administrative Judge or to comply with the Commission's regulations may result in sanctions. *See* 29 C.F.R. § 1614.109(f) (3). When a conflict between the parties arises, the parties should attempt to resolve the conflict themselves before bringing it to the attention of the Administrative Judge.

I. DESIGNATION OF REPRESENTATIVE

The parties are entitled to be represented. However, a class agent is not required to be represented. The EEOC does not provide representatives for complainant. Even if the class agent has previously designated a representative for EEO counseling and agency investigation of the complaint, he/she must renew that designation for the purpose of EEOC processing of this complaint. The parties must inform this office of the name, address and telephone number of his/her respective representative. If that representative changes, or if a currently unrepresented class agent obtains representation in the future, the party shall notify the Administrative Judge and the other party immediately.

II. CORRESPONDENCE AND MOTIONS

The parties are hereby notified and authorized to submit specific information as to whether or not this complaint meets the certification requirements under 29 C.F.R. § 1614.204(a) for a class complaint. Such submissions shall be received in this office no later than January 10, 2003.

Each party must provide the opposing party with a copy of all correspondence that he/she sends to the Administrative Judge. The attachment of a certificate of service may demonstrate that the opposing party was provided a copy. Failure to provide a copy of submissions to the opposing party may result in return of such submissions without consideration. The parties are reminded of their ongoing obligation to keep this office informed of their current mailing address. Other than to clarify a procedural issue, it is inappropriate for the parties to engage in *ex parte* (one-sided) communication with the Administrative Judge.

Extensions of filing dates and postponements will not be granted, absent a prompt request in writing and a showing of good cause. Failure by the class agent to obtain representation, or failure by the agency to assign this matter to a representative, will not be grounds for postponement.

On any request or motion, the requesting party shall certify that he/she has made a good faith effort to resolve the matter with the non-moving party and, where appropriate, indicate whether the opposing party has an objection to the request or motion. All motions should be accompanied by a proposed order granting the relief requested in the motion.

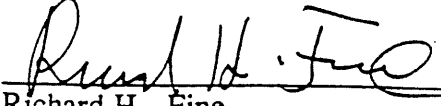
III. SANCTIONS FOR FAILURE TO FOLLOW ORDERS

Failure to follow this Order or other orders of the Administrative Judge may result in sanctions pursuant to 29 C.F.R. § 1614.109(f) (3). The Administrative Judge may, where appropriate:

- (A) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;
- (B) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;
- (C) Exclude other evidence offered by the party failing to produce the requested information or witness;
- (D) Issue a decision fully or partially in favor of the opposing party; or
- (E) Take such other actions as appropriate.

IT IS SO ORDERED

Date: 12/17/02


Richard H. Fine
Administrative Judge

CERTIFICATE OF SERVICE

I certify that on December 17, 2002, the foregoing ACKNOWLEDGMENT AND ORDER FOR CLASS CERTIFICATION was sent by first class mail, postage prepaid to the following:

Sam Wright, Jr.
168 Peyton Road
Sterling, VA, 20165

David G. Liss, Esquire
Assistant Legal Counsel
Office of Legal Counsel
U. S. Equal Employment Opportunity Commission
1801 L Street, N.W.
Washington, D.C. 20507

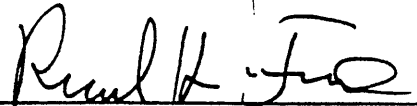

Richard H. Fine
Administrative Judge
25 West Middle Lane
Rockville, MD 20850
301-838-3241
301-340-8217 (fax)

EXHIBIT 4

BEFORE ADMINISTRATIVE JUDGE RICHARD H. FINE

Sam Wright, Jr., et al.
Plaintiffs.

v.

Cari M. Dominguez, Chair.
U.S. Equal Employment Opportunity Commission,
Agency.

Agency No. 200200076

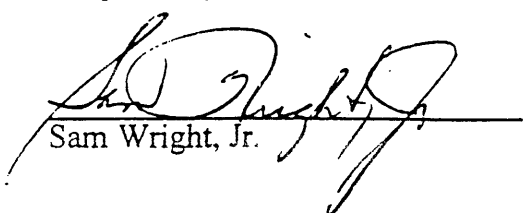
REQUEST FOR INFORMATION IN ORDER FOR PLAINTIFFS TO PROCEED

Plaintiffs request the information below in order that Plaintiffs may prepare to proceed with the instant case. Plaintiffs request:

1. A copy of the contract between Richard H. Fine and the U.S. Equal Employment Opportunity Commission.
2. A copy of the document or documents that designate Richard H. Fine as an administrative judge.
3. A copy of each and every document that permits the U.S. Equal Employment Opportunity Commission to make public the charges in the instant complaint.
4. A copy of each and every document that provides Richard H. Fine with the authority to adjudicate the instant complaint.
5. A copy of each and every written communication, regarding the instant complaint, between Richard H. Fine and the Agency.
6. As the EEOC is not processing this complaint, a copy of each and every document that requires that the class agent "must renew that designation for the purpose of EEOC processing of this complaint."
7. A complete description of each oral communication, regarding the instant complaint, between Richard H. Fine and the Agency.

Also, Plaintiffs filed fourteen (14) class complaints with the Agency. The Agency has not made Plaintiffs aware of the agency numbers assigned to each of the fourteen complaints. Plaintiffs cannot proceed without knowing which of the fourteen complaints is before Richard H. Fine.

Respectfully,


Sam Wright, Jr.

CERTIFICATE OF SERVICE

I certify that on this 31st day of December 2002 that I mailed, via first class mail, postage prepaid, a copy of the foregoing REQUEST FOR INFORMATION IN ORDER FOR PLAINTIFFS TO PROCEED to David G. Liss, Assistant Legal Counsel, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission, 1801 L Street, N.W., Washington, DC 20507.

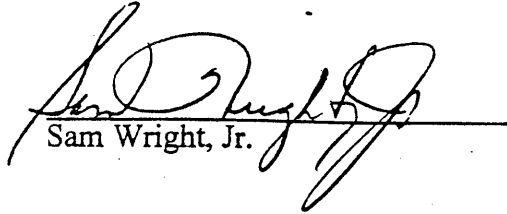

Sam Wright, Jr.

EXHIBIT 5

POSITION DESCRIPTION (Please Read Instructions on the Back)

1. Agency Position No.
F-1405

2. Reason for Submission ☒ Redescription ☐ Reestablishment Explanation (Show any positions replaced) In Lieu of F-1118	3. Service ☐ New ☐ Hdqtrs ☒ Field ☐ Other	4. Employing Office Location Washington, DC	5. Duty Station District Office	6. OPM Certification ☐ Yes ☐ No
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7. Fair Labor Standards Act ☒ Exempt ☐ Nonexempt	8. Financial Statements Required ☐ Executive Personnel ☐ Employment and Financial Interest	9. Subject to IA Action ☒ Yes ☐ No
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10. Position Status ☐ Competitive ☒ Excepted (Specify in Remarks) ☐ SES (Gen.) ☐ SES (CRI)	11. Position Is ☐ Supervisory ☐ Managerial ☒ Neither	12. Sensitivity 1--Non-Sensitive 2--Noncritical Sensitive 3--Critical 4--Special Sensitive	13. Competitive Level Code	14. Agency Use
---	---	--	----------------------------	----------------

15. Classified/Graded by	Official Title of Position	Pay Plan	Occupational Code	Grade	Initials	Date
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a. Office of Personnel Management						
b. Department, Agency or Establishment	Attorney-Examiner (Civil Rights)	GS	905	14	Rm	7/19/02
c. Second Level Review						
d. First Level Review						
e. Recommended by Supervisor or Initiating Office						

16. Organizational Title of Position (if different from official title) Administrative Judge	17. Name of Employee (if vacant, specify)
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18. Department, Agency, or Establishment Equal Employment Opportunity Commission	c. Third Subdivision District Office
a. First Subdivision Office of the Chair	d. Fourth Subdivision Hearings Staff
b. Second Subdivision Office of Field Programs	e. Fifth Subdivision
19. Employee Review-This is an accurate description of the major duties and responsibilities of my position.	Signature of Employee (optional)

20. Supervisory Certification. I certify that this is an accurate statement of the major duties and responsibilities of this position and its organizational relationships, and that the position is necessary to carry out Government functions for which I am responsible. This certification is made with the knowledge that this information is to be used for statutory purposes relating to appointment and payment of public funds, and that false or misleading statements may constitute violations of such statutes or their implementing regulations.	b. Typed Name and Title of Higher Level Supervisor or Manager (optional) Elizabeth M. Thornton, Director Office of Field Programs
a. Typed Name and Title of Immediate Supervisor	Signature <i>Elizabeth M. Thornton</i> Date 7/19/02

21. Classification/Job Grading Certification. I certify that this position has been classified/graded as required by Title 5, U.S. Code, in conformance with standards published by the U.S. Office of Personnel Management or, if no published standards apply directly, consistently with the most applicable published standards.	22. Position Classification Standards Used in Classifying/Grading Position
Typed Name and Title of Official Taking Action Kenneth Myers Human Resources Specialist	Information for Employees. The standards, and information on their application, are available in the personnel office. The classification of the position may be reviewed and corrected by the agency or the U.S. Office of Personnel Management. Information on classification/job grading appeals, and complaints on exemption from FLSA, is available from the personnel office or the U.S. Office of Personnel Management.

Signature <i>Kenneth Myers</i> Date 7/19/02	Signature <i>Elizabeth M. Thornton</i> Date 7/19/02
--	--

23. Position Review	Initials	Date	Initials	Date	Initials	Date	Initials	Date	Initials	Date
a. Employee (optional)										
b. Supervisor										
c. Classifier										

24. Remarks Bus code 0020 - 10000 7/19/02
--

25. Description of Major Duties and Responsibilities (See Attached)

INTRODUCTION

This position is located in the Hearings Unit of a District office, Office of Field Programs, Office of the Chair, Equal Employment Opportunity Commission (EEOC). The purpose of this position is to handle cases arising under the various anti-discrimination laws and to conduct hearings pursuant to complaints of discrimination filed by Federal employees and applicants for Federal employment.

MAJOR DUTIES

- Serves as an Attorney-Examiner (Civil Rights) adjudicating individual and class discrimination complaints of all types through a hearing or issuance of a decision without a hearing. Carries out a myriad of functions by accomplishing the following major responsibilities: reviews assigned cases for procedural compliance; schedules hearings or determines if a decision without hearing will be rendered; conducts prehearing and status conferences to explore the possibility of settlement, conducts settlement discussions and other types of ADR, clarifies the issues and identifies stipulations; advises the parties about their rights, responsibilities, and burdens of proof; oversees the discovery process; rules on motions; rules on witnesses, including authorizing and qualifying expert witnesses; presides over hearings making procedural and evidentiary rulings as necessary while maintaining decorum by excluding unruly people; administers oaths and affirmations; assures that the record is fully developed; determines credibility of witnesses; conducts research; analyzes complex fact patterns and applies evolving case law.
- May direct parties to produce written briefs, memoranda of law or present oral arguments. May order the appearance of witnesses or the production of documents. Fashions appropriate relief when discrimination is found.
- Cases involve substantial motion practice and novel arguments and/or fact patterns. Resolution of the issues requires great skill and knowledge in making credibility determinations, obtaining facts, determining the relevancy of evidence and assigning it the appropriate probative value, evaluating expert testimony on controversial matters, distinguishing legal applications, imposing sanctions and dismissing cases under 29 CFR 1614.109(b). Resolution of cases may involve the development of new case law in particular in dealing with new and/or constantly evolving areas of Federal employment law such as disability discrimination and compensatory damages.
- Provides interpretive guidance and formal opinions to Federal agencies, unions, and employees on provisions of equal employment laws, executive orders and directives, and on the full range of laws, rules and regulations which constitute the basis of the Federal personnel program. Provides training to agency staff, managers, the Federal and private Bar Associations, including

courses for continuing legal education credits. Assists agency representatives in developing programs and procedures and in establishing methods of program evaluation and reporting. Provides advice to agency program managers on resolution of major problems.

- Exercises significant discretion in managing his/her caseload in accordance with EEOC policy concerning quality, production, and timeliness. Adjudicates the more complicated and sensitive cases received by the EEOC.
- A significant portion of the Attorney-Examiner's time is devoted to the processing and adjudication of cases involving complex fact situations. The incumbent also will adjudicate "cases of first impression" requiring unique legal analyses. Complaints may cover a broad spectrum of unrelated areas of the law (e.g., criminal law, labor law, contract law, domestic law or torts). A single case also may involve the application of multiple areas of the law.

FACTORS

1. Knowledge Required by the Position

- Admission to the Bar.
- A demonstrable knowledge of current laws and court decisions concerning employment law, as well as EEOC regulations and policies.
- A comprehensive knowledge of the legal system and processes.
- Knowledge of the organization, policies, regulations and procedures of the Federal government.
- Ability to interpret laws, analyze facts and render a decision.
- Ability to deal with parties under substantial pressure and stress.
- Possession of a high level of judicial temperament and skill to preside over hearings.

2. Supervisory Controls

The incumbent works under the general supervision of a Supervisory Attorney-Examiner (CR) or Lead Administrative Judge who assigns cases without preliminary instructions. The incumbent is independently responsible for case processing and adjudicatory activities and retains signatory authority for his/her assigned cases. The incumbent's decisions are seldom reviewed prior to issuance for conformance with commission policy, precedential effect and overall quality. Decisions delivered orally from the bench following the hearing, if reviewed, are reviewed only after they are rendered. Conclusions of law such as whether or not discrimination is proven by a preponderance of the evidence, is an independent function of the Attorney-Examiner (CR). Work is considered technically authoritative.

3. Guidelines

The incumbent is guided by current laws, Commission policy, and regulations. The incumbent must use independent judgment and originality in identifying and applying law to specific fact situations.

4. Complexity

The work consists of presiding over the more complex cases confronting EEOC. Cases processed include ruling on motions and witnesses, analyzing issues and facts, rendering decisions either immediately or subsequently in writing, and determining remedies including compensatory damages and appropriate attorney fees.

Cases are considered highly complex and varied based on the identification of issues of legal significance. The work typically involves novel, unique and precedential cases.

5. Scope and Effect

The primary purpose of the position is to provide authoritative advice and legal interpretations as an Attorney-Examiner (CR). The work has an impact on the overall accomplishment and effectiveness of the Hearings Unit.

Incumbent determines whether a hearing will be held and presides over the hearing. The decision reached and remedy awarded may affect ~~other~~ Federal agencies' policies and procedures and if confirmed in a court decision, may affect the public and other future EEOC and court rulings as well.

6. Personal Contacts

Contacts may be with other Federal agency officials, EEOC headquarters personnel and members of the public.

7. Purpose of Contacts

Contacts may be with attorneys, agencies, or complainants' representatives to process cases for Federal employees, or to the public while conducting training or public speaking at seminars.

8. Physical Demands

Work is generally performed while seated. However, traveling to and from hearings is required.

9. Work Environment

Work is performed in an EEOC office or at a hearing site within another Federal agency.

EXHIBIT 6



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, D.C. 20507

Office of
Legal Counsel

NOV 02 2001

Sam Wright, Jr.
168 Peyton Road
Sterling, Virginia 20165

Re: FOIA No. A2-01-FOIA-026

Dear Mr. Wright:

This is in response to your request under the Freedom of Information Act (FOIA). The paragraphs checked below apply:

- ☐ Your request is neither granted nor denied as it does not reasonably describe the records you wish disclosed. 5 U.S.C. § 552(a)(3)(A). A record is "reasonably described" if the description enables a professional agency employee to locate the record with a reasonable amount of effort.
- ☒ Your request is neither granted nor denied. A thorough search was conducted for records that fit the description of the records you seek disclosed. No such records exist or could be located.
- ☐ Your request was sent improperly to this office and has been forwarded to the Regional Attorney for the ☐ District Office of the EEOC for response. Your request will not be deemed received by the Commission until received by the appropriate Regional Attorney. 29 C.F.R. § 1610.7(d).
- ☒ See the attached Comments page for further information.

Sincerely,

A. Jacy Thurmond, Jr.
Assistant Legal Counsel/FOIA

Re: FOIA No. A2-01-FOIA-026

Comments Page

We can neither grant nor deny your FOIA request. The EEOC does not provide standard training to newly hired Administrative Judges or Supervisory Administrative Judges. The EEOC does not maintain information concerning every training course taken specifically by its Administrative Judges. The FOIA does not require an agency to create documents or databases and to do so would place an unreasonable burden on our agency.

EXHIBIT 7

processes, the design of welding sequences and welded structures, the establishment and maintenance of standards and quality controls for welding, the giving of advice to design and construction engineers on the production applicability of welding, and similar work regarding metallic joining or cutting processes allied to welding.

GS-0895 – Industrial Engineering Technician Series*

This series includes nonprofessional technical positions engaged in industrial engineering work. Industrial engineering technician positions are concerned primarily with planning, designing, analyzing, improving, and installing integrated work systems comprised of men, materials, and equipment, for use in producing products, rendering services, repairing equipment, or moving and storing supplies and equipment. The work typically involves studies of engineered time standards, methods engineering, layout design of work centers, control systems, materials handling, or manpower utilization. It requires a knowledge of the principles and techniques of industrial engineering and practical knowledge of pertinent industrial and related work processes, facilities, methods, and equipment.

GS-0896 – Industrial Engineering Series*

This series includes positions that involve professional work in industrial engineering. Industrial engineering is that branch of engineering concerned with the planning, design, analysis, improvement, and installation of integrated systems of employees, materials, and equipment to produce a product or render a service. The work requires application of specialized professional knowledge and skill in the mathematical, physical, and social sciences together with the principles and methods of engineering analysis and design to specify, predict, and evaluate the results to be obtained from such systems.

GS-0899 – Engineering and Architecture Student Trainee Series

See the series definition for the General Student Trainee Series, GS-0099.

GS-0900 – LEGAL AND KINDRED GROUP

This group includes positions that advise on, administer, supervise, or perform work of a legal or kindred nature.

Series in this group are:

GS-0901 – General Legal and Kindred Administration Series**

This series covers two-grade interval administrative positions that supervise, lead, or perform work involving two or more series in the Legal and Kindred Group, GS-0900 or positions that require legal and kindred administrative knowledge but are not covered by an existing administrative series within the group.

GS-0904 – Law Clerk Series

This series includes positions of law clerk trainees performing professional legal work requiring graduation from a recognized law school or equivalent experience, pending admission to the bar.

GS-0905 – General Attorney Series*

This series includes professional legal positions involved in preparing cases for trial and/or the trial of cases before a court or an administrative body or persons having quasi-judicial power; rendering legal advice and services with respect to questions, regulations, practices, or other matters falling within the purview of a Federal Government agency (this may include conducting investigations to obtain evidentiary data); preparing interpretative and administrative orders, rules, or regulations to give effect to the provisions of governing statutes or other requirements of law; drafting, negotiating, or examining contracts or other legal documents required by the agency's activities; drafting, preparing formal comments, or otherwise making substantive recommendations with respect to proposed

legislation; editing and preparing for publication statutes enacted by Congress, opinions or discussions of a court, commission, or board; drafting and reviewing decisions for consideration and adoption by agency officials.

Included also are positions, not covered by the Administrative Procedure Act, involved in hearing cases arising under contracts or under the regulations of a Federal Government agency when such regulations have the effect of law, and rendering decisions or making recommendations for disposition of such cases. The work of this series requires admission to the bar.

GS-0920 – Estate Tax Examining Series

This series includes positions concerned with determining liability for Federal estate or gift taxes. Such work requires knowledge of State, local, and Federal laws and regulations relating to estate and gift taxation; knowledge of accounting principles and theory; knowledge of business methods and practices; and knowledge of property valuation and investigative techniques.

GS-0930 – Hearings and Appeals Series

This series includes positions that involve the adjudication of cases that typically include the conduct of formal or informal hearings that accord appropriate due process, arising under statute or under the regulations of a Federal agency when the hearings are not subject to the Administrative Procedure Act; or involve the conduct of appellate reviews of prior decisions. The work requires the ability to review and evaluate investigative reports and case records, conduct hearings in an orderly and impartial manner, determine credibility of witnesses, sift and evaluate evidence, analyze complex issues, apply agency rules and regulations and court decisions, prepare clear and concise statements of fact, and exercise sound judgment in arriving at decisions. Some positions require application of a substantive knowledge of agency policies, programs, and requirements in fields such as personnel management or environmental protection.

GS-0945 – Clerk of Court Series**

This series covers two-grade interval administrative positions that supervise, lead, administer, or perform administrative and related work in connection with:

- proceedings instituted before courts of justice under the jurisdiction of a department or independent establishment in the executive branch of the United States Government; or
- business operations in connection with such courts.

GS-0950 – Paralegal Specialist Series*

This series includes positions not requiring professional legal competence that involve various legal assistance duties, of a type not classifiable in some other series in the Legal and Kindred Group, in connection with functions such as hearings, appeals, litigation, or advisory services. The specialists analyze the legal impact of legislative developments and administrative and judicial decisions, opinions, determinations, and rulings on agency programs; conduct research for the preparation of legal opinions on matters of interest to the agency; perform substantive legal analysis of requests for information under the provisions of various acts; or other similar legal support functions that require discretion and independent judgment in the application of a specialized knowledge of laws, precedent decisions, regulations, agency policies and practices, and judicial or administrative proceedings. Such knowledge is less than that represented by graduation from a recognized law school, and may have been gained from formalized, professionally instructed agency or educational institution training or from professionally supervised on-the-job training. While the paramount knowledge requirements of this series are legal, some positions also require a practical knowledge of subject matter areas related to the agency's substantive programs.



EXHIBIT 8

PART 1614--FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

(PUBLISHED JULY 12, 1999; EFFECTIVE NOVEMBER 9, 1999)

Subpart A--Agency Program to Promote Equal Employment Opportunity

1614.101 General policy.

1614.102 Agency program.

1614.103 Complaints of discrimination covered by this part.

1614.104 Agency processing.

1614.105 Pre-complaint processing.

1614.106 Individual complaints.

1614.107 Dismissals of complaints.

1614.108 Investigation of complaints.

1614.109 Hearings.

1614.110 Final action by agencies.

Subpart B--Provisions Applicable to Particular Complaints

1614.201 Age Discrimination in Employment Act.

1614.202 Equal Pay Act.

1614.203 Rehabilitation Act.

1614.204 Class complaints.

Subpart C--Related Processes

1614.301 Relationship to negotiated grievance procedure.

1614.302 Mixed case complaints.

1614.303 Petitions to the EEOC from MSPB decisions on mixed case appeals and complaints.

1614.304 Contents of petition.

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation will be conducted by investigators with appropriate security clearances. The Commission will, upon request, supply the agency with the name of an investigator with appropriate security clearances.

(e) The agency shall complete its investigation within 180 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to 1614.107. By written agreement within those time periods, the complainant and the respondent agency may voluntarily extend the time period for not more than an additional 90 days. The agency may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Exec. Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the investigating agency notifies the parties of the extension.

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the agency shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to 1614.110 from the agency with which the complaint was filed.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the agency's acknowledgment letter. The complainant shall send a copy of the request for a hearing to the agency EEO office. Within 15 days of receipt of the request for a hearing, the agency shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

1614.109 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section. Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security

clearances.

(b) *Dismissals.* Administrative judges may dismiss complaints pursuant to 1614.107, on their own initiative, after notice to the parties, or upon an agency's motion to dismiss a complaint.

(c) *Offer of resolution.* (1) Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the agency may make an offer of resolution to a complainant who is represented by an attorney.

(2) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the agency may make an offer of resolution to the complainant, whether represented by an attorney or not.

(3) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The agency's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, an agency may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the agency's final decision, or the Commission decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the agency of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, an agency may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(d) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(e) *Conduct of hearing.* Agencies shall provide for the attendance at a hearing of all employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for

contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct.

(f) *Procedures.* (1) The complainant, an agency, and any employee of a Federal agency shall produce such documentary and testimonial evidence as the administrative judge deems necessary. **The administrative judge shall serve all orders to produce evidence on both parties.**

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) **When the complainant, or the agency against which a complaint is filed, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:**

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(g) *Decisions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the administrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 days of receipt of the statement in paragraph (g)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the

administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue a decision without a hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

(h) *Record of hearing.* The hearing shall be recorded and the agency shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the agency representative for reproduction.

(i) *Decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the agency. The administrative judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If an agency does not issue a final order within 40 days of receipt of the administrative judge's decision in accordance with 1614.110, then the decision of the administrative judge shall become the final action of the agency.

1614.110 Final action by agencies.

(a) *Final action by an agency following a decision by an administrative judge.* When an administrative judge has issued a decision under 1614.109(b), (g) or (i), the agency shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order shall notify the complainant whether or not the agency will fully implement the decision of the administrative judge and shall contain notice of the complainant's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the agency shall simultaneously file an appeal in accordance with 1614.403 and append a copy of the appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(b) *Final action by an agency in all other circumstances.* When an agency dismisses an entire complaint under 1614.107, receives a request for an immediate final decision or does not receive a reply to the notice issued under 1614.108(f), the agency shall take final action by issuing a final decision. The final decision shall consist of findings by the agency on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart E of this part. The agency shall issue the final decision within

Sam Wright, Jr., et al.
Final Order

EEO Class Complaint No. 200200076

Any statement or brief in support of the appeal must be submitted to OFO within 30 calendar days of filing the Notice of Appeal/Petition. **One (1) copy of any appeal AND one (1) copy of any statement or brief filed with OFO must be sent to:**

U.S. Equal Employment Opportunity Commission
Director, Office of Equal Opportunity
1801 L Street, NW, Room 9024
Washington, D.C. 20507

If you are represented by an attorney of record, then the 30-day time period within which to appeal is calculated from the date this Final Order is received by your attorney. In all other instances, the time within which to appeal is calculated from the date of your receipt of this Final Order.

2. You also have the right to file a civil action in an appropriate United States district court. If you choose to file a civil action, you may do so

- within 90 days of receipt of this Final Order if no appeal has been filed, or
- within 90 days after receipt of the EEOC's final decision on appeal, or
- after 180 days from the date of filing an appeal with the EEOC if there has been no final decision by the Commission.

You must name the person who is the official agency head as the defendant. You must also state the official title of the agency head. Failure to provide the name or official title of the agency head may result in dismissal of your case. In your case, you must name Cari M. Dominguez, Chair, U.S. Equal Employment Opportunity Commission, as the defendant.

3. If you decide to file a civil action, under Title VII or under the Rehabilitation Act, and if you do not have or cannot afford the services of an attorney, you may request that the Court appoint an attorney to represent you and that the Court permit you to file the action without payment of fees, costs, or other security. **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney does not extend your time in which to file a civil action. Both the request and the civil action MUST BE FILED WITHIN NINETY (90) CALENDAR DAYS of the date you receive the final decision from the agency.

FOR THE COMMISSION:

April 7 '03
Date

Leonora L. Guarraia
Leonora L. Guarraia
Chief Operating Officer

Sam Wright, Jr., *et al.*
Final Order

EEO Class Complaint No. 200200076

Enclosures:

AJ's Decision & Order
EEOC Form 573 (to Complainant only)

cc: David L. Frank, Legal Counsel
Office of Legal Counsel

Erin N. Norris
Agency Representative
Office of Legal Counsel

Richard H. Fine
Administrative Judge
25 West Middle Lane
Rockville, MD 20850

Don Names, Director
Special Services Staff
Office of Federal Operations

CERTIFICATE OF MAILING

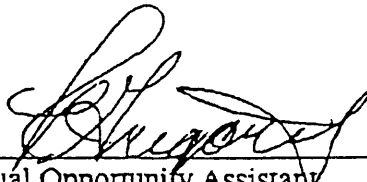
I certify that a copy of the Commission's Final Order with attachments was mailed to the Class Agent (pro se) at the following address:

Mr. Sam Wright, Jr.
168 Peyton Road
Sterling, VA 20165

Date

4/08/03

Equal Opportunity Assistant



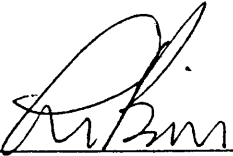
Certified Mail Receipt No.

2480 5673

CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing DEFENDANT'S MOTION TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS and proposed order to be sent on June 25, 2003, via first class mail postage prepaid, addressed to the following:

Sam Wright, Jr.
168 Peyton Road
Sterling, Va. 20165



LISA BARSOOMIAN