



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

Vickie J. Louthen,  
Complainant,

v.

John E. Potter,  
Postmaster General,  
United States Postal Service,  
Agency.

Appeal No. 01A44521  
Agency Nos. 4G-780-0247-02, 4G-000-0013- 02, 4G-000-0003-03  
Hearing No. 360-2003-0834X

### DECISION

Complainant timely initiated an appeal from the agency's final order concerning her equal employment opportunity (EEO) complaints of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e *et seq.*, and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. §621 *et seq.* The appeal is accepted pursuant to 29 C.F.R. § 1614.405. For the following reasons, the Commission VACATES the agency's final order.

### BACKGROUND

Complainant, initially an Account Representative, EAS-16, in the agency's Rio Grande District (SWA Sales Office), San Antonio, Texas, filed three formal EEO complaints alleging discrimination as follows:

- (1) that on the basis of sex (female) and reprisal (prior EEO activity under Title VII), in May 2002 she was not considered or selected for an Officer-in-Charge (OIC) assignment;
- (2) that on the basis of sex (female), national origin (Anglo), age (53), and reprisal (prior EEO activity under Title VII), in May 2002 (a) she was denied an interview for the position of Senior Account Representative, EAS-19; (b) she was reassigned to the position of Customer Service Representative, EAS-13; (c) she was no longer considered RIF-impacted and was denied an EAS-16 position; and (d) she learned that all Southwest Area positions were not consistent in vacancy announcements, review boards, and the selecting and awarding of positions; and

(3) that on the basis of sex (female), national origin (Anglo), and reprisal (prior EEO activity under Title VII), in September 2002 she was denied an EAS-18 developmental opportunity in Accounting and Finance at the Rio Grande District.

At the conclusion of the investigation, complainant received a copy of the investigative report and requested a hearing before an EEOC Administrative Judge (AJ). The three complaints were consolidated for hearing. The AJ conducted the entire hearing by telephone, over complainant's objection. Following this hearing, during which 12 witnesses testified, the AJ issued a decision finding no discrimination as to all issues. The final agency action fully implemented the AJ's decision.

On appeal, complainant contends that the AJ erred when she conducted the hearing by telephone and when she denied complainant the benefit of an adverse inference concerning the destruction of comparative records. Complainant argues that the telephonic hearing placed the judge at a disadvantage in assessing the credibility of the witnesses. Complainant notes that the AJ was present in the same city as the parties on the date of the hearing. Complainant further argues that the AJ should have drawn an adverse inference from the agency's destruction of documents (comparative employees' application packets) related to her non-selection for an Officer-in Charge position, notwithstanding that the agency was on notice that the non-selection was being challenged and where the documents were destroyed ahead of the agency's usual schedule for document disposition. Complainant contends that denial of the adverse inference foreclosed the complainant from showing that she was among the best-qualified candidates for the position.

In its reply, the agency argues that the AJ's factual findings meet the "substantial evidence" standard, and therefore should not be disturbed on appeal. The agency notes in particular that "[the] AJ's credibility determinations are entitled to deference due to his (*sic*) first-hand knowledge of the witnesses, through personal observations, at the hearing." The agency contends that the AJ's findings of no discrimination are correct, and should be upheld. The agency does not respond to complainant's arguments regarding the telephonic hearing, nor the AJ's denial of an adverse inference regarding its destruction of documents related to the non-selection.

#### FINDINGS and ANALYSIS

The issue in this appeal is whether the AJ erred in conducting the entire hearing by telephone. Because this is an issue of first impression, the Commission reviews the history of the hearing in the Federal sector and the evolution of the standard of review for post-hearing factual findings.

Title VII of the Civil Rights Act of 1964 (CRA), as first enacted, did not include Federal employees within its protection. *See* Civil Rights Act of 1964, Pub. L. No. 88-352, Title VII

§ 701, 78 Stat. 253. In 1965, however, the President issued Executive Order 11246, affirming the Federal government's commitment to equal employment opportunity for its workforce. Exec. Order No. 11246, 30 Fed. Reg. 12319 (1965), *superseded in part by* Exec. Order No. 11478, 34 Fed. Reg. 12985 (1969).

Executive Order No. 11246 also authorized the U.S. Civil Service Commission (CSC) to issue regulations governing charges of employment discrimination relative to Federal employment. *Id.* Designated 5 C.F.R. § 713, the regulations promulgated by the CSC formalized the process by which claims of Federal-sector employment discrimination could be raised, as well as the manner in which such complaints would be adjudicated. *See* 5 C.F.R. § 713.201(a) (1967); 31 Fed. Reg. 3069 (1966). From the first, the regulations included a provision for an individual raising a claim of discrimination to obtain a hearing before a disinterested arbiter. 5 C.F.R. § 713.216 (1967).<sup>1</sup>

In 1972, Congress passed § 717 of Title VII, formally extending the CRA's protection to Federal employees and applicants for Federal employment. *See* the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e, 86 Stat. 103 (1972). The CSC's revised regulations continued to incorporate the right to a hearing before the final disposition of a claim. *See* 5 C.F.R. §§ 713.217, 713.218, 37 Fed. Reg. 22717 (1972). Subsequently, the CSC was split into two new agencies, the Office of Personnel Management and the Merit Systems Protection Board (MSPB). Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111 (1978) (codified as amended at 5 U.S.C. § 101 *et seq.*); Reorganization Plan No. 2 of 1978, 43 Fed. Reg. 36037, 92 Stat. 3783 (1978); Exec. Order No. 12107, 44 Fed. Reg. 1055 (1978). The CSC's adjudicative authority over claims of discrimination was divided between the MSPB and the EEOC. The MSPB retained the CSC's jurisdiction over those cases where discrimination was alleged in connection with appealable personnel actions; in all other cases, jurisdiction would lie with the EEOC. *See id.*; Reorg. Plan No. 1 of 1978, 43 Fed. Reg. 19807, 92 Stat. 3781 (1978); Exec. Order 12106, 44 Fed. Reg. 1053 (1978).

The first regulations implemented by the EEOC carried over the administrative procedures which had been established by the former Civil Service Commission, including the right to a hearing. 29 C.F.R. §§ 1613.217, 1613.218, 43 Fed. Reg. 60900 (1978). Under the Commission's nascent regulations, a complainant was entitled upon request to a hearing before a Complaints Examiner (later designated as an Administrative Judge). *Id.* As the EEOC subsequently revised its regulations, the right to request a hearing before an Administrative Judge (AJ) remained intact. However, the Commission amended its regulations to reflect that an AJ might issue a recommended decision without a hearing, *i.e.*, render summary judgment. 29 C.F.R. § 1613.218(g), 52 Fed. Reg. 41920 (1987); *see Stabler v. Department of the Navy*, EEOC Request No. 05910080 (February 21, 1991). The regulation made clear that the parties

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<sup>1</sup> The inclusion of the right to request a hearing parallels what were then recent developments in the laws protecting the rights of Federal employees. In 1962, civil service rights previously reserved for preference-eligible veterans, including the right to a hearing prior to an adverse action, had been extended by the President to all members of the competitive civil service as "safeguards to protect employees against arbitrary or unjust adverse actions ...." Exec. Order No. 10987, 27 Fed. Reg. 550 (1962).

were to have notice of the AJ's intention to do so, as well as an opportunity to argue why a hearing in fact should be held. *Id.*

In 1992, 29 C.F.R. Part 1613 was superseded by 29 C.F.R. Part 1614. The new hearing regulation, found at 29 C.F.R. § 1614.109, clarified the circumstances under which an AJ could issue findings and conclusions without a hearing. In addition to a *sua sponte* determination by the AJ, the regulations for the first time specified that either party could move for a recommended decision without a hearing, subject to notice and opportunity for the non-moving party to respond to the motion. 29 C.F.R. § 1614.109(e) (1992). The regulation stipulated, however, that a motion for a decision without a hearing is appropriate only where "some or all material facts are not in genuine dispute *and there is no genuine issue as to credibility ....*" (emphasis supplied) *Id.*, at §§ 1614.109(e)(1), 1614.109(e)(3); *see, e.g., Williams v. United States Postal Service*, EEOC Request No. 05931149 (May 26, 1994).

It is noted here that the Commission has long granted a measure of deference to the factual findings of an AJ, in particular according greater deference to credibility determinations based on testimonial inferences. In *Embree v. Department of Veterans Affairs*, the Commission noted, "[O]nly the AJ, as the fact finder, has the opportunity to personally observe the demeanor and reactions of the witnesses.... Consequently, we accord more weight to credibility determinations based on testimonial inferences...." (citations omitted) *Embree v. Department of Veterans Affairs*, EEOC Request No. 05901054 (November 15, 1990); *see also, e.g., Hanratty v. Department of the Interior*, EEOC Appeal No. 01922312 (May 6, 1993), n.9 (testimonial inferences drawn from demeanor, expressions, tone, pace, or physical appearance of witnesses are lost in transcription of hearing or trial onto paper) *Johnson v. Department of the Army*, EEOC Request No. 05910359 (June 21, 1991) (considerable weight given to AJ's credibility determinations based on direct observation of witness demeanor because this perspective not available to Commission reviewing record from written transcript).

The weight given to AJ testimonial-based credibility determinations, expressed in *Embree, et al.*, took on new import with the 1999 revision of 29 C.F.R. Part 1614. Under the revised regulations, the decision of the AJ, previously "recommended," is binding on both parties, subject to the right of appeal to the Commission by either party or the filing of a civil action by the complainant.<sup>2</sup> 29 C.F.R. § 1614.110. Further, and significantly, the revised regulations provide for a dual standard of appellate review. From 1979 until the 1999 amendments, the Commission had exercised *de novo* review over all cases brought before it on appeal. 29 C.F.R. § 1613.234 (1979), 29 C.F.R. § 1614.405 (1992). As of the 1999 revision, however, "[t]he decision on appeal from an agency's final action shall be based on a *de novo* review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 1614.109(i) shall be based on a substantial evidence standard of review."<sup>3</sup> 29 C.F.R. § 1614.405(a).

<sup>2</sup> With regard to class decisions, however, the decision of the AJ remains "recommended."

<sup>3</sup> "Substantial evidence" is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *E.g., Management Directive 110, Ch.9, § VI(B)(1).*

The Notice of Proposed Rulemaking explained this change as follows: “[T]he substantial evidence standard does not preclude meaningful review of factual findings. However, applying the *de novo* (*sic*) standard of review to the factual findings of the administrative judges’ final decisions after hearings would be an inefficient use of EEOC’s limited [appellate] resources. In addition, since EEOC’s Office of Federal Operations did not see and hear the witnesses, it would not be in a position to second-guess the administrative judge during the appellate process, especially with respect to credibility determinations based on a witness’ (*sic*) demeanor....” 63 Fed. Reg. 8601 (1998). Plainly, such deference to the factual findings of the AJ was premised on the expectation that the AJ would have the opportunity to personally observe the witnesses.

Support for this conclusion is found in another evolution of the Commission’s regulations. As originally set forth in 29 C.F.R. § 1613.218, the agency could be excused from securing the appearance of a witness “[w]hen it is administratively impracticable,” with the witness’s testimony to be taken via written interrogatory and entered into the record. 29 C.F.R. § 1613.218(e) (1979). This provision persisted through amendments to the Part 1613 regulations in 1987. 29 C.F.R. § 1613.218(f) (1987). It was removed from the regulations with the promulgation of 29 C.F.R. Part 1614, coincident with a greater emphasis on the agency actually producing requested witnesses, and the issuance of decisions without a hearing “when some or all material facts are not in genuine dispute and there is no genuine issue as to credibility ....” 29 C.F.R. §§ 1614.109(d)-1614.109(e) (1992); *see* 29 C.F.R. § 1614.109(g) (1999). The new Part 1614 neither expressly authorized nor expressly prohibited taking testimony by other means than in-person appearance. *See* 29 C.F.R. §§ 1614.109(c)-(d) (1992); §§ 1614.109(e)-(g) (1999).

Further support for the foregoing conclusion is found in the Commission’s Management Directive 110 (MD-110), which notes that the substantial evidence standard places on the party challenging the AJ’s post-hearing decision a burden that does not exist under *de novo* review – the burden to demonstrate that the AJ’s factual determinations are not supported by substantial evidence. MD-110, Ch.9, § VI(C)(1). Further, “[a] finding of discriminatory intent will be treated as a factual finding subject to the substantial evidence review standard.” (citation omitted) MD-110, Ch. 9, § VI(B)(3). Although MD-110 does not state one way or the other whether telephonic hearings are permitted, it does not seem to anticipate telephonic hearings. Rather, its instructions relate to such details as locating an adequate hearing site and arranging for travel of witnesses, indicia of an in-person hearing. *See* MD-110, ch. 7, II(B), (E).

The Commission notes that it has long been common practice for AJs to conduct pre-hearing matters by telephone, and to take testimony by telephone where a witness would otherwise be unavailable to testify. *See, e.g., Mozee and Bailey v. United States Postal Service*, EEOC Appeals Nos. 01A34265 and 01A34266 (January 10, 2005) (prehearing conducted by telephone); *Freeman v. United States Postal Service*, EEOC Appeal No. 01924204 (September 30, 1993) (witness testimony taken by telephone); *Davis v. Department of Transportation*, EEOC Appeal No. 01883565 (January 18, 1989), *req. to reopen. den.*, EEOC Request No. 05890471 (November 9, 1989) (witness testimony taken by telephone). While the periodic

amendments and revisions to the Commission's statutes and regulations do not expressly authorize use of alternate means of appearance, neither do they expressly prohibit it.

The Commission further notes that telephonic testimony allows the AJ first-hand contact with a witness which is not available to an appellate arbiter. Considering the special weight given to an AJ's demeanor-based credibility determinations, however, the Commission is persuaded that the AJ should be afforded the maximum opportunity to observe the demeanor of a witness. To that end, the Commission finds that, with the limited exceptions set forth below, the conduct of an entire hearing by telephone is not appropriate and should not occur.<sup>4</sup>

The Commission recognizes that in exigent circumstances it may be necessary to take the testimony of a witness, or to conduct an entire hearing, telephonically. For instance, the parties or witnesses to an action may be at far-flung locations and travel is impractical for reasons other than mere inconvenience or expense to the parties, *e.g.*, a civilian witness has been deployed on military reserve duty. Witnesses who are not Federal employees or who have left Federal service and cannot be compelled to appear in person may nonetheless be willing to testify telephonically. Taking testimony by telephone may be an appropriate reasonable accommodation where a witness or party has a disability that prevents him or her from participating in a hearing in person. This is not an exhaustive list of the limited circumstances in which a telephonic hearing or telephonic testimony may be warranted.

A telephonic hearing or testimony is permissible when the AJ determines that such exigent circumstances require it and the AJ documents these circumstances in the record. If exigent circumstances are not present, a telephonic hearing (or telephonic testimony) may be conducted only if the parties submit a joint request to the AJ.<sup>5</sup> In such a case, prior to the date of the hearing, the AJ must obtain a statement of consent from both parties to the telephonic hearing or testimony, reflecting that the parties have been informed of the limitations of taking testimony telephonically.<sup>6</sup> Further, the AJ must be satisfied that it is unlikely that the

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<sup>4</sup> The Commission specifically reserves for another occasion the question of when testimony may be taken by video conference.

<sup>5</sup> A request for telephonic hearing or testimony in the absence of exigent circumstances must be voluntary. Any effort by an agency to advertise or promote the availability or use of telephonic hearing or testimony, or to entice or pressure a complainant into requesting or agreeing to a telephonic hearing or testimony would violate the procedures set forth in 29 C.F.R. §§ 1614.109(e) and (f). Similarly, it would be an abuse of discretion for an AJ to advertise or promote the availability or use of telephonic hearing or testimony, or to entice or pressure either party into requesting or agreeing to a telephonic hearing or testimony.

<sup>6</sup> Informed consent at a minimum requires either a statement signed by each party, or other such documentation in the record which sets forth their understanding of the limitations of telephonic testimony, including: 1) the AJ would not have the opportunity to observe the witnesses' testimony in person; 2) credibility determinations based on the AJ's observation of the demeanor of a witness may not be possible; 3) credibility determinations based on an AJ's in-person observation of a witness are entitled to greater deference by the Commission on appeal; and 4) technological problems may arise that could interfere with the hearing, for example, by causing delay or difficulties with transmission, that would have to be corrected in some other manner by the AJ.

credibility of any witness testifying telephonically will be at issue. The parties' joint request as well as the AJ's ruling on them must be documented in the record.<sup>7</sup>

Returning to the facts of the instant case, complainant has objected to the AJ holding a telephonic hearing from the outset, noting issues of credibility with regard to the actions of the alleged discriminating officials. Complainant has identified several specific instances where the credibility of witnesses was critical to the outcome of her case. In particular, there is conflicting testimony regarding the agency's explanation for complainant's non-selection for an OIC position (that complainant was "no longer considered part of the Rio Grande cluster" after a reorganization), and the qualifications of the selectee for the Sales Analyst position (who either did or did not have a particular desired skill). Further, there are circumstances present which call into question the credibility of particular individuals, including, *inter alia*, allegations that complainant was characterized by agency officials as "constantly filing EEO complaints"; was referred to as an "EEO Queen" by an agency official speaking to the selecting official for the Sales Analyst position, and that complainant was known to have filed an EEO complaint against the spouse of a member of the rating panel for the OIC position.

In addition to the foregoing concerns, complainant notes on appeal that on the date of the hearing the AJ was present in the same city where the parties had convened. The Commission notes further that the record contains no information regarding the reason the AJ could not or would not participate in an in-person hearing.

Matters pertaining to the conduct of a hearing are within the discretion of the presiding AJ. See 29 C.F.R. § 1614.109(e). The Commission finds that in this case, the AJ's conduct of the entire hearing by telephone over the objection of one of the parties and with no explanation or indication of exigent circumstances warranting a telephonic hearing constitutes an abuse of discretion. This is particularly true where, as here, the AJ was present in the same city where the parties had convened, cited no reason for her inability to appear before the parties, and cited no explanation for her determination that a telephonic hearing was appropriate in this case.

With regard to remedial action, the Commission finds that under the circumstances of this case, complainant is entitled to a full in-person rehearing before a newly assigned AJ. The Commission notes, however, that not all such cases may require so extensive a remedy. Rather, it may be appropriate in other cases to limit the in-person rehearing to certain

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<sup>7</sup> The Commission today promulgates its policy regarding the taking of telephonic testimony in the future by setting forth explicit standards and obligations on its Administrative Judges and the parties. The Commission requires either a finding of exigent circumstances or a joint and voluntary request by the parties with their informed consent. When assessing prior instances of telephonic testimony, the Commission will determine whether an abuse of discretion has occurred by considering the totality of the circumstances. In particular, the Commission will consider factors such as whether there were exigent circumstances, whether a party objected to the taking of telephonic testimony, whether the credibility of any witnesses testifying telephonically is at issue, and the importance of the testimony given telephonically. Further, where telephonic testimony was improperly taken, the Commission will scrutinize the evidence of record to determine whether the error was harmless. *Sotomayor v. Department of the Army*, EEOC Appeal No. 01A33440.

witnesses; for example, one or more witnesses whose telephonic testimony was improperly taken.

### CONCLUSION

Based upon review of the record and the foregoing explanation, it is the decision of the Commission to VACATE the final agency order. The case is REMANDED for a full in-person rehearing.<sup>8</sup>

### ORDER

Within fifteen (15) calendar days of the date on which this decision becomes final, the agency shall submit to the Hearings Unit of the EEOC San Antonio District Office the request for a hearing, to be held in person before a newly assigned AJ. The agency is directed to submit a copy of the complaint file to the EEOC Hearings Unit within fifteen (15) calendar days of the date this decision becomes final. The agency shall provide written notification to the Compliance Officer at the address set forth below that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0501)

Compliance with the Commission's corrective action is mandatory. The agency shall submit its compliance report within thirty (30) calendar days of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. The agency's report must contain supporting documentation, and the agency must send a copy of all submissions to the complainant. If the agency does not comply with the Commission's order, the complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. *See* 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). If the complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated. *See* 29 C.F.R. § 1614.409.

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<sup>8</sup> Given its disposition of the case today, the Commission need not reach the question of whether complainant is entitled to an adverse inference drawn from the agency's destruction of documents related to complainant's non-selection for an Officer-in-Charge position. That question is left to be decided by the AJ rehearing this matter.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0701)

The Commission may, in its discretion, reconsider the decision in this case if the complainant or the agency submits a written request containing arguments or evidence which tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. *See* 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 19848, Washington, D.C. 20036. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. *See* 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. *See* 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0900)

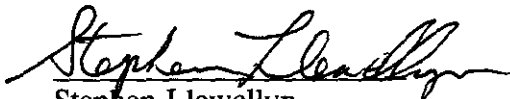
This is a decision requiring the agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in

the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z1199)

If you decide to file a civil action, 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. *See* Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **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 the time limits as stated in the paragraph above ("Right to File a Civil Action").

FOR THE COMMISSION:



Stephen Llewellyn  
Acting Executive Officer  
Executive Secretariat

5/17/06

Date