



The

# **Broadcasters' Desktop Resource**

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... edited by Barry Mishkind – the Eclectic Engineer

## **Focus on Regulation** **Dealing With Public File Gremlin #2**



**by Ken Benner**

*[March 2016] As an experienced inspector under the ABIP, Ken Benner has been to several thousand stations over the past couple of decades, and he has helped many of them to be in compliance with the FCC Rules and Regulations. That does not mean there are no problem areas. There are. And Ken has called them The Three Gremlins. Here he discusses one of them.*

Of the three Gremlins afflicting the maintenance of a station's Public Inspection File – Issues & Programs, EEO (Equal Employment Opportunity), and the Political File – it is the rules governing the EEO have long been considered to be some of the most difficult.

In fact, with its approximate 5,675 legally complexified words, EEO issues are among the most profitable to the FCC Fine Machine's contributions to the Federal treasury and the legal fraternity's retirement fund

### **HARD TO PARSE INSTRUCTIONS**

Several years ago the FCC EEO Office decided to require a "randomly selected" 5% of station licensees to be audited.

Most licensees had no choice but to contact their legal counsel for assistance because CFR Part 73.2080 was so gobbledygooed that it was hopelessly impossible for most lay persons to comprehend.

For example, in one fun-filled paragraph – see 73.2080(c)(4)(iv) – we find the following instruction to "Utilize media for recruitment purposes in a manner that will contain no indication, either explicit, or implicit, of a preference for one race, national origin, color, religion or sex over another; ..."

We could offer more examples, but rest assured that reading part or all of 73.2080 is not for the faint of heart.

### **PROTECTION FOR STATION OWNERS?**

On the surface EEO appears to provide some protection for a station licensee in the event someone complains to the FCC that he/she was discriminated against from being hired or fired.

The problem is, as with so much we read or hear about, how do you defend yourself from a fabri-

cated allegation without losing everything you have worked so hard, for so long?

The current result is not very encouraging. Often you may wind up in court, your lawyer produces scads of EEO material accumulated in your Public File and – if you are lucky – you are vindicated after spending scads of money and losing a mountain of respect from the adverse media publicity generated from something over which you have had absolutely no control.

## OUTSIDE PRESSURES

My research for this column has also revealed substantial support from the Gay, Lesbian, and Transgender groups to add their concerns regarding this group to prohibit religious broadcasters (who may well have issues with these folks) from discriminative hiring.

One long-time broadcaster friend of mine upon receiving his EEO audit notice desperately phoned his lawyer for help who responded to the effect; “Fear not, my dear friend, I can handle your audit response that will suffice and my fee will be only \$4,000.” My friend felt he had no choice.

His lawyer then produced a few hundred pages of lawyereeze and billed my friend \$6,000. Yes, \$6,000!

## LOOKING FOR RESOURCES

So let us see what we can do to simplify things.

If you are seeking the absolute simplest way to deal with an EEO audit, just visit a couple of large, well-capitalized stations nearby and request copies of the material in their EEO Public Inspection File folder. Take them home, study them for the easiest to file, and replace the appropriate items with your appropriate items. Then, file the form, and thank dear ol’ Uncle Kenny here, who now has saved you thousands in legal costs.

## I AM NOT A LAWYER

No, Uncle Kenny is not a lawyer, and is not offering legal advice. Just a strategy which has worked for some folks.

Ok, so you do not feel like you can trust your Uncle Kenny’s idea. My suggestion then is to go on line: hop onto the NAB website spend a few bucks for their booklet addressing EEO.

Perhaps even better, if you have read [a prior column of mine](#) and obtained the NAB Legal Guide that I suggested, go to page 124-128 “O. EQUAL EMPLOYMENT PROCEDURES,” and you will have a very good comprehensive idea of what you must do to be complaint.

And, in the event you *still* have doubts or questions about what to do, in this event you pick up your telephone and meet some few really, really nice folks at the FCC EEO office:

Lew Pulley at 202-418-1456 or

[Lewis.Pulley@fcc.gov](mailto:Lewis.Pulley@fcc.gov);

Estella Salvatierra at 202-418-1789 or

[Estella.Salvatierra@fcc.gov](mailto:Estella.Salvatierra@fcc.gov); or

Cheryl Kornegay at 202-418-7948 or

[cheryl.Kornegay@fcc.gov](mailto:cheryl.Kornegay@fcc.gov).



## DO NOT EXPECT CHANGES SOON

When one looks at EEO, and where it began, in Congress, it is clear EEO is largely political – and unfortunately, not going away any time soon.

Of course, the new Congress being voted later this year might change things. But Washington, DC is just as likely to fall into a black hole and disappear.

Finally, again please remember that Uncle Ken-ny here at 79 is not a lawyer. Rather he wants you to see him as a really nice, meek, and humble guy out here on the Arizona Sonora Desert, semi-retired after over a half-century of service to the industry. Yet, even as he struggles to feed

his lovely little wife and lovely precocious daughter, “Sparky” the cat, he has learned a few disturbing things that plague our profession, one of which is the topic at hand.

Now was that not fun? Next time we will tackle Public File Gremlin No. 3 – The Political File – for still more “fun,” especially this year!

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*Ken Benner, CBRE, NCE is not a lawyer nor politician, and does not hold the above material to be considered legal advice, but rather a good faith explanatory effort based upon his 20 years of dedicated service as an ABIP inspector. You can contact Ken directly at: [bennerassociates@me.com](mailto:bennerassociates@me.com)*

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