

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

SPECIALIST JEREMY HALL, <u>et al.</u>)	
)	
Plaintiffs,)	
)	
v.)	Case No. 08-2098-JWL-DJW
)	
MAJOR FREDDY J. WELBORN, <u>et al.</u>)	
)	
Defendants.)	

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TO DEFENDANTS' MOTION TO DISMISS**

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EXHIBIT A
TO DEFENDANTS' MOTION TO DISMISS

Affidavit of COL Wanda L. Good

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AFFIDAVIT

COMES NOW, the undersigned, being duly sworn on oath, and avers, to wit, that:

1. The undersigned official is the official custodian of the military records of Major Freddy J. Welborn II located at U.S. Army Human Resources Command--St. Louis, 1 Reserve Way, St. Louis, Missouri, 63132-5200. These records are kept in the regular course of business.
2. The records in the custody of the official custodian state as follows:
 - a. Major Freddy J. Welborn II was activated in 2007 and served a tour of duty in Iraq that concluded on February 3, 2008.
 - b. Major Welborn was released from active duty at Fort Benning, Georgia, on February 17, 2008, at which time he was transferred to the 431st Civil Affairs Battalion (United States Army Reserve) in North Little Rock, Arkansas.
 - c. Major Welborn is currently an Individual Mobilization Augmentee (IMA) Reservist assigned to Headquarters and Headquarters Company, 10th Area Support Group, United States Army Japan.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 8th day of July, 2008.



WANDA L. GOOD
Colonel, US Army
Commanding

**IN THE UNITED STATES DISTRICT COURT
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**EXHIBIT B
TO DEFENDANTS' MOTION TO DISMISS**

Declaration of MAJ Robert F. Cosgrove

**IN THE UNITED STATES DISTRICT COURT
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SPECIALIST JEREMY HALL, <u>et al.</u>)	
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Plaintiffs,)	
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)	
Defendants.)	
)	

DECLARATION OF MAJOR ROBERT F. COSGROVE

I, Major Robert F. Cosgrove, hereby declare as follows:

1. I am the Executive Officer for the 97th Military Police Battalion. In this capacity, I am directly responsible for the supervision of the Battalion S1 section which is responsible for the processing of all personnel actions, to include assignments, promotions, leaves, finance, awards, etc.

2. I have read the complaint that Plaintiffs Specialist Jeremy Hall and the Military Religious Freedom Foundation filed in the above-captioned case.

3. Specialist Hall enlisted in the United States Army on April 7, 2004, for a term of five years as a military policeman.

4. Specialist Hall was assigned to the 97th Military Police Battalion, 977th Military Police Company, on September 22, 2004, at Fort Riley, Kansas. Specialist Hall deployed to Iraq on September 28, 2006. While in Iraq, Specialist Hall was stationed at Combat Operations Base Speicher. Specialist Hall redeployed to Fort Riley on November 3, 2007 and was reassigned to the 287th Military Police Company.

5. Specialist Hall is currently on the Department of the Army integrated promotion list to Sergeant (E-5), but he has not appeared before a promotion board at this time.

6. Major Freddy J. Welborn has never been a member of the 97th Military Police Battalion or within Specialist Hall's chain of command.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 8, 2008.



Major Robert F. Cosgrove
Executive Officer
United States Army

**IN THE UNITED STATES DISTRICT COURT
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**EXHIBIT C
TO DEFENDANTS' MOTION TO DISMISS**

Declaration of SFC Kristofer J. Britton

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

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 Plaintiffs,)
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 MAJOR FREDDY J. WELBORN, et al.,)
)
 Defendants.)
)

DECLARATION OF SERGEANT FIRST CLASS KRISTOFER J. BRITTON

I, Sergeant First Class Kristofer J. Britton, hereby declare as follows:

1. I am the Equal Opportunity Representative for the 97th Military Police Battalion. Pursuant to Army Regulation 600-20, ¶ 6-3(I), in this capacity, I am responsible for assisting the Battalion command in carrying out the Army’s Equal Opportunity (“EO”) Program. Specifically, I am responsible for, among other things, assisting the command in the conduct of EO climate assessments; ensuring that unit-level EO training is completed; providing guidance to Soldiers who wish to file an EO complaint, to include helping them get access to an Equal Opportunity Advisor to file a complaint, or referring them to another agency for assistance; and serving as a resource for EO matters in the unit.
2. I have read the complaint that Plaintiffs Specialist Jeremy Hall and the Military Religious Freedom Foundation filed in the above-captioned case.
3. In the course of my duties as EO Representative, I am informed when a member of my unit files an EO complaint, and I maintain records of any such complaints.

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**EXHIBIT D
TO DEFENDANTS' MOTION TO DISMISS**

Department of Defense Directive 1350.2



Department of Defense

DIRECTIVE

NUMBER 1350.2

August 18, 1995

Certified Current as of November 21, 2003

Incorporating Change 1, May 7, 1997
USD(P&R)

SUBJECT: Department of Defense Military Equal Opportunity (MEO) Program

- References:** (a) DoD Directive 1350.2, subject as above, December 23, 1988 (hereby canceled)
- (b) DoD Human Goals Charter (signed by the Secretary of Defense, Deputy Secretary of Defense, Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, and Service Chiefs), May 19, 1994 ¹
 - (c) Secretary of Defense Memorandum, "Equal Opportunity (EO)," March 3, 1994
 - (d) Secretary of Defense Memorandum, "Prohibition of Sexual Harassment in the Department of Defense (DoD)," August 22, 1994
 - (e) through (o), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

- 1.1. Reissues reference (a).
- 1.2. Regulates the Department of Defense MEO Program and assigns responsibilities for ensuring DoD-wide compliance with the broad program objectives outlined in references (b), (c), and (d).
- 1.3. Provides for education and training in EO and human relations.

¹ References (b) through (e) are on file in the Office of the Deputy Assistant Secretary of Defense (Equal Opportunity), Pentagon, Washington, DC, (703) 697-6381 or DSN 227-6381.

1.4. Prescribes the functions of the Defense Equal Opportunity Council (DEOC) and the Defense Equal Opportunity Management Institute (DEOMI).

1.5. Establishes Department-wide standards for discrimination complaint processing and resolution as set forth in the DEOC Task Force on Discrimination and Sexual Harassment Report (reference (e)). The recommendations contained in the DEOC Task Force Report are set out in section 6.; implementation of this Directive shall be consistent with sections 4. and 6., below.

1.6. Provides standard terms and definitions pertaining to the MEO program.

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, the Marine Corps, and the U.S. Coast Guard when it is operating as a Service in the Department of the Navy.

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 2. Service implementing documents shall adopt the terms contained herein and shall define those terms exactly as they are defined in this Directive.

4. POLICY

It is DoD policy to:

4.1. Support the MEO program as a military and economic necessity, as stated by the Secretary of Defense (reference (c)), and enforce the provisions of this Directive in developing operating EO policies and programs at all levels of activity. Toward that end, Component heads are charged with promoting EO and affirmative actions, and for eliminating unlawful discrimination and sexual harassment within the Department.

4.2. Promote an environment free from personal, social, or institutional barriers that prevent Service members from rising to the highest level of responsibility possible. Service members shall be evaluated only on individual merit, fitness, and capability. Unlawful discrimination against persons or groups based on race, color, religion, sex, or national origin is contrary to good order and discipline and is counterproductive to

combat readiness and mission accomplishment. Unlawful discrimination shall not be condoned.

4.3. Use the chain of command to promote, support, and enforce the MEO program. The chain of command is the primary and preferred channel for identifying and correcting discriminatory practices. This includes the processing and resolving of complaints of unlawful discrimination and sexual harassment, and for ensuring that human relations and EO matters are taken seriously and acted upon as necessary. The chain of command is responsible for creating and maintaining a MEO environment that incorporates the policies set out in this Directive.

4.4. Ensure that the Military Services (to include the Reserve components) establish MEO and affirmative action programs that identify and resolve EO problems through formulating, maintaining, and reviewing affirmative action plans (AAPs) with established objectives and milestones, including accountability in personnel management, consistent with DoD Instruction 1350.3 (reference (f)).

4.5. Provide periodic, mandatory education and training in EO and human relations at installation and fleet unit commands, during pre-commissioning programs and initial entry training, and throughout professional military education (PME) systems, as part of the overall effort to achieve EO within the Department of Defense. This training shall be provided to all Service members, enlisted and officer, including flag and general officers. The training shall include comprehensive material on leadership roles and responsibilities for EO programs, complaints processing, legal implications, reprisal prevention and detection, climate assessment methodologies, and managing civilian equal employment opportunity (EEO) systems.

4.6. Provide for an environment that is free from unlawful discrimination and sexual harassment. (See items E2.1.15. and E2.1.16., enclosure 2.)

4.7. Ensure that all on-base activities and, to the extent of the ability of the Department of Defense, any off-base activities available to military personnel are open to all military personnel and their family members regardless of race, color, religion, age, physical or mental disability, sex, or national origin, as called for by the DoD Human Goals Charter (reference (b)).

4.7.1. Organizations or administering activities that do not meet this requirement shall be denied the use of military facilities and resources in accordance with DoD Directive 5410.18 (reference (g)).

4.7.2. Organizations that use on-base facilities, whether on a reimbursable basis or otherwise, must satisfy the responsible area or activity commander that they do not unlawfully discriminate through their membership requirements or in any of their activities.

4.8. Oppose discrimination in off-base housing directed against DoD personnel and their family members. Each commander shall take actions to overcome such discrimination and to impose off-limits sanctions in housing cases, as required by DoD Instruction 1100.16 (reference (h)).

4.9. Impose, as required, off-limits sanctions through the cognizant Armed Forces Disciplinary Control Board in cases of discrimination involving places of public accommodation outside military installations.

5. ORGANIZATIONS AND FUNCTIONS

5.1. There is established a DEOC.

5.1.1. It shall:

5.1.1.1. Advise the Secretary of Defense on policies for EO matters.

5.1.1.2. Coordinate policy and review the military and civilian EO programs.

5.1.1.3. Monitor progress of program elements.

5.1.1.4. Assist in developing policy guidance for education and training in EO and human relations for DoD personnel.

5.1.1.5. Provide oversight and ensure resourcing for the DEOMI.

5.1.2. It shall consist of:

5.1.2.1. The Deputy Secretary of Defense, who shall serve as Chair.

5.1.2.2. The Under Secretary of Defense for Personnel and Readiness, who shall serve as the Vice-chair.

5.1.2.3. The Deputy Assistant Secretary of Defense for Equal Opportunity (DASD(EO)), who shall serve as the Executive Secretary.

5.1.2.4. The Under Secretaries of Defense.

5.1.2.5. The Secretaries of the Military Departments.

5.1.2.6. The Chairman of the Joint Chiefs of Staff.

5.1.2.7. The General Counsel of the Department of Defense.

5.1.2.8. The Assistant Secretary of Defense for Force Management Policy (ASD(FMP)).

5.1.2.9. The Assistant Secretary of Defense for Command, Control, Communications, and Intelligence.

5.1.2.10. The Director of Administration and Management, Office of the Secretary of Defense.

5.2. There is established a DEOMI.

5.2.1. The mission of DEOMI is to enhance combat and operational readiness by enhancing unit and organizational leadership and cohesion. This is accomplished by developing and conducting education and training in the administration of military, EO, EEO, and human relations.

5.2.1.1. The primary focus of DEOMI shall be on the training and education of DoD and Coast Guard military and civilian personnel to include the following:

5.2.1.1.1. Providing primary training for all DoD military and civilian personnel assigned to EO, EEO, and human relations programs, to include training on policies and programs on the prevention of sexual harassment and participation in extremist activities. Contractors retained by Defense organizations to perform EO/EEO-related functions shall also be afforded space available access to this training on a reimbursable basis. The full cost for contractor attendees shall be the sole responsibility of the sponsoring organization.

5.2.1.1.2. Providing special seminars and briefings for senior civilian and military leaders, including a mandatory 2-day program for all officers newly appointed to the grade of brigadier general or rear admiral (lower half) and all new members of the Senior Executive Service, and training for officers in the grade of major general and rear admiral, and above, and DoD civilians serving in Executive Schedule positions. To the extent possible, speakers and instructors for the mandatory 2-day program should at least be at a grade comparable to the target audience. The curricula for those courses shall be reviewed and approved by the ASD(FMP).

5.2.1.1.3. Providing assistance or consultation services, upon request, to DoD organizations, including professional military education (PME) schools in developing curricula and educational materials for EO, EEO, and human relations education.

5.2.1.1.4. Disseminating educational training materials to assist EO/EEO advisors and human relations instructors in remaining current in the EO/EEO subject area and in otherwise developing professionally.

5.2.1.2. Additional functions and activities of DEOMI shall include the following:

5.2.1.2.1. Performing EO, EEO, and human relations research with the Military Services, special research-related projects on request in support of the DEOC, and acting as a clearinghouse to monitor and disseminate research findings relevant to DoD and Coast Guard activities on EO, EEO, and human relations.

5.2.1.2.2. Developing procedures for the dissemination of reference resources, lesson plans, research papers, and demographic databases that support programs outlined in this Directive through the use of existing computer-based electronic systems, such as electronic mail and establishment of a world wide web page on the internet and technologies such as teleconferencing to support EO/EEO advisors and specialists throughout the Military Services, and to link DoD human relations professionals, senior commanders, and Heads of Defense Agencies and DoD Field Activities worldwide.

5.2.1.2.3. Supporting research on the EO/EEO climate and sexual harassment in the Military Services and administering the Military Equal Opportunity Climate Survey (MEOCS) program as a by-request service for commanders and organization heads throughout the Department of Defense. DEOMI is authorized to conduct, in coordination with the Defense Manpower Data Center (DMDC), periodic random sample EO/EEO or human relations surveys of the Services and relevant Service subgroups to determine the status of the EO/EEO climate in the Department of Defense. For other surveys, DEOMI shall coordinate with DMDC and the Services involved before conducting surveys and research involving their members.

5.2.1.2.4. Serving in an advisory capacity to other Federal Departments and Agencies and to State and local governments and private sector organizations, as determined by the DEOMI Commandant consistent with applicable law and regulations and after consultation with the ASD(FMP) through the DASD(EO).

5.2.2. The DEOMI shall operate under the supervision, direction, and policy guidance of the ASD(FMP), through the DASD(EO). It shall be located as a tenant on Patrick Air Force Base, Florida, or another installation, as determined by the ASD(FMP). While located as a tenant at Patrick Air Force Base, the DEOMI shall be supported administratively and logistically by the Department of the Air Force as the DoD Executive Agent for DEOMI and the ASD(FMP).

5.2.3. The publications and research projects of DEOMI shall be reviewed and approved by an Editorial and Research Review Panel that shall be appointed by the ASD(FMP), and include representation from the Military Departments. The panel shall approve all material proposed for publication and distribution by DEOMI with the exception of curricula, periodic newsletters and similar materials. The Panel shall review and approve all new research projects before initiation.

5.2.4. *The policy and procedures governing academic freedom and nonattribution at DEOMI shall be consistent with those established at the National Defense University as determined by the DEOMI Commandant.*

5.2.5. *Personnel nominated or selected for assignment to DEOMI shall meet the following criteria:*

5.2.5.1. *The Commandant shall be selected by the ASD(FMP). That position shall rotate among representatives nominated by the Departments of the Army, the Navy, and the Air Force.*

5.2.5.2. *The ASD(FMP) shall establish criteria for assigning officers and enlisted personnel from the Military Services, including personnel of the U.S. Coast Guard and Reserve components, to faculty and staff positions at DEOMI. The minimum criteria for instructional staff assignments to DEOMI shall include the following:*

5.2.5.2.1. *Successful completion of the DEOMI EO staff advisor course (all).*

5.2.5.2.2. *Possession of an undergraduate degree (officer).*

5.2.5.2.3. *Satisfactory completion of Service Instructor Training School (all).*

5.2.5.2.4. *At least one successful tour as an EOA (enlisted).*

5.2.5.2.5. *Possession of associate (2-year) degree or equivalent level of college credit or experience (enlisted).*

5.2.5.2.6. *Individual and Service action, as necessary, to ensure a minimum of 3 years service following assignment to DEOMI (all).*

5.2.6. *The Commandant of DEOMI shall:*

5.2.6.1. *Prepare and update annually a 5-year plan for the DEOMI and DEOMI programs. The plan shall include priorities and projections that reflect the needs of the users of DEOMI services based on DoD Component input. The 5-year plan is subject to approval by the ASD(FMP).*

5.2.6.2. *Consult with the Military Services and the Chairman of the Joint Chiefs of Staff and their respective educational activities, as applicable, to obtain assistance on training methods and technologies and curriculum development and to ensure that DEOMI training is responsive to the needs of its customers.*

5.2.6.3. *Conduct consultation and bench marking with organizations inside and outside of the Department of Defense, as applicable, to incorporate new technologies, methodologies, and material to enhance the capabilities and products of DEOMI.*

5.2.6.4. *Produce EO/EEO course graduates who are able to effectively meet Service requirements in the field with minimum on the job training and orientation in their new position to include the ability to effectively apply EO/EEO facilitation skills in the field environment.*

6. RESPONSIBILITIES

6.1. The Under Secretary of Defense for Personnel and Readiness shall:

6.1.1. Develop overall MEO policy.

6.1.2. Monitor compliance with this Directive.

6.1.3. Serve as the Vice-chair of the DEOC.

6.1.4. Ensure that the ASD(FMP):

6.1.4.1. Represents and advises him or her in MEO matters consistent with DoD Directive 5124.2 (reference (j)).

6.1.4.2. Serves as a member of the DEOC.

6.1.4.3. Exercises authority and direction over the Office of the Deputy Assistant Secretary of Defense for Equal Opportunity in developing DoD programs to ensure EO for military personnel in the total force.

6.1.4.4. Develops, executes, and monitors the effectiveness of MEO policies in support of national security objectives.

6.1.4.5. Ensures that the DoD Components fulfill the requirements of this Directive.

6.1.4.6. Provides supervision, direction, and policy guidance to DEOMI through the DASD(EO) and selects the Commandant of DEOMI from Military Service nominations.

6.1.4.7. Establishes reporting categories and monitors specific goals to be included in the affirmative action programs and annual MEO assessments of each Military Service under DoD Instruction 1350.3 (reference (f)).

6.1.4.8. Reviews and refers to the appropriate Military Service all complaints of unlawful discrimination (to include sexual harassment) sent to the Secretary of Defense or the Under Secretary of Defense for Personnel and Readiness (USD(P&R)).

6.1.4.9. Ensures fair, impartial, and timely investigation, resolution, and follow-up, to include feedback to complainants, of all formal complaints of discrimination arising under this Directive at all levels within the Department of Defense, consistent with 5 U.S.C. 552a, "The Privacy Act of 1974" (reference (k)), and implementing DoD guidance.

6.1.4.10. Establishes procedures for recurring annual reviews of DEOMI services and a biennial review of DEOMI curricula.

6.2. The Secretaries of the Military Departments are responsible for EO and for ensuring compliance with this Directive within their respective Services and shall:

6.2.1. Ensure that all DoD EO policies and programs are understood and executed at all levels of military command and that EO programs and protection extend to Service members who serve in joint-duty positions.

6.2.2. Require commanders to assess their organizational EO climate, preferably as part of their assumption of command, and schedule follow-up assessments periodically during their command tenure. Commanders shall be held accountable for the EO climates in their commands. See item E2.1.7., enclosure 2.

6.2.3. Continuously review and update documents and eliminate practices that unlawfully discriminate against military personnel based on race, religion, color, sex, or national origin.

6.2.4. Develop policies to prevent unlawful discrimination and sexual harassment, and require that commanders prominently post and enforce them. Personnel should be made aware of the policies and procedures for filing a complaint of reprisal under DoD Directive 7050.6 (reference (l)). Violations of the policies set forth in this Directive may constitute violations of specific articles of the Uniform Code of Military Justice (UCMJ) (reference (m)).

6.2.5. Establish and publish complaint procedures. These procedures shall cover both formal and informal means for resolving complaints and shall include timelines for resolution (normally 60 days), feedback, and follow-up mechanisms, as well as examples of prohibited reprisal actions and measures that can be taken to counter these actions. Reserve component timelines should take drilling periods into account. To deal effectively with reprisals in the Reserve components, follow-up on sexual harassment and discrimination cases in the National Guard and Reserves should extend through a period of 1 year following conflict resolution. Ensure that all discrimination complaints are

investigated in a fair, impartial, and prompt manner, and that all reports of investigation of formal complaints are reviewed for legal sufficiency. Ensure that appropriate disciplinary and corrective actions are taken if unlawful discrimination or reprisal is substantiated.

6.2.6. Feed back information about both the status and outcome of the complaint; e.g., who is investigating, projected completion date, and whether the allegations were substantiated. When requested, the complainant should be provided a copy of the investigating officer's final report, redacted as necessary to comply with the Privacy Act of 1974 (reference (k)) and other applicable laws and regulations. Information about specific adverse actions taken against an individual is generally not disclosed unless such information is a matter of public record (e.g., court-martial proceedings) or when otherwise required to be released by statute.

6.2.7. Develop forms for the documentation of each step in the formal complaint process, including pre-decision updates and post-decision follow-ups with the complainant consistent with the Privacy Act of 1974 (reference (k)) and implementing DoD guidance. Complaint forms and reporting systems should clearly identify the duty status involved in Reserve component cases. Service members should be encouraged to file complaints promptly, normally within 60 days of the incident.

6.2.8. Provide a central point of contact at the installation level or below, staffed with qualified and trained EO counselors, to receive formal complaints of unlawful discrimination and sexual harassment.

6.2.9. Establish toll-free or local hot (or advice) lines that provide information on how and where to file complaints and what kinds of behaviors constitute unlawful discrimination and sexual harassment. Personnel working these lines shall be fully trained to address National Guard and Reserve component situations in addition to those on active duty.

6.2.10. Establish criteria for the appeal of administrative findings of formal complaints of unlawful discrimination and sexual harassment. The sole mechanism for appealing the disposition of an informal complaint shall be to file a formal complaint. The first-level appeal of an administrative finding on a formal complaint should be to an installation-level commander, or, in the case of personnel not assigned to an installation (e.g., on ships), to the first commander in the chain with general court-martial convening authority. Subsequent and final appeal procedures should be established within each Service at the level of the Secretary of the Military Department. The appeal procedure should not be an adversarial process, nor does it require personal appearances or hearing rights. The Secretary or other designated official will decide the appeal based on the written record and any written arguments submitted with the appeal. The appeal authority may sustain or overrule the finding below or remand the matter for further fact-finding.

6.2.10.1. Both the complainant and the subject(s) of the complaint may appeal administrative findings of discrimination or no discrimination.

6.2.10.2. To avoid delaying or impeding the prompt and effective resolution of complaints, commanders are not required to withhold appropriate administrative action while an appeal is pending.

6.2.10.3. This administrative appeal process is not applicable to findings rendered pursuant to command action under the UCMJ (reference (m)) (i.e., nonjudicial punishment or court-martial). When a commander initiates or has previously initiated action under reference (m), that action shall take precedence over any ongoing or contemplated administrative actions or appeals. In such circumstances, reference (m) appellate processes are the exclusive appellate mechanisms available.

6.2.11. Ensure that victims' support programs provide information on services, and assistance in obtaining them. The Services shall ensure that programs for counseling, information, referral, and other assistance are made available to Service members who have experienced unlawful discrimination or sexual harassment.

6.2.12. Establish and fill sufficient full-time staff positions and allocate sufficient resources to conduct all EO programs. Qualifications and grades of personnel serving in EO billets shall be specified. EO staff personnel shall be selected for training at DEOMI by Service-established criteria and placed upon assignment at a level that enables them to communicate effectively the goals and objectives of the program and to obtain the understanding, support, commitment, and involvement of the organization's leaders. The professional development training of EO staff personnel shall include continuing education and training to ensure mastery and competency in the EO field.

6.2.13. Ensure that all personnel not assigned to EO billets, but having program-associated responsibilities, such as inspectors general (IGs), chaplains, judge advocates, investigating officers, and personnel working in victims' assistance and support programs, receive such training as may be necessary for them to carry out their EO duties. Service-developed training plans for such personnel should be submitted to DEOMI for review and comment.

6.2.14. Ensure that all military personnel, including command selectees and flag and general officers, receive adequate training in EO, human relations, and prevention of sexual harassment on a recurring basis, and at all levels of PME. Service-wide training programs, when not conducted by DEOMI personnel, shall be submitted to DEOMI for prompt review and comment.

6.2.15. Ensure that all rating and reviewing officials evaluate a member's compliance with DoD and Component directives prohibiting unlawful discrimination and sexual harassment and document serious or repeated deviations from such directives in performance reports.

6.2.16. Ensure that Reserve component members' off-duty or non-duty behaviors that affect the military workplace are covered by the unlawful discrimination and sexual harassment prevention programs, emphasizing the principle of "full-time values - part-time careers." An example of off-duty or non-duty behavior that impacts on the workplace is quid pro quo (something for something) sexual harassment. See items E2.1.15.1. & E2.1.15.2., enclosure 2.

6.2.17. Recognize the unique characteristics of the Reserve components when establishing programs and procedures for processing unlawful discrimination and sexual harassment involving members of the Reserve components, whether as complainants or respondents.

6.2.18. Develop management information and reporting systems to determine the progress for each AAP goal, consistent with DoD Instruction 1350.3 (reference (f)).

6.2.19. Forward a fiscal year report to the USD(P&R) outlining their progress in achieving the established MEO objectives of their AAPs. This report shall be due each year on February 1, and is described further in reference (f).

6.3. The Commanders of the Combatant Commands and Directors of Defense Agencies under OSD Principal Staff Assistants and those that report directly to the Secretary or Deputy Secretary of Defense shall be responsible for EO within their respective areas of responsibility and ensure compliance with the policies set forth in this Directive. Because such Agency heads generally do not exercise career management or UCMJ authority (reference (m)) over assigned military personnel, special consideration must be exercised in meeting DoD EO standards for assigned personnel. At a minimum, they shall:

6.3.1. Ensure that all DoD EO policies and programs are understood and executed throughout the organization, to include:

6.3.1.1. Establishing an EO program that complies with the guidelines of this Directive and reflects the standards, values, and principles of existing Service programs, resources, and counseling services. Commanders and Agency heads should be aware that some Service members may only know of, or be comfortable using, their parent Service's complaint system. These individuals should not be denied the benefit of their parent Service's EO and counseling systems if necessary to ensure the DoD standards on complaint handling are met for each member.

6.3.1.2. Appointing an assigned EO advisor who will initiate the administrative processes and prepare initial reports for the commander's or director's review and disposition. Generally, these positions need not be full-time, but incumbents should receive DEOMI-approved training that enables them to administer a responsive EO program.

6.3.1.3. Establishing and publishing procedures for appealing the findings of formal complaints of unlawful discrimination and sexual harassment that comply with subparagraphs 6.2.4. through 6.2.11., above. Appeal procedures should provide for referral to appropriate general courts martial convening authority. Subsequent and final appeal procedures should end at the level of the respondent's or complainant's Military Department Secretary. To the extent commanders and Agency heads rely on the installation host Service to provide complaint processing, investigation support, and counseling or referral services, these relationships should be formally established and published.

6.3.2. Ensure that appropriate disciplinary and corrective actions are taken if unlawful discrimination or reprisal is substantiated. If the appropriate administrative or disciplinary sanction is not within the supervising commander's or director's authority (e.g., nonjudicial punishment, promotion removal actions, or administrative separation actions), refer the case to the offender's installation host Service or Service command element for disposition and action.

6.4. The Secretaries of the Army and the Air Force shall ensure that the Chief, National Guard Bureau, fulfills his or her responsibilities for EO within his or her jurisdiction, fully consistent with the broader DoD objectives and 42 U.S.C. 2000d (reference (n)) and shall establish discrimination and sexual harassment complaints procedures that include:

6.4.1. All the provisions of subparagraphs 6.2.4. through 6.2.11., above.

6.4.2. Both the Army and Air National Guard.

6.4.3. The provision that the National Guard Bureau maintain final review or decision authority over discrimination complaints within its purview.

7. INFORMATION REQUIREMENTS

The information requirement identified in subparagraph 6.2.19., above, has been assigned Report Control Symbol DD-P&R(A)1760, in accordance with DoD 8910.1-M (reference (o)). Reporting requirements are contained in enclosure 3 and further amplified in DoD Instruction 1350.3 (reference (f)).

8. EFFECTIVE DATA AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Under Secretary of Defense for Personnel and Readiness within 90 days; forward one copy of changes to existing implementing documents within 60 days.

A handwritten signature in black ink, appearing to read "John P. White", is written over a horizontal line.

John P. White
Deputy Secretary of Defense

Enclosures - 3

- E1. References, continued
- E2. Definitions
- E3. MEO Reporting Requirements

E1. ENCLOSURE 1

REFERENCES, continued

- (e) Defense Equal Opportunity Council Task Force on Discrimination and Sexual Harassment Report, May 1995
- (f) DoD Instruction 1350.3, "Affirmative Action Planning and Assessment Process," February 29, 1988
- (g) DoD Directive 5410.18, "Community Relations," July 3, 1974
- (h) DoD Instruction 1100.16, "Equal Opportunity in Off-Base Housing," August 14, 1989
- (i) Section 1535 of title 31, United States Code, "The Economy Act" (as amended)
- (j) DoD Directive 5124.2, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," October 31, 1994
- (k) Section 552a of title 5, United States Code, "The Privacy Act of 1974"
- (l) DoD Directive 7050.6, "Military Whistleblower Protection," August 12, 1995
- (m) Chapter 47 of title 10, United States Code, "Uniform Code of Military Justice"
- (n) Section 2000d of title 42, United States Code, "Federally Assisted Programs"
- (o) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," November 1986

following: group and/or individual interviews, observations, surveys or questionnaires, and reviews of records and reports.

E2.1.8. Ethnic and Racial Categories. The basic racial and ethnic categories for DoD reporting are defined as follows:

E2.1.8.1. American Indian or Alaskan Native. A person having origins in the original peoples of North America.

E2.1.8.2. Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes China, India, Japan, Korea, the Philippine Islands, and Samoa.

E2.1.8.3. Black (Not of Hispanic Origin). A person having origins in any of the original peoples of Africa.

E2.1.8.4. Hispanic. A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, Central or South America, or of other Spanish cultures, regardless of race.

E2.1.8.5. White (Not of Hispanic Origin). A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

E2.1.9. Legal Sufficiency Review. A review of an investigation into a formal complaint of unlawful discrimination or sexual harassment to determine whether:

E2.1.9.1. The investigation complies with all applicable legal and administrative requirements;

E2.1.9.2. The investigation adequately addresses the matters complained of;

E2.1.9.3. The evidence supports the findings of the investigating officer or board;

E2.1.9.4. The conclusions and recommendations of the investigating officer or board are consistent with the findings; and,

E2.1.9.5. Any errors or irregularities exist, and, if so, their legal effect, if any.

E2.1.10. National Origin. An individual's or ancestor's place of origin. Also applies to a person who has the physical, cultural, or linguistic characteristics of a national group.

E2.1.11. Protected Communication. A lawful communication to a Member of Congress, an IG, any member of a DoD audit, inspection, investigation or law enforcement organization, or to any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures to receive such communications, to which a member of the Armed Forces makes a complaint or discloses information that he or she reasonably believes evidences a violation of law or regulation (including those covering unlawful discrimination and sexual harassment), mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety (see DoD Directive 7050.6, reference (1)).

E2.1.12. Race. A division of human beings identified by the possession of traits that are transmissible by descent and that are sufficient to characterize persons possessing these traits as a distinctive human genotype.

E2.1.13. Religion. A personal set or institutionalized system of attitudes, moral or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by ardor and faith, and generally evidenced through specific religious observances.

E2.1.14. Reprisal. Taking or threatening to take an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a Military member for making or preparing a protected communication.

E2.1.15. Sexual Harassment. A form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

E2.1.15.1. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or

E2.1.15.2. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

E2.1.15.3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for Military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or

condones any form of sexual behavior to control, influence, or affect the career, pay, or job of a Military member or civilian employee is engaging in sexual harassment. Similarly, any Military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

E2.1.16. Unlawful Discrimination. Includes discrimination on the basis of color, national origin, race, religion, or sex that is not otherwise authorized by law or regulation.

E3. ENCLOSURE 3

MEO REPORTING REQUIREMENTS

E3.1.1. Each DoD Component shall submit an annual MEO assessment for the period ending September 30 to the USD(P&R) no later than February 1 of the following year. The report shall include the following information:

E3.1.1.1. An executive summary, providing an overall assessment of each DoD Component's AAPs and EO Programs.

E3.1.1.2. An assessment of each affirmative action in the following 10 categories shall be made an enclosure to the report. The assessment in each category should include quantitative data in the basic race and/or ethnic classifications for officers and enlisted personnel broken down by sex.

E3.1.1.2.1. Recruiting and/or Accessions.

E3.1.1.2.2. Composition.

E3.1.1.2.3. Promotions.

E3.1.1.2.4. PME.

E3.1.1.2.5. Separations.

E3.1.1.2.6. Augmentation and/or Retention.

E3.1.1.2.7. Assignments.

E3.1.1.2.8. Discrimination and/or Sexual Harassment Complaints.

E3.1.1.2.9. Utilization of Skills.

E3.1.1.2.10. Discipline.

E3.1.1.3. Requirements are further explained in DoD Instruction 1350.3 (reference (f)).