

**PRIVILEGED ATTORNEY-CLIENT
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February 24, 2010

TO: Jason Cummings, Chief Civil Deputy Prosecuting Attorney, Snohomish County
Prosecutor's Office

FROM: Linda D. Walton

RE: **Confidential Investigation Report – County EEO Practice and Protocol
Review**

A. Scope of Review

On January 19, 2010, the Snohomish County (the "County") Prosecuting Attorney's Office retained Perkins Coie LLP to conduct a privileged review of the County's current EEO investigatory practices and protocols and to advise the County and the Chief Civil Deputy of the Prosecuting Attorney's Office regarding the same. During the course of my review I interviewed the County's EEO Officer, Mark Knudsen, and members of the Prosecuting Attorney's Office. I also reviewed a representative sampling of open and closed County EEO investigation files and a log of all County EEO complaints filed with the County EEO Officer from November 2, 1999 until December 15, 2009.

B. Findings and Recommendations

1. Findings

a. The Numbers of Complaints

Between November 2, 1999 and December 15, 2009 the Snohomish County EEO Office received 128 EEO complaints. County EEO Officer Mark Knudsen investigated (or has begun investigating) 126 of the 128 complaints. At Mr. Knudsen's request a County Human Resources employee investigated one complaint in January 2006 and an outside investigator investigated one complaint in March 2003.

b. Investigative Process and Technique

(i) Intake

Prior to December 2009 the County did not employ a standard protocol for the intake of EEO complaints. According to Mr. Knudsen he received complaints in a variety of ways. Sometimes an employee would call or email him directly with a complaint or to speak with him about "an issue." Sometimes a supervisor would call him to tell him that an employee had complained of harassment or discrimination.

Prior to December 2009 Mr. Knudsen did not use a standard intake form. Consequently, Mr. Knudsen sometimes found it difficult to determine whether the complainant was actually filing a complaint that fell within the purview of the County's Workplace Harassment Policy (Executive Order 07-49) ("E.O. 07-49") before beginning an investigation. In December 2009 Mr. Knudsen began using a standard intake form. The new form includes, among other things, the complainant's name, job title, the EEO bas(es) for the complainant, a space in which the complainant can briefly describe the events upon which the complaint is based, and the date on which the complainant signs the form.

(ii) Interview Process

Once Mr. Knudsen receives a complaint he develops a set of interview questions based on a standard form. He then interviews the complainant. According to Mr. Knudsen these interviews generally last about an hour. He reported that his longest interview session with a complainant lasted about three hours.

Prior to December 2009, Mr. Knudsen maintained a practice of tape recording his interviews with most, if not all, complainants. He also tape recorded some of his interviews with witnesses, and some of his interviews with the persons against whom complaints had been brought. It was Mr. Knudsen's practice to send the tape recordings to an outside vendor for transcription. The amount of time it took the vendor to return the transcriptions to Mr. Knudsen varied from approximately one week to as many as six weeks, depending upon the vendor's availability.

This process delayed Mr. Knudsen's completion of investigations because it was his practice to wait until he received the transcription of the tape recording of a complainant's interview before proceeding with additional witness interviews. Once Mr. Knudsen received the transcript he forwarded it to the complainant for review, and he asked the complainant to complete an errata sheet. According to Mr. Knudsen the errata sheet allowed the interviewee to correct any spelling errors and to fill in gaps where the tape recording was inaudible. Mr. Knudsen reported that the corrections were rarely substantive. Mr. Knudsen usually waited for the complainant's corrections before gleaning from the transcript the names of the individuals he would then interview as witnesses.

According to Mr. Knudsen after reviewing the transcript of a complainant's interview, he developed a questionnaire for his interview of the person against whom the complaint was filed. Normally, he would then interview the respondent; and after interviewing the respondent he would interview witnesses identified during the course of the complainant's interview. If the complainant raised concerns about possible retaliation Mr. Knudsen would interview the person against whom the complaint had been brought after interviewing other witnesses.

The files that I reviewed contained no telephone logs or other communication logs indicating when Mr. Knudsen spoke with complainants, witnesses, or the persons against whom complaints were brought. Some files did contain handwritten notes that indicated the dates on which Mr. Knudsen called or attempted to call witnesses.

(iii) Investigation Reports

During his tenure with the County Mr. Knudsen has not consistently prepared written investigation reports. Mr. Knudsen has prepared written investigation reports in only 32 of the 126 investigations that he has conducted on behalf of the County. (Both the outside investigator and the County Human Resources employee who conducted EEO investigations in 2003 and 2006, respectively, prepared written investigation reports; resulting in a total of 34 written reports for 128 investigations.)

According to Mr. Knudsen he did not prepare written reports in those instances where he determined that the complainant's complaint had no EEO basis. Mr. Knudsen reported that he also did not prepare written reports when department management stepped in to resolve a complaint during the course of an investigation.

By Mr. Knudsen's calculation 41 out of the 126 complaints he investigated fell into the category of complaints lacking an EEO basis or complaints resolved by management during the course of the investigation. Mr. Knudsen closed 33 cases for which he was unable to determine why he had not prepared written reports. By his account these investigations did not fall into the category of complaints lacking an EEO basis or complaints resolved by management during the course of the investigation. And, Mr. Knudsen could not locate records for an additional 7 complaints.

(iv) Timing

E.O. 07-49 "strongly encourages the prompt reporting of harassing conduct or incidents of discrimination or retaliation." The policy also provides that "[e]very complaint regarding harassing conduct, discrimination or retaliation will be investigated promptly." According to Mr. Knudsen initially it was his goal to complete investigations within 60 days of the filing of the complaint. He reported that he later revised that goal, setting 90 days as his target for the completion of investigations.

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While Mr. Knudsen has maintained a practice of keeping records indicating when he begins investigations, he has not kept records indicating when he closes investigations. Mr. Knudsen was able to provide closing dates for only those investigations for which he had completed written investigation reports. Thus, it is impossible to determine with certainty how long it took Mr. Knudsen to complete most of his investigations. However, for those investigations in which Mr. Knudsen completed a written report his records indicate that he opened and closed the investigations on the following dates:

Open	Closed
11/12/09	02/02/10
04/22/09	01/05/10
10/16/07	08/20/09
10/16/07	11/04/08
09/12/07	03/04/09
08/02/07	09/23/08
08/23/06	09/11/08
05/10/06	03/09/08
02/07/06	05/07/08
12/12/05	07/10/06
02/17/05	06/26/05
02/25/04	05/13/04
08/22/02	03/04/04
01/08/02	10/30/02
12/13/01	10/02/03
11/19/01	02/06/03
11/07/01	03/05/03
09/27/01	08/27/02
05/11/01	02/05/03
04/25/01	08/27/02
04/24/01	09/18/02
02/21/01	07/17/01
01/17/01	03/27/02

Open	Closed
06/18/01	07/26/01
10/00	03/20/01
09/27/00	02/12/01
3/00	06/15/00
3/00	05/15/00
3/00	05/15/00
11/24/99	02/04/03
11/02/99	08/18/00

As of January 21, 2010, Mr. Knudsen was working on eleven ongoing investigations, the oldest of which stemmed from a complaint filed on August 20, 2008. The remaining open investigations stemmed from complaints filed between April 2009 and November 2009.

c. Staffing

Mr. Knudsen is the only person employed by the County in its EEO Office, which is a part of the Executive's Office. In addition to his investigation responsibilities he is responsible for drafting the County's EEO plan, staffing the County's Diversity Council, serving as the County's ADA Coordinator, handling the County's WMBE initiative, and conducting workplace harassment training for County employees. He has no clerical support within the office.

As noted above Mr. Knudsen has investigated all but two of the 128 EEO complaints filed with the County EEO Office since November 1999. Mr. Knudsen received the following number of complaints per year:

Year	No. of Complaints
1999	3*
2000	10
2001	21
2002	6
2003	4
2004	7
2005	12

* Mr. Knudsen began investigating complaints for the County as a contractor in late 1999.

Year	No. of Complaints
2006	15
2007	22
2008	10
2009	18

Neither of the two occasions on which Mr. Knudsen asked to have someone else conduct an investigation occurred during one of the years (2001 and 2007) when the EEO Office received the largest number of complaints. And by his own account he has not asked for assistance.

While Mr. Knudsen reports to the County Deputy Executive, for the most part he works autonomously. He meets with the Deputy Executive for bi-weekly status reports; and when he feels that it is necessary, he consults with a Deputy Prosecuting Attorney for clarification regarding legal issues that arise during the course of an investigation.

2. Recommendations

- Author has not interviewed HR to determine whether resources are available at this time. However, recommendations are offered as a suggestion to improve the County's process.

a. Move the EEO Function into the County Human Resources Department.

- This move would allow for closer supervision of the EEO Officer by the County Human Resources Director.
- The move should also provide a mechanism by which additional professional staff would be available to conduct investigations when the number of complaints exceeded the number that the EEO Officer could complete in a timely manner.
- And, the move could provide much needed clerical support for the County's EEO Officer.

b. Establish a computerized database of all EEO complaints filed with the County's EEO Officer

- The database should contain intake information including:
 - Name of complainant

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- Complainant's contact information
- Date on which complaint was received
- Department of complainant
- Complainant's job title
- Whether complainant is a union member and the name of union if applicable
- Name of the person against whom the complaint is brought
- Contact information for the person against whom the complaint is brought
- Whether the person against whom the complaint is a union member, and the name of union if applicable
- EEO bas(es)
- Summary of the allegations
- The database should include the following closing information for each complaint:
 - Date closed
 - Resolution
 - Date and method by which complainant, complainant's department head, and the person against whom the complaint has been brought are notified of closing
- The computerized system need not be complicated or expensive.

c. Goal to Complete investigations and investigation reports within 30 days of receipt of complaint.

- If the volume of pending complaints will prevent the County's EEO Officer from completing the investigation within 30 days of the filing of the complaint, assign investigation tasks to County Human Resource personnel or contract with an outside investigator to complete the investigation in a timely manner.

- Discontinue the practice of routinely tape recording every complainant, respondent, and witness.**
- d. Consistently develop plans of action for the investigation of each complaint.**
- e. Maintain telephone and other communication logs during the course of investigations.**
- f. Prepare written investigation reports, including:**
 - Date on which the complaint was filed
 - Date of report
 - Name of investigator
 - Name of complainant
 - Name of the person(s) against whom the complaint is brought
 - Department
 - EEO bas(es)
 - Summary of Allegations
 - List of persons interviewed
 - List of documents reviewed
 - Findings of Facts
 - Copies of documents relied upon in reaching findings
 - Conclusions

**This practice was discontinued in December 2009.

- g. Follow up with complainant 30 days after close of investigation (this task may be assigned to County HR personnel or member of management).**
- h. At the direction of the Prosecuting Attorney's Office suspend investigation of complaints from complainants who have filed external agency charges (e.g., EEOC, WHRC) where the Prosecuting Attorney's Office is investigating the same or substantially similar facts for the purpose of responding to the agency charge.**
- i. Require the current County EEO Officer to attend periodic refresher training courses on conducting investigations.**