



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO:

FROM:

SUBJECT: PRIMARY FEC WITNESS PARTICIPATION IN THE EEO
COMPLAINT PROCESS

As a person identified or alleged to be responsible for taking, proposing to take or failing to take the action which has given rise to a discrimination complaint, your role is significant in the EEO complaint process. The purpose of the discrimination complaint procedure is to determine whether the alleged discrimination occurred so that appropriate remedial action(s) can be taken, if warranted. Investigations and hearings in discrimination complaint cases are essentially fact-finding processes. Your role is that of a witness. EEO complaints are filed against the FEC and not individuals.

The burden of proof remains at all times with the complainant to prove discrimination by the preponderance of the evidence. However, if the complainant establishes sufficient facts to give rise to an inference that the alleged discrimination did occur, the burden of production shifts to the FEC to articulate legitimate nondiscriminatory reason(s) for its action(s). Due to your alleged involvement in the action(s) at issue, it is important that you be informed of all allegations which include you and that you be given a full and fair opportunity to articulate your reason(s) for the action(s) at issue. Then the complainant has the burden of proof to show that FEC's articulated reason(s) are untrue and are a mask for prohibited discrimination.

EEO Counseling. During the informal EEO counseling stage, the Equal Employment Opportunity (EEO) Counselor will solicit your input concerning the allegation of discrimination. The EEO Counselor will also inform you of the nature of any allegations that pertain to you. You have the right to have a representative at the interview with the EEO Counselor and at any other meeting necessary to the processing of the complaint. You may be represented by a person of your own choosing, provided the choice of a representative does not involve a conflict of interest or position. You may not be represented by a member of the FEC Office of General Counsel staff. The EEO Counselor cannot reveal the identity of the complaint unless s/he has authorized the EEO Counselor to do so. You should also understand that the EEO counseling stage is an informal process for resolving the matters at issue. Your participation in the EEO counseling process may serve to assist in resolving the matter quickly.

EEO Investigation. If the complainant decides to file a formal discrimination complaint and the EEO complaint is accepted, it will be investigated. The EEO Investigator will provide you with a full and fair opportunity to state the facts as you understand them. Prior to your testimony or the giving of an affidavit, the EEO Investigator may allow you to review documents or portions thereof that name or implicate you in the complaint. Such documents may be sanitized of any identifying information of persons other than yourself or the complainant. You may contact the EEO office to obtain information on the progress of the investigation.

Hearing. Subsequent to the investigation, there may also be an Equal Employment Opportunity Commission (EEOC) hearing on the complaint. In preparation for and during an EEOC hearing, you will be afforded an opportunity to review sanitized documents and to testify for the record on any allegations that involve you.

Final Agency Decision. After the EEO investigation is complete and if the complaint is not resolved the case will be forwarded to the Director EEO or his/her designee for a final decision on the merits of the complaint. If discrimination is found, the Director EEO, or his or her designee, will determine the culpability, if any, of those involved. If it is determined that you are culpable and corrective or adverse action is proposed against you, you may have access to case materials to the extent needed to respond to allegations and give evidence.

Any questions or need for assistance during the informal processing of the EEO complaint can be addressed to me. You may contact me via e-mail or at (202) 694-1229. Any question during the formal processing of the EEO complaint should be addressed to Carolyn Mackey-Bryant, Director EEO.