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2-19-1982

### First Conference on Compliance in the Federal Sector

J. Clay Smith Jr.

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#### Recommended Citation

Smith, J. Clay Jr., "First Conference on Compliance in the Federal Sector" (1982). *Selected Speeches*. 64. [https://dh.howard.edu/jcs\\_speeches/64](https://dh.howard.edu/jcs_speeches/64)

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DR. J. CLAY SMITH, JR.  
ACTING CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Before the  
EEOC Compliance Conference  
Washington, D.C.

February 19, 1982

FIRST CONFERENCE ON COMPLIANCE IN THE FEDERAL SECTOR

Welcome to the Equal Employment Opportunity Commission's first conference on compliance in the Federal sector. The purpose of this conference is, not only to give a brief explanation of the role played by the EEOC in this area, but to afford us all an opportunity of better understanding how we can work together toward a proper and expeditious disposition of federal EEO complaints. To that end, the Commission's Office of Review and Appeals has made available for distribution an agenda together with information on the EEO complaint processing procedure.

By way of background, the Office of Review and Appeals is the successor of the Appeals and Review Board of the old Civil Service Commission. The functions of the Appeals and Review Board were transferred to this agency in January 1979, pursuant to the Civil Service Reform Act. The Office of Review and Appeals was fully staffed and ready to begin operations by late summer of that year. This was done despite the fact that, in addition to opening ORA to handle all current appeals, we also had to establish a task force to dispose of 1,800 cases which we had inherited from the

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Civil Service Commission. I am very pleased that we succeeded in disposing of all those cases.

The Office of Review and Appeals is headed by Nestor Cruz. It is staffed with about 30 attorneys who review about 50 cases every week. The office stays very busy. As of this date, about 5,400 appeals have been resolved by this office.

The processing of appeals received by the Office of Review and Appeals begins with the random assignment to one of the staff attorneys. After the record is reviewed, the attorney writes a proposed decision which is given to his or her supervisor for review. From that supervisor, the decision then goes to Mr. Cruz. If the appeal raises issues upon which there is no Commission policy, then the proposed decision must go to both the EEOC's Office of the General Counsel and the Office of Policy Implementation as well as the Commissioners themselves for final review.

Once a decision has been made by the EEOC, we expect full cooperation from the other Federal agencies in taking whatever corrective action is ordered. It is critical that such corrective action be taken immediately. I am happy to hear that the Federal agencies have generally been very cooperative in complying with our decisions. However, in those situations where our decisions are not followed, the Chairman, on behalf of the Commission, will not hesitate to personally intervene.

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In determining what legal standards to apply on federal EEO appeals, we look to the body of Title VII case law which has evolved in suits arising in the private sector. This has resulted in providing federal employees with the some legal protections as are enjoyed by their counterparts in the private sector. Unfortunately, one area of the law where there is little legal precedent to assist us is in the area of handicap discrimination. The obvious reason for this is that this area is so new. However, rest assured that the Commission subjects handicap discrimination cases to careful scrutinization to assure that they are disposed of properly.

In assessing the viability of federal EEO complaints, we have repudiated what is commonly known as the "competent authority" doctrine because it was being improperly used to dismiss valid complaints. Accordingly, once we've assured ourselves that the complaint at issue has stated a claim upon which relief can be granted, we begin the processing of the complaint.

In terms of assessing the final factual findings made by the affected Federal agency, we have adopted the same standard of review as that of other Federal agencies such as the NLRB and the FCC over decisions issued by administrative law judges. That is, we will not affirm an agency's decision simply because it was based upon a "permissible" conclusion. Rather, we will only affirm those decisions whose findings are supported by a "preponderance" of the

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evidence in the record. To that end, it is critical that the Office of Review and Appeals be provided with the complete appellate record. To the extent that we don't receive complete records, our work is hamstrung.

I've been pleased to hear that the quality of the investigative files have improved considerably over the last few months. However, I've also been informed that there remains much more work to be done by Federal agencies in the development and maintenance of complete records for review. In addition, it is very important that the Office of Review and Appeals be provided with complete files as soon as possible. Just as importantly, if you do not have any record of a complaint having been filed, it is critical that we be promptly notified of this.

In conclusion, this Agency is fully committed to the vigorous enforcement of all anti-discrimination in employment laws in both the Federal and private sectors. Because I am confident that your agencies are just as mindful of their legal responsibilities over the rights of federal employees, I look forward to your continued close cooperation with the EEOC in making certain that these rights are not jeopardized.

I will now turn over the podium to Mr. Cruz who will then introduce all the speakers at this conference.