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*National Guard Regulation (AR) 690-600/
NGR (AF) 40-1614
Volume I

Civilian Personnel

NATIONAL GUARD CIVILIAN DISCRIMINATION COMPLAINT SYSTEM

Summary. This regulation implements Federal statutes and regulations and Defense Department directives prohibiting discrimination based on race, color, religion, sex (hereinafter gender), national origin, age, or physical or mental handicap.

Summary of Changes. This is a complete revision of the National Guard Civilian Discrimination Complaint System. Policies, responsibilities, and a summary of the complaint process are in this volume; complaint procedures and implementation of specific provisions of Federal laws and regulations are in volume II. Other changes are:

- a. New time limits and dismissal rules.
- b. Emphasis on resolution and a new dispute resolution process.
- c. Elimination of proposed dispositions and introduction of adverse inference procedures.

Applicability. This regulation applies to National Guard technician personnel, applicants for technician employment, and to all personnel who supervise, manage, or regulate the National Guard technician workforce.

Internal Control System. This regulation is not subject to the requirements of AR 11-2. It does not contain internal control provisions.

Impact on New Manning System. This regulation does not contain information that affects the New Manning System.

Supplementation. Supplementation of this regulation and establishment of forms other than NGB forms are prohibited without prior approval from NGB-HRE-C.

Interim Changes. Interim changes to this regulation are not official unless authenticated by the Director, Administrative Services. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the National Guard Bureau Complaints Management and Support Activity. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to NGB-HRE-C, 4501 Ford Avenue, Alexandria, VA 22302-1454.

*This regulation supersedes NGR 690-600/ANGR 40-1613, 5 May 1989

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1. Purpose

This regulation establishes policies and responsibilities for and explains the National Guard Civilian Discrimination Complaint System and the avenue of redress available to complainants. It implements Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-16); the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 633a); the Rehabilitation Act of 1973, as amended (29 U.S.C. 791 and 794a); the Equal Pay Act of 1963 (29 U.S.C. 206(d)); Title 29 of the Code of Federal Regulations, Parts 1613 and 1614 (29 CFR 1613 and 1614); the Equal Employment Opportunity Commission Management Directive 110; Department of Defense Directive 1440.1, the DoD Civilian Equal Employment Opportunity Program, as changed; and related case law and decisions and interpretation of EEOC.

2. Explanation of Abbreviations and Terms

Definitions and abbreviations used in this regulation are contained in the glossary of volume II of this regulation.

3. Implementation

Transfer of discrimination complaints functions from Regional Centers to the

NGB Complaints Management and Support Activity will be announced by an All States Memorandum. 29 CFR 1614 went into effect 1 Oct 92 and, as of that date, all discrimination complaints, including those filed before 1 Oct 92, became subject to the time limits and processing rules of 29 CFR 1614, as explained in this regulation.

4. The National Guard Civilian Discrimination Complaint System

The National Guard has established and operates a Civilian Discrimination Complaint System, based on statutes and regulations cited in paragraph 1. It is designed so that processing, management, and adjudication of discrimination complaints is carried out in accordance with the policies in volume I and procedures in volume II of this regulation. The primary purposes of this system are to:

- a. Foster equal opportunity.
- b. Resolve complaints fairly and quickly.
- c. Provide a just and effective avenue of redress to aggrieved persons when complaints are not resolved.

5. Who May File a Complaint

Individual and class complaints of employment discrimination covered by this regulation are based on discrimination prohibited by the statutes cited in paragraph 1. Complaints of retaliation or reprisal for participation in actions authorized by these statutes are considered as complaints of discrimination. Sex discrimination cited in these statutes and regulations is referred to as gender discrimination herein.

- a. Any National Guard technician, former technician, or applicant for technician employment who believes that he or she has been illegally discriminated against due to race, color, religion, gender (including sexual harassment), national origin, age, or

physical or mental handicap in an employment matter subject to the control of the National Guard, may file an individual complaint of discrimination.

b. Any group of National Guard technicians, former technicians, or applicants for technician employment who believe that they have been or are being adversely affected by a National Guard personnel management policy or practice which illegally discriminates against the group on the basis of their common race, color, religion, gender, national origin, age, or physical or mental handicap in a matter subject to the control of the National Guard, may file a class complaint of discrimination.

c. In some instances, discrimination allegations may also be raised under negotiated grievance procedures or under appellate provisions of the Merit Systems Protection Board rather than under this regulation. Volume II of this regulation states under what circumstances these other procedures are available and how an individual chooses the procedure. The MSPB rules are in FPM Supplement 990-1.

d. Members or former members of the National Guard alleging illegal discrimination that relates to their military status and applicants for membership in the National Guard or for duty as Active Guard Reserve (AGR) are not covered by provisions of this regulation. Such discrimination complaints are governed by NGR (AR) 600-22/NGR (AF) 30-3.

6. Filing and Processing Complaints

The avenue of redress available under the Civilian Discrimination Complaint System (figure 1) is summarized below. When processing of a complaint is delayed or when NGB or the State National Guard fail to issue the required notices, the complainant has, depending on the circumstances, the right to request a hearing or to file an appeal or a civil action in court. These and

other special provisions and procedures are in volume II of this regulation. They will be explained to complainants when they contact an EEO counselor.

a. Before an individual or class complaint can be filed, a complainant must consult with an EEO counselor within 45 days of the alleged discrimination. The 45-day time limit may be extended as provided in paragraph 4-11 of volume II of this regulation.

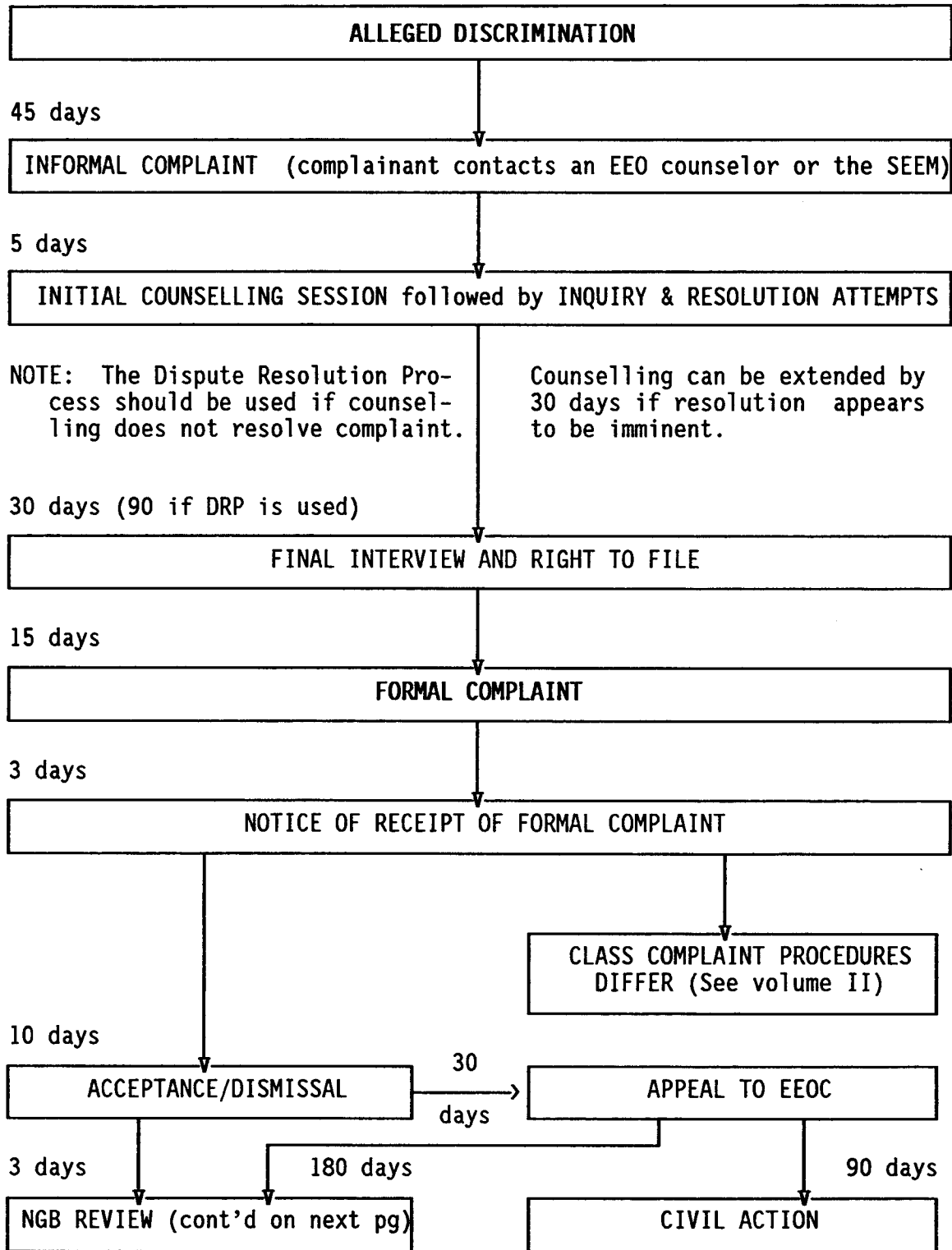
b. Counselling must be completed in 30 days, unless the complainant agrees to an extension. Complainants can use the dispute resolution process (DRP) to resolve complaints. See chapter 3, volume II, of this regulation for counselling rules and procedures.

c. If the complaint is not resolved after counselling or DRP, the complainant may file a formal complaint within 15 days after receipt of the notice of right to file. Unless clarification is needed, a complaint is accepted or dismissed within 10 days. This is done on procedural grounds not on whether the complaint has validity or merit. Dismissals may be appealed as provided in chapter 8, volume II, of this regulation.

d. Accepted complaints are investigated. The National Guard and the complainant should continue resolution attempts using DRP (with mediation and other techniques) during this period. Within 180 days after a complaint is filed, NGB must issue a notice of investigation completion and provide the complainant a copy of the Report of Investigation and the official discrimination complaint case file. Paragraphs 5-12b and 5-17, volume II, of this regulation govern extensions and failure to issue a notice of investigation completion.

e. After the complainant receives a notice of investigation completion, he or she has 30 days to request a

DISCRIMINATION COMPLAINT PROCESS



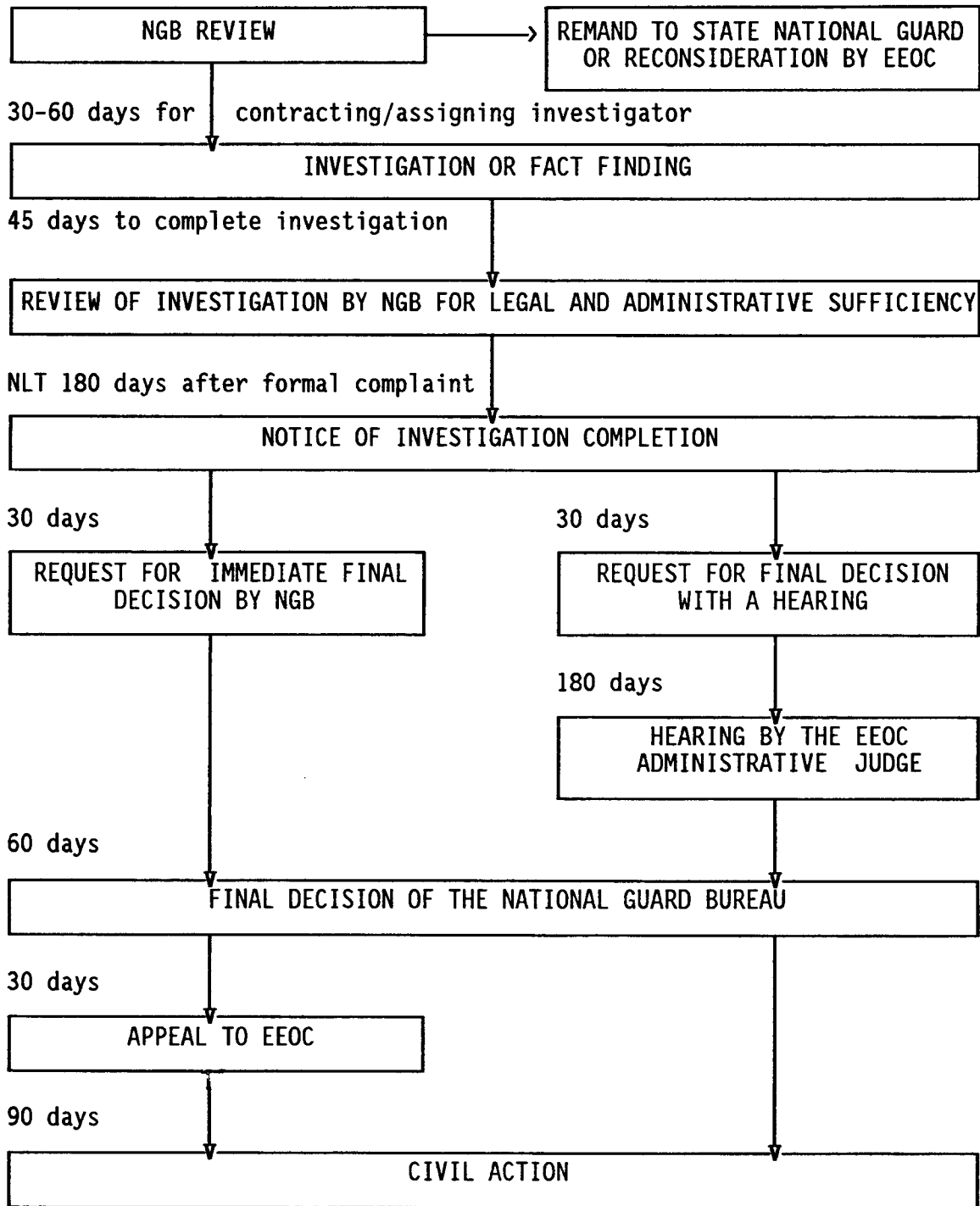


Figure 1. Discrimination complaint process

decision from NGB with or without a hearing by an Administrative Judge (AJ), otherwise NGB will issue a decision based on the existing record.

f. NGB will issue a final decision on the merits of the complaint within 60 days after receiving either the complainant's request or the results of the hearing from the AJ.

g. Chapter 8, volume II, of this regulation governs how a complainant may appeal the NGB final decision and file civil action in a U.S. District Court if the complainant is dissatisfied with the final decision or with the decision on appeal.

7. Policies

a. Equal Opportunity. The fair, equitable and nondiscriminatory treatment of all members and employees of the National Guard improves morale and productivity, fosters unit cohesion and readiness, and increases combat effectiveness of the Guard. It is the policy of the National Guard to provide equal employment opportunity for National Guard technician personnel or applicants for technician employment. They will not be subjected to illegal discrimination due to race, color, religion, gender, national origin, age, physical or mental handicap, or retaliation.

b. Sexual Harassment. All National Guard personnel are entitled to serve in an environment free from sexual harassment. Sexual harassment is a form of gender discrimination and will not be tolerated in the National Guard. Allegations of sexual harassment will be given prompt attention and resolved as expeditiously as possible. Sanctions outlined in military or civilian personnel regulations will be applied when individuals behaved inappropriately by engaging in sexual harassment.

c. Resolution of Complaints. It is the goal of the National Guard to

resolve and settle all allegations and complaints of discrimination fairly, equitably and expeditiously. Whenever possible, complaints will be resolved before the formal stage. The settlement of a complaint should be pursued at any stage of complaint processing; however, settlements will not contain any provisions that abridge the rights guaranteed under the laws and regulations listed in paragraph 1 and as stated in policies herein.

d. Dispute Resolution Process. To foster early resolution, a dispute resolution process has been established in the National Guard Civilian Discrimination Complaint System. It provides for a dispute resolution panel, mediation, and other techniques for settling complaints. It should be used both before and after a formal complaint is filed.

e. Right to File a Complaint. Personnel who feel that they have been subjected to illegal discrimination have a right to have their allegations heard, initially as an informal complaint and, if it is not resolved, as a formal complaint of discrimination. These rights will not be withheld even if it may be evident to National Guard officials that discrimination did not take place or that the complaint does not fall within the criteria of this regulation. Such matters may only be decided in dismissals or final decisions of formal complaints.

(1) Whenever an individual brings an allegation of discrimination to the attention of National Guard officials, it is appropriate that every effort be made to resolve the complaint. Concurrently, however, the individual will be advised of the right to file a complaint and of the time limitations for contacting an EEO counselor.

(2) EEO counselors, SEEMs, and other EEO officials contacted by aggrieved persons will advise them on criteria for acceptance or dismissal of complaints and on how complaints

are processed under the Civilian Discrimination Complaint System but they will not discourage aggrieved personnel from filing complaints. During pre-complaint processing (the informal stage), EEO counselors and SEEMs will not make conclusions on the merits of the complaint.

f. Freedom from Retaliation and Restraint. The National Guard Civilian Discrimination Complaint System exists to resolve complaints and to provide a just and effective avenue of redress. Participation in this system, as established by this regulation, is a right that will not be abridged and individuals will not be discouraged from such participation due to fear of reprisal or retaliation. No one shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Equal Pay Act, or the Rehabilitation Act or for participating in any stage of administrative or judicial proceedings under those statutes or this regulation. Personnel who believe that retaliation has been taken against them have the right to raise such a matter as a complaint of discrimination.

g. Corrective and Remedial Actions. When supervisors, managers, or commanders have reason to believe that discrimination may be occurring, they will conduct appropriate inquiries and take whatever corrective or remedial action necessary to eliminate and remedy such discrimination.

(1) Nothing in this regulation requires supervisors, managers, or commanders to wait until a discrimination complaint is filed before they take remedial or corrective action on any real or perceived discrimination in their organization. They should consult with equal opportunity staffs to help identify and rectify potential areas of discrimination.

(2) Dismissal or withdrawal of discrimination complaints does not

lessen responsibility of supervisors, managers, and commanders to determine the validity and merits of the allegations raised and to take corrective or remedial action, if warranted.

h. Referral of Complaints. Allegations of discrimination by or on behalf of technician personnel, former technician personnel, or applicants for technician employment received by NGB will be referred for processing to the State National Guard. General allegations of discrimination made by persons or special interest organizations that are not within the scope of individual or class discrimination complaints will be promptly answered by the Adjutant General (AG) or an officer acting for the AG.

i. Disciplinary/Adverse Actions. Appropriate action will be taken against personnel who engage in discrimination. Disciplinary or adverse action against individuals who have engaged in discrimination is not a form of remedy and is taken separate and apart from the administrative processing of a discrimination complaint.

j. EEO Staff Resources. The SEEM will be the senior State EEO official and will have direct access to the AG. The SEEM will normally work under the staff supervision of the SPMO. Adequate resources will be provided in each State National Guard to ensure efficient and successful operation of the Civilian Discrimination Complaint System. EEO counselors may be designated as collateral or full time duties. In either case, a sufficient number of EEO counselors will be appointed for easy and ready access to pre-complaint counselling and to ensure that counselling is initiated within the time limits in this regulation. Allocation of personnel, their qualifications, training, and experience is a matter reportable to the EEOC and NGB.

8. Role and Authority of NGB

The Secretaries of the Army and the Air Force have delegated to the Chief, National Guard Bureau the authority and responsibility for equal employment opportunity for National Guard technician personnel. Therefore, the National Guard Bureau acts as the "Agency" within the meaning of 29 CFR 1614 in all aspects of administrative processing, management, and adjudication of complaints of discrimination, with responsibility for:

- a. Propriety of the acceptance and dismissal of complaints.
- b. Final Decisions on the merits of the issues in discrimination complaints.
- c. Closures of complaint cases.
- d. Full relief certifications.
- e. Determinations and final decisions on attorney's fees and costs.
- f. Compliance and enforcement of settlements and final decisions.
- g. Determinations to have EEOC reconsider its appeal decisions.
- h. Appeals of denial of representative.
- i. Acceptance or dismissal of class complaints.
- j. Decision on petitions to vacate a resolution.

9. Responsibilities

a. Chief, National Guard Bureau. Responsible for equal employment opportunity within the National Guard. Acts as the Agency head within the meaning of 29 CFR 1614.

b. Chief, Equal Opportunity Division (NGB-HRE). As Equal Employment Opportunity Director, appointed by the

Chief, NGB, directs and administers National Guard EEO programs, plans and policies and serves as principal advisor to the Chief, NGB, on all EEO matters. Issues decisions, determinations and certifications on discrimination complaints or delegates them to Deputy EEO Director for Complaints.

c. Chief, Complaints Management and Support Activity (NGB-HRE-C). Establishes and administers the National Guard Civilian Discrimination Complaint System and develops policies and procedures for processing, management, and adjudication of discrimination complaints. As Deputy EEO Director for Complaints, issues decisions, determinations, and certifications on discrimination complaints.

d. Chiefs, Regional Centers (NGB-HR-EC and -MC). Provide assistance and advice to NGB and State National Guard officials on the dispute resolution process (DRP), recommend use of DRP in appropriate cases and assign mediators where mediation has been selected in the DRP.

e. Judge Advocate, NGB (NGB-JA). Provides legal advice on discrimination complaint matters. Reviews complaint cases, Reports of Investigation, settlements, full relief offers, final decisions and other matters for legal sufficiency and compliance with laws and regulations. Designates the National Guard representative for class complaints. Coordinates with the Department of Justice and the Litigation Offices of the Departments of the Army and the Air Force Judge Advocates General whenever a complainant files a civil action in Federal court.

f. Chief, Acquisition Contracting Division, NGB (NGB-AQC). Provides advice on and contracts for investigations of discrimination complaints.

g. Director, Administrative Services, (NGB-AD). Acts on Freedom of Information Act requests for release

of any part of the official discrimination complaint case file, to include Reports of Investigation.

h. State Adjutants General (AG). Administer the EEO program, implement and manage the Civilian Discrimination Complaint System in their States, and ensure that--

(1) The State National Guard operates in an atmosphere free of illegal discrimination and does not discourage personnel from participating in the complaint process due to fear of retaliation.

(2) Policies and requirements of this regulation are followed and procedures are established for expeditious processing of discrimination complaints and adherence to the established time limits.

(3) Complaints are accepted or dismissed on procedural grounds, as listed in volume II, this regulation.

(4) Attempts are made to resolve complaints early and expeditiously and resolution attempts continue throughout the discrimination complaint process, using the DRP, to include mediation and other dispute resolution techniques.

(5) Full relief is provided, in accordance with 29 CFR 1614 and volume II of this regulation, to make the victim whole, including posting of required notices when it is found that a complainant has been discriminated against.

(6) National Guard personnel called as witnesses during discrimination complaint investigations participate consistent with the overall objectives of the fact finding mission.

(7) Information on how to file complaints and on time limits for filing is regularly publicized and permanently posted on bulletin boards with easy access to all technicians, former technicians, and to applicants for technician employment with the National Guard.

i. Support Personnel Management

Officers (SPMO).

(1) Ensure actions required of the State in connection with the Civilian Discrimination Complaint System and complaints processing, to include those to be taken by the SEEM and EEO counselors, are accomplished in a timely manner and in accordance with applicable laws and regulations.

(2) Provide access to the SEEM, EEO counselors, investigators, and State legal representatives to personnel records and copies of documents and records relative to the complaint when needed in the performance of their official duties. Retain relevant records or documents until notified by the SEEM that no further administrative or legal decision is pending on the complaint.

j. The State Equal Employment Managers (SEEM).

(1) Manage the Civilian Discrimination Complaint System on behalf of the AG and ensure that complaints are processed as provided for in volume II of this regulation.

(2) Provide expert advice and recommendations to the SPMO and the AG on all aspects of discrimination complaints, to include acceptance or dismissal of complaints and settlement of complaints. Coordinate legal aspects and implication of complaints with the State JA.

(3) In conjunction with the SPMO, advise the AG on the resources needed to manage the complaint system effectively.

(4) Provide EEO training in accordance with paragraph 11, below.

(5) Ensure availability of an adequate number of trained EEO counselors. Supervise them and assign them to perform pre-complaint counselling.

(6) Monitor records of complaints filed and provide statistical and other information regarding complaints processing.

k. EEO Counselors.

(1) Advise complainants of provisions of the law and Federal and

National Guard regulations on illegal discrimination and how complaints are filed and processed.

(2) Assist complainants in identifying specific acts they perceive to be discriminatory and in stating clear and concise issues.

(3) Conduct inquiries into allegations raised by complainants, attempt resolution, keep a record of counselling, and prepare a written report of the inquiry and advice provided to complainants and management officials.

1. State Judge Advocates (JA). Provide legal review and advice on all aspects of discrimination complaints.

(1) Review formally filed complaints to recommend their acceptance or dismissal based on criteria in volume II of this regulation, prior EEOC rulings in similar cases, and applicable case law.

(2) Serve as the National Guard representative during investigative fact finding hearings and EEOC hearings. In conjunction with the SEEM, identify witnesses for the State and determine and present the case for the National Guard.

(3) In conjunction with the SEEM, advise the AG on settlement agreements and claims for attorney's fees and costs.

(4) When informed that a complainant has initiated or terminated civil action, notify NGB CMSA and NGB JA. Assist in any litigation as necessary at the request of NGB JA.

m. Supervisors, Managers, and Commanders.

(1) Prevent or correct situations that may give rise to complaints of discrimination.

(2) Ensure that all members of their organization refrain from actions or comments that might be viewed as discriminatory.

(3) Allow employees with collateral EEO duties enough duty time to perform their EEO functions and allow complainants and their representatives

reasonable amount of duty time, both at the informal and the formal stages of a complaint, to pursue their complaints.

(4) Ensure full cooperation with EEO counselors, SEEMs, investigators, and administrative judges in discrimination complaint processing.

n. EEO Complaint Investigators and EEOC Administrative Judges. Responsibilities of these officials are in volume II of this regulation.

10. Time Limits

Time limits in this regulation have been established to ensure that complaints are processed expeditiously, as prescribed by law and Federal regulations, and to ensure the availability of witnesses and information needed for investigation and resolution of complaints. Failure by complainants and their attorneys to adhere to the time limits can result in dismissal of a complaint. Failure by National Guard officials to adhere to the time limits can result in adverse inference and may cause NGB to issue a decision in favor of the complainant.

11. Education, Training, and Awareness

a. Time limits and redress procedures of the Civilian Discrimination Complaint System are predicated on personnel being aware of such time limits, policies, and filing procedures. Such information will be included in all orientations of new personnel, in subsequent periodic orientations, and in sexual harassment prevention or other EEO training, and will be conspicuously posted, to include posting of NGB CMSA Poster 93-160, You Have a Right to File a Complaint, where all employees and applicants for employment have ready access to this information.

b. Training in EEO subjects will include information on the Civilian Discrimination Complaint System. Training for supervisors, managers,

and commanders will emphasize their responsibility in preventing and eradicating discrimination, in complaint resolution, and use of the DRP.

c. EEO counselors will receive discrimination complaint counselling training before they counsel complainants. Formal training will include, as a minimum, completion of a basic EEO counselling course (Office of Personnel Management or equivalent) which includes information regarding provisions of the statutes cited in this regulation, EEOC regulations and management directives, and the complaints process described in this regulation. Additional and refresher training may be prescribed by NGB and the State concerned.

d. SEEMs will receive training described for EEO counselors and additional training applicable to their duties. Such training is available through the Defense Equal Opportunity By Order of the Secretaries of the Army and the Air Force:

Management Institute and regional OPM offices. Additional training will be prescribed or made available by NGB.

12. Documentation

Decisions on timeliness of filing, dismissals, merits, and appeals of complaints are based on the record as evidenced in the official discrimination complaint case file. Failure to include all documentation in the case file may result in adverse inference and may cause the NGB or the EEOC to issue a decision in favor of the complainant.

13. Interpretation and Exemption

Requests for interpretation of or exemption to any policy or provision of this regulation will be forwarded in writing, through command channels, to the Chief, Complaints Management and Support Activity, National Guard Bureau, 4501 Ford Ave., Alexandria, VA 22302-1454.

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Chief, National Guard Bureau

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