

January 9, 1998

SAMR-SFECR

MEMORANDUM FOR ALL EEO OFFICERS

SUBJECT: Union Representation in the Equal Employment Opportunity (EEO) Complaint Process

1. In accordance with 29 Code of Federal Regulation (CFR) Part 1614 and Department of Army (DA) regulation (AR) 690-600, every complainant has a right to be accompanied, represented, and advised by a representative of his/her choice. Union officials or union members may likewise be designated by a complainant to serve as personal representatives in the processing of a discrimination complaint. It is necessary for the EEO officer in consultation with the Army legal representative and Civilian Personnel official to determine whether conflict of interest issues exist. In cases where representation of a complainant would conflict, or create the appearance of a conflict, with the official or collateral duties of the representative, the representative may be disqualified. For example, a Union president may not represent a supervisor if he/she supervises a person who encumbers a position in the bargaining unit. In this circumstance the Union president may be disqualified due to conflict of interest.

2. Any decision to disqualify a representative rest with the activity commander or his/her designee who will be promptly advised of conflict of interest issues. If a personal representative is disqualified for representation, the activity EEO officer will address the denial in a letter to the complainant. The letter must advise complainant of his/her right to appeal to EEOCRA, ATTN: SAMR-SFECR, Arlington, Virginia 22202-4508. If an Equal Employment Opportunity Commission (EEOC) administrative judge disqualifies a representative during a hearing, the decision cannot be appealed.

3. Time used by a union official or union member in representation of the complainant in administrative EEO complaint process cited in 29 CFR Part 1614 is not to be considered nor computed as "official time" within the confines of "official time" as stated in 5 USC Section 7131 unless a negotiated labor-management agreement includes EEO representation as official time under section 7131. Otherwise, time used by a union official or union member in serving as personal representative for a complainant during EEO complaint processing is no different than that of a non-union member. The time used by

a complainant or his/her representative to prepare the complaint and respond to DA and EEOC requests for information is called "official time" in accordance with 29 CFR Section 1614.605.

4. While on duty and otherwise in a pay status, a reasonable amount of official time, as defined in EEOC's EEO Management Directive 110, is permitted by a management official. The actual number of hours to which complainant and his/her representative are entitled will vary, depending on the nature and complexity of the complaint and considering the agency's mission and the agency's need to have its employees available to perform their normal duties on a regular basis. Complainant, his/her personal representative, and the activity should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time.

5. When a union attorney represents a complainant and the complaint is settled or there is a finding of discrimination (except in age discrimination and equal pay complaints), the attorney is entitled to payment of attorney's fees as would be the case if the complainant's attorney representative was not a union attorney. However, under the provisions of 29 CFR Section 1614.501(e), no award of attorney's fees is allowable for the services of any employee of the federal government.

6. The preceding guidance applies only to matters in the administrative process. There is no right to official/administrative time to file a suit in court. The above guidance is also subject to any conditions agreed upon in a negotiated labor-management agreement.

Stanley L. Kelley, Jr.,
Director, Equal Employment Opportunity
Compliance and Complaints Review Agency