

Durfee, Scott

From: Durfee, Scott
Sent: Monday, August 20, 2007 9:42 AM
To: Begle, Eileen (County Attorney)
Subject: EEOC operations manual provision

ATTORNEY-CLIENT COMMUNICATION

Eileen,

This is the DA's current operations manual provision related to diversity and equal employment. It was in the manual when I became General Counsel in 1995 (it appears that it was added in 1993), and, as I mentioned on the phone, is pretty much ignored as far as our actual hiring practices are concerned. (I verified that fact with Marie Munier, the chief of our Public Service Bureau and the supervisor of hiring.) Anyway, please let me know what should come out and I'll get it done.

Thanks!

Scott

SECTION 2.58. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

The philosophy of the District Attorney's Office of Harris County, Texas, is to treat all employees equally and with dignity.

In the review of candidates for employment and in the consideration of employees for advancement within the office and for salary increases, the Hiring Committee and District Attorney shall be guided by three co-equal objectives:

1. Employment in the District Attorney's Office shall be without regard to race, religion, color, national origin, sex or age in accordance with the constitutional and statutory provisions of our State and Nation.
2. The District Attorney has a duty to the citizens of Harris County to employ the best qualified persons available. To do otherwise would be to violate the public trust of the people that the office represents. ☺
3. The District Attorney's Office shall actively recruit qualified persons from minority groups so as to achieve minority representation on the staff commensurate with the general proportions of minority groups in Harris County.

With respect to attorneys, the office will strive to achieve minority representation commensurate with the proportions of minority groups that are licensed to practice law in the the State of Texas. The District Attorney and staff recognizes that from a historical perspective, minorities have not been properly represented or hired as would be consistent and fair with their numbers and their equal interest in our society.

The problem in any office, is to reconcile the three aforementioned objectives:

- (1) employment without regard to race, religion, color, national origin, sex, or age
- (2) employment of the best qualified persons available, and

(3) assurance that minorities are well represented.

For example, how does a Hiring Committee simultaneously disregard race, religion, color, etc. and at the same time see that minorities are represented? It will be the policy of the Hiring Committee to resolve these goals by seeking out and pursuing qualified, potential minority employees in order to maintain the high standard required to represent the public in the professional capacity of Assistant District Attorney. Recognizing that qualified persons are also necessary for the office to function properly in the hiring of investigators, secretarial and clerical help, the District Attorney's Office will aggressively pursue minority recruitment for these positions.

(a) Dissemination

This written program will be distributed to each staff member and will be on file with the records of Harris County. The plan will be sent to all recognizable minority and feminist organizations. Copies will be available in the District Attorney's Office.

(b) Prohibition

The District Attorney or anyone working for the District Attorney, when acting or purporting to act in his or her official capacity may not:

1. Refuse to appoint, employ or advance a person because of the person's race, religion, color, sex or national origin or give a preference to any person in appointment, employment or advancement because of the person's race, religion, color, sex or national origin.
2. Discharge a person because of the person's race, religion, color, sex, or national origin.
3. Refuse to permit a person to use facilities open to the public under the management of the District Attorney, because of the person's race, religion, color, sex, age or national origin or give a preference in the use of such facilities because of a person's race, religion, color, sex or national origin.
4. Refuse to permit a person to participate in a program operated or managed by, through and under the District Attorney, because of a person's race, religion, color, sex or national origin or to give a preference in such a program to any person because of such person's race, religion, color, sex or national origin.
5. Discriminate in employment practices against any person because of the person's race, religion, sex, color or national origin or grant a preference to any person through employment practices because of the person's race, religion, color, sex, age or national origin. As used in this plan "employment practices" means all terms and conditions of employment including but not limited to all practices related to the screening, recruitment, selection, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, social activities, transfer, leave practices, rates of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities. Provided that it shall not be discriminatory under this plan in exceptional cases, to hire or assign an individual on the basis of religion, sex, or national origin where the office or agency involved is able to demonstrate in a constitutional manner that the religion, sex or national origin of the individual is essential to the performance of the job.
6. Discharge, terminate or otherwise punish any person (officer or employee) solely for asserting his or her rights under this plan or for enforcing this plan, provided that any appointed officer or employee serving at the pleasure of the District Attorney may be terminated and discharged as provided by law and the statutory contract of employment. There is no job tenure in the District Attorney's Office.

(c) Evaluation

The District Attorney shall evaluate equal employment opportunities under this plan and in so doing shall:

1. Identify and analyze any problem areas inherent in the utilization or participation of all qualified persons in the District Attorney's employment phases (recruitment, selection and promotion), since identification and analysis are necessary prerequisites to the successful development and implementation of this plan.
2. Analyze and identify problem areas separately for recruitment, selection and promotion of minorities and women. All racial or ethnic data collected to perform evaluations under this plan shall be cross classified by sex to ascertain the extent to which minority men or women may be underutilized.
3. Analyze present representation of minority persons and women in all job categories under the management of the District Attorney.
4. Analyze all recruitment and employment selection procedures including such things as position descriptions, application forms, advertisement, recruitment sources, interview procedure, test validity, test administration, educational prerequisites, validity of education prerequisites, referral procedures, and final selection methods to insure that equal opportunity is being afforded to all persons in all job categories.
5. Analyze seniority practices, promotion procedures, transfer procedures (lateral and vertical), and formal and informal training programs in order to insure that equal employment opportunity is being afforded to all citizens on an equal basis.
6. Maintain a job classification table or chart clearly indicating for each job classification or assignment the number of employees within each respective job category by race, color, sex and national origin (include for example Spanish surnames, Oriental, and American Indian). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made.
7. Maintain records, which reflect in a well organized manner, all disciplinary actions taken against employees and officers, under the District Attorney and each member thereof by race, color, sex and national origin and the number of types of sanctions imposed (example: suspension indefinitely, suspension for a term, loss of pay, written reprimand, oral reprimand, other) against individuals by race, color, sex and national origin.
8. Maintain records of individuals by race, color, sex and national origin (if available) applying for employment and the number by race, color, sex and national origin (if applicable) of those applicants who were offered employment and those who were actually hired.
9. Maintain records of employees and officers in each job category by race, color, sex and national origin who made application for promotion or transfer and the number in each job category by race, color, sex and national origin who were promoted or transferred.
10. Maintain records of employees by race, color, sex and national origin who are terminated, identifying by race, color, sex and national origin who were terminated.
11. Maintain records of the characteristics of the pertinent labor markets within this statistical area including total population, total work force, existing unemployment by race, color, sex and national origin. Such data is obtainable from the Bureau of Labor Statistics and State Agencies.
12. Maintain statistics indicating the availability of minorities, women and others in the various job categories or job markets utilized by the District Attorney and officers and agencies operating by, through, and under said body.
13. Conduct an ongoing and continuous program of evaluation - identifying and analyzing officer and employee selection and promotional policies (or lack thereof) which directly or indirectly have the effect of denying equal employment opportunities to minority persons and women at all levels.

(d) Enforcement

The Chief of the Intake Bureau shall administer and enforce this Plan and in so doing, among other duties, shall:

1. Institute an affirmative program for recruitment of minority persons and women based upon an informal judgment of what is necessary to attract minority applications including, but not necessarily limited to, dissemination of posters, use of advertising media patronized by minorities and women, minority group contacts, and community relations programs. Under no circumstances shall such program be operated in such a manner as to exclude any person or group from equal employment opportunity and the program shall endeavor at all times to disseminate information to all persons or groups in the community, minorities, majorities and men and women alike.
2. After completing necessary evaluation, institute any changes that are needed in the personnel policies of the District Attorney's Office. Where improvements or changes are required, the officer in charge shall set forth in written detail the specific steps that shall be taken for the achievement of full and equal employment opportunity.
3. Grievance procedure to insure that all employees have a forum for any complaint of discrimination, a standard grievance system is hereby established. This will include a committee so designed that every recognizable group of the office is represented. This insures that anyone with a grievance can speak with a committee member from his/her own ethnic or employment category if so desired. The below diagram indicates the anticipated flow of the grievance procedure.

Employee
Immediate Supervisor
EEO Committee (7-9 members)
EEO Officer
District Attorney
External Procedures

If the employee gets no satisfaction from the internal procedure, the EEO officer will inform him/her how to proceed with the external complaint. The makeup of the EEO Officer and committee will change at certain intervals providing more employees with an opportunity to participate in this vital facet of the office. These individuals will be named in a separate publication which will be posted in the various sections of the office.

4. Equal Employment Officer - The District Attorney will appoint a staff member to this position whose identity will be made available to the entire staff. The primary responsibility of this officer will be to coordinate, advise and implement the equal opportunity concept and plan for all individuals and groups. The EEO Officer will be responsible for insuring that the goals of the affirmative action plan are being met. He will insure that all employees have an opportunity to be heard on any grievances or suggestions they may have. The Equal Employment Officer is accountable directly to the District Attorney.

(e) Hiring and Promotions

1. Hiring Procedures

The District Attorney cannot feasibly interview each applicant, so hiring committees are utilized for lawyers, investigators and secretaries. Each applicant interviews an individual member of the committee and those referred are interviewed by the entire committee. The applicants are ranked and lists are submitted to the

District Attorney for final decision.

This system gives the applicant two oral interviews, one individual, and one group. The oral interview is essential to make a preliminary evaluation of the prospective employee's interest in the position and to evaluate that person's personality and native ability.

Job openings will be referred to the Harris County Personnel Office. This agency will then advertise these various openings with various agencies catering to minority and female applicants. Notice of attorney and intern openings will be sent to the various law schools in Texas. Active recruitment will take place to find qualified minority applicants wherever they may be available. Investigator openings will be filled mainly from various police agencies since these individuals must be certified peace officers with five years previous investigative experience.

All recruitment practices will be reviewed to insure that local minorities and women are notified regarding job opportunities and are encouraged to apply.

All correspondence of this office relating to employment will include the statement "Equal Opportunity Employer, M/F".

2. Promotions

The general policy of the District Attorney's Office is to promote from within the ranks of employees. This method has proven highly successful and is best for the morale of the employees.

The District Attorney personally determines which of the professional staff will either receive a raise or be promoted. Recommendations for raises and promotions are submitted to the District Attorney by appropriate supervisors within the office. The basic philosophy is to treat all employees equally based upon ability to most effectively handle the position involved. Seniority takes precedent when persons under consideration are equally based upon merit and overall effectiveness. The professional staff consists largely of Assistant District Attorneys, and no civil service or tenure.

No one department head is empowered to make a promotion or grant a pay increase, but in arriving at his decision, the District Attorney relies heavily upon the Promotion Committee. This committee makes a recommendation to the Executive Committee which in turn meets with the District Attorney and advises him. The District Attorney makes the final decision. After a thorough investigation of the potential prospect for promotion, a recommendation is made. The investigation consists of reports from various personnel involved, such as the Chief Prosecutor, fellow prosecutors, and trial Judges, plus performance records, 201 file material and trial records.

All factors are taken into consideration including experience, years of service, past record, attitude, willingness to work, initiative, dedication to the job and office, ability to work with others, leadership capacity and the many other traits that go into the particular job.

Anyone who feels he/she has been passed over in violation of policies mentioned herein may review the situation with the Bureau Chief and/or the District Attorney.

Written evaluations will be made periodically on all employees. These evaluations will be kept on file and reviewed when promotions are being considered. Since the salaries are set by Commissioners' Court, without regard to formal classification, it is possible for someone to get a promotion without a raise or vice versa. In addition, it should be noted that persons from different departments compete for a pay raise where a vacancy occurs. The most valuable employee in the opinion of the District Attorney, will receive the raise. Therefore, one may be selected for a raise without benefit or promotion or vice versa.

(f) Affirmative Action Measures

An effective policy of minority recruitment takes more than policy statements and public pronouncements. Furthermore, a passive policy that simply attempts to fairly evaluate those minority applicants who randomly apply ignores the highly competitive job market that presently exists for the qualified trial attorney with a minority background.

The office of the District Attorney is first and foremost a trial law firm. Its hiring policies are primarily based upon a desire to hire only first class trial lawyers. Since the overwhelming majority of law school graduates are white, the law of averages dictates that the random application of white applicants is going to produce enough qualified trial attorneys to meet the office's needs. Furthermore, though it is clear that females have been a historical minority within professional ranks, it is expected that the greatly increased number of female law students over the last few years will result in a natural expansion of qualified female applicants to the District Attorney's Office. On the other hand, Mexican-American and Black attorneys still comprise a very small percentage of the total number of lawyers entering the annual job market. As a result, a policy of simply waiting and selecting from minority applicants who apply on their initiative might result in a sufficient number of qualified applicants who will make good attorneys, but it might not surface large numbers of minority applicants who would make outstanding trial lawyers.

Therefore, because of the highly competitive market for the type of specialized skills, this office seeks, and because of the much smaller number of total minority applicants available, the District Attorney has specifically created the position of Recruiting Officer for the office of the District Attorney. The Deputy Chief of the Misdemeanor Division shall serve in this capacity.

It shall be the responsibility of the Recruiting Officer to conduct an aggressive and wide ranging minority recruitment effort. This person will actively recruit on a regular basis at all law schools in the State of Texas. Annual recruiting visits will be made to the campuses of each law school in the Fall, and each visit will be preceded by notification that the Harris County District Attorney's Office is particularly concerned with talking to minority applicants. Furthermore, all law school placement directors are to be informed of our continuing interest in seeking qualified minority applicants for trial positions. This Recruiting Officer is authorized to make personal unscheduled visits anywhere in the State at anytime to contact potential minority applicants who come to his attention. Also, practicing attorneys and judges throughout the State will be contacted in an attempt to solicit the names of minority attorneys and law students who possess outstanding trial potential. Contacts are to be made both locally and nationally with representative minority legal groups in an attempt to encourage application by minority students and lawyers who desire to be trial attorneys. This assistant will develop a nationwide effort to seek minority applicants, to include recruiting trips out of State on a selective basis consistent with budgetary constraints. All members of the staff and particularly the minority employees have been requested to assist in looking for potential minority employees and encouraging them to become interested in employment.

In an effort to make contact with promising minority law students at an early stage of their legal training, the office will also place an emphasis on minority students when filling paid summer intern positions. By using the intern positions in this manner, it is hoped that the office can offer early training of prospective employees while at the same time secure an early advantage over other potential employers who may be seeking these individuals upon graduation. Depending upon the vagaries of positions and funding available, it is the goal of the office to have at least three members of minority groups occupying summer intern positions each year. If after three months of supervision and observation by members of the District Attorney's staff it is determined that any or all of these individuals have the necessary requisites for being a top trial lawyer, and if they meet all other qualification for hiring, the District Attorney may offer a firm commitment of employment prior to graduation. Though this is contrary to the office's usual hiring policy of waiting to make offers until after the applicant has received the bar results, an exception may be made in the case of minority applicants in light of the smaller numbers available and the greater competition likely.

This policy is designed to give an atmosphere of equality of opportunity for all applicants to, and

employees of the Harris County District Attorney's Office. All employees are to be treated with dignity and afforded the freedom to work as part of this office without regard to race, religion, color, national origin, sex or age in accordance with the constitutional and statutory provisions of our State and Nation.

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