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**January 20, 2012**  
**Telephonic Board of Commissioner's**  
**Meeting Minutes**

**Commissioners Present:**

Commissioner Davis  
Chair Garrett  
Commissioner Hewitt  
Commissioner Jones  
Commissioner McDaniel  
Commissioner Miller  
Commissioner Osborne  
Commissioner Pierce  
Commissioner Starling  
Commissioner Walker  
Commissioner Wiggins  
Commissioner Wurzburg

**Commissioners Absent:**

Commissioner Blalock  
Commissioner Cocke  
Commissioner Pride

**Staff Present:**

Beverly Watts, Executive Director  
Bobbie Porter, Special Assistant to the Executive Director  
Shalini Rose, General Counsel  
Richard Gadzekpo, Housing Coordinator  
Marcus Thomas, Title VI Compliance Director  
Lisa Lancaster, Executive Assistant

**Guests:**

Matthew Stephenson, THRC  
Linda Reed, Memphis THRC  
Barbara Gardner, Chattanooga THRC

**Call to Order**

Chair Garrett called the meeting to order at 9:07 a.m. and reflected briefly on her time with the Commission since 2003. At the time the Commission was in jeopardy of being Sunsetted by the Legislature with issues being the perception of the public as THRC being unresponsive and inaction (inactive?) and also Commissioner involvement and action. She

noted that currently most commissioners attend board and committee meetings regularly with almost 100 % participation of the Budget and Audit Committee. Mediation Month and the Roundtable discussions came out of the Education and Outreach Committee and over the last three years Commissioners have participated in strategic planning for the agency.

Chair Garrett said she was honored to have been chosen to serve as Chair of the Commission and noted that she will call upon each Commissioner to ensure that we continue to have 100% participation from Commissioners and an increased involvement with committees.

Roll call was taken. Minutes of the November meeting were reviewed. Commissioner McDaniel made a motion to accept. Commissioner Miller seconded the motion. A vote was taken and passed.

### **Executive Director's Report**

Executive Director, Beverly Watts began her report by noting that we have filled the Title VI position on December 13, 2011. We have completed interviews for the Deputy Director position and are waiting for approval from human resources. The Associate General Counsel Position interviews are also complete and reference checks are being done and the process has begun to identify candidates for the position.

Another vacancy has come in that Bobbie Porter will be leaving on January 24, 2012 to join our previous Deputy Director at TSU. We have been given authority to fill the position and will begin the process immediately.

We have a House budget hearing on February 7, 2012 and the budget questions to the Senate are due on February 2, 2012. We will have a Budget and Audit Committee meeting to review the document.

On January 9, 2012 the Executive Director met with the Auditor from the Comptroller's office to review the issues relative to our audit and that we were to do an evaluation of witnesses on an ongoing basis. This began in June of 2011 and you have a one page overview in your packet. The auditors were primarily interested in the witness interview process.

We are sending out surveys to all respondents and complainants when investigations are completed. We are surveying two witnesses for each employment investigator and one for each housing investigator. We are making two phone call attempts when contacting witnesses. These witnesses are identified during the intake process and during the investigation process. This information is included in the investigative plan submitted to the Regional coordinators and approved by legal. Investigators certify in writing that they have contacted the necessary witnesses.

At present we have sent out 701 surveys and received back 48 which is 6.85% rate of returns. We have called 134 witnesses and interviewed 40 which is 29.45% of those called.

We have included a survey script in our standard operating procedure and provided that to the auditors as well. Our surveys are being conducted by Francisco Guzman and contractor Paula Casey. We will present a full report on this at the March meeting.

Commissioner Osborne asked why this was still an issue and Executive Director Watts noted that our Sunset mandated that we report back to the Government Operations Committee. It was noted that we continue to conduct internal audits in both employment and housing to review case processing issues.

Commissioner Jones made a motion to accept the Executive Director's report and Commissioner Starling seconded the motion. A vote was taken and passed.

### **Employment Case Report**

Executive Director Watts reported on the timeframe November 1, 2011 to December 31, 2011 when we received 126 inquiries which resulted in 75 charges being accepted. During this time 61 cases were closed and of these cases the average open charge age is 236 days and closed charge age 234 days. There were five settlements totaling \$25,135 in benefits and one mediation was conducted resulting in \$1,593 in benefits.

When inquiries and charges accepted are compared with the previous year, they are down slightly and total number of cases are less which we are reviewing and benefits from settlements and mediations are about the same. The EEOC comparisons with the previous year are also down slightly from 119 to 102. The total inventory is down to 298 with last year being 494. We are looking to see why we have less cases coming through the door.

Paulette Wilson with EEOC met with us at the December 13, 2011, All Staff meeting and talked about a concern with the number of "cause cases" we have and discussions are taking place to have some possible training to address this issue.

A motion to accept the Employment report was made by Commissioner Miller and seconded by Commissioner Jones. A vote was taken and passed.

### **Housing Case Report**

The housing report was given by Housing Coordinator, Richard Gadzekpo who reported that during the November 1, 2011 to December 31, 2011 timeframe we received 33 inquiries and accepted 15 as complaints with the top bases being race and disability and noted that of those cases, 7 cases or 47% were race based.

During the timeframe 20 cases were closed with 3 being THRC only cases which are cases that are not dual filed with HUD because they were not within the Jurisdiction of HUD. Seven of these were no cause cases or 35% and 6 cases or 30% were conciliated with 7 or 35% being closed administratively. Of note is that four of these complaints were withdrawn with resolution after they were filed.

As of December 1, 2011, 80% of housing cases were closed within 100 days. In comparing numbers from last year to this year, the number of inquiries is down and the inventory is lower but this has not negatively impacted our processing of cases. We are on

target to meet the HUD standard of 50% case closure within 100 days with our closures at 74% within 100 days. Three cases (6%) were closed within 250 days due to legal analysis being done.

Thanks were offered to the THRC staff for recognizing Richard as the Employee of the Year for 2011. Two Investigators will go to NFHTA in Washington DC and if funds are available, General Counsel will attend a new course designed for public sector attorneys who are engaged in fair housing investigation and enforcement that is planned for March 5-9, 2012. When a new Associate General Counsel is employed it is hoped that they will attend NFHTA week one as well. The rescheduled Mediation Training will be attended by Saadia Williams and Richard Gadzekpo.

Commissioner Osborne asked have you checked for undue influence on the cases that are withdrawn; and for the ones withdrawn, do the Respondents now respect our process enough that when they get the notice that a complaint has been filed against them do they now decide to take action to correct the issues that are alleged?

Mr. Gadzekpo responded that they are resolving the issues among themselves. For example, a complainant believed he was being denied housing due to his race and after filing the complaint with us he withdrew because he was offered the housing. Another case it was alleged that they were denying people with disabilities and when the investigation was begun that was not the case and they were able to settle it among themselves. When complaints are withdrawn, we ask them specifically why and we review to make sure that it is not that they are being coerced or forced to withdraw.

Commissioner Osborne added that the reason for his question was that in East Tennessee he did not believe that Respondents were taking THRC seriously and it sounds as though that is changing and offered congratulations to the housing staff for their progress.

Chair Garrett asked about the substantial benefits received last year in comparison to this year. Mr. Gadzekpo noted that last year when we closed a case, our emphasis was on what we received as payment from HUD and this year we are focused on what the complainants received and are not including our payment amount. At the March meeting we will prepare an analysis of all benefits reported in both housing and employment.

A motion to accept the housing report was made by Commissioner Osborne and seconded by Commissioner Pierce. A vote was taken and passed.

### **Legal Report**

General Counsel, Shay Rose reported on the November 1, 2011 to December 31, 2011 timeframe during which time legal has closed 52 employment cases, 5 were administratively closed and 2 withdrawn with settlement. One case has been caused and legal has reviewed 32 investigative plans and completed 5 reconsiderations. In housing 17 cases were closed with one administratively closed and 7 conciliations and 3 withdrawals with settlements. We did have 3 cause cases but one has been settled and reviewed 5 investigative plans, 2 reconsiderations and completed 23 copy requests.

In the legal department all interviews for the associate general counsel position are completed and 3 follow-up interviews with Director Watts are also completed. We are checking references and working with human resources to deal with salary issues. We hope to complete this process and have an employee on staff by mid-February.

Next week we will conduct our Rule hearings on January 23 in Nashville; January 24 in Jackson and January 26 in Knoxville. There have been no comments at this time and we are not anticipating any changes but if there are changes the Commission will have to vote on those again.

The Legislature reconvened on January 10, 2012 and we have completed several fiscal notes. The first was SB2152 which says the state shall not discriminate or give preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, sexual orientation or national origin in the areas of employment, public education and public contracting. We attached a fiscal note of \$115,000 on this bill because it expands our law to include ethnicity and sexual orientation and it also adds the areas public education and contracting. We felt that it would require 2 to 3 more employees at the agency to deal with the expansion.

Another bill that has no number assigned to it requires landlords to require tenants to show some form of identification before being rented property. Our thought was that this would affect housing by increasing the number of cases we investigate and we placed a fiscal note of \$45,000.

House bill 2322 assigns the responsibility of verifying charter schools are operating in accordance with Title VI to the Commission. We placed a fiscal note of \$75,000 because it increases Title VI oversight by 42 additional schools. We are also in discussion with Rep. Cooper on this bill to have THRC monitor the Department of Education and have them monitor the 42 additional schools.

Commissioner Wurzburg asked if the SB2152 was an attempt to dismantle affirmative action plans. General Counsel Rose thinks the bill may not be written appropriately. Republican Senator Summerville from the Dickson area is the sponsor of the bill and it protects these people and says you can't treat them differently. The bill has not moved yet and will probably be amended along the way. Ms. Rose will keep the commission updated as to its progress.

Senate Bill 2365 adds sexual orientation as a protected class to the THRA. It also adds it every time a protected class is mentioned in the Tennessee Code Annotated. It was brought up last year but did not pass and is being reintroduced this year.

Commissioner Wurzburg noted that the landlord tenant bill was probably directed toward undocumented people. Ms. Rose noted that was probably true.

Richard Gadzekpo noted that a public housing department is looking into people who lease their properties being issued IDs. We consulted with HUD and they informed us that

such a program violates the privacy act and they would not encourage this practice by properties that receive HUD funding.

Commissioner Wurzburg asked if there would be an issuance of a government ID in order for people to get to vote. Executive Director Watts noted that this was not included in this bill. Ms. Rose noted that there were 8 to 10 forms of ID listed as being valid for this purpose such as driver's license, passport, Visa, Green Card and others. The bill does not cover undocumented residents.

Executive Director Watts noted that there are a number of these bills around the country and Department of Justice is suing Alabama and other states about similar bills. Our role is to give advice and counsel and add fiscal notes when applicable. We will also provide testimony if relevant if the bills go to hearing. In the past you could bring a landlord your electric bill or some form of mail to verify your residence and the focus now is on some form of ID either government.

We are asking what does this bill do as it relates to things we are responsible for; what impact will it have on us and will we have to hire more people; will we have more issues we will have to deal with that we don't have resources for and these are the things that fiscal notes address.

Commissioner Pierce asked if commissioner attendance is needed at the hearings on these upcoming bills. Executive Director Watts noted that if there is a need for commissioners to attend a hearing, we would contact all commissioners as soon as possible if your presence is requested.

The US Supreme Court case that came out on January 11, 2012 Hosana v. EEOC was a unanimous decision where the Judges ruled in favor of the Lutheran Church School. An employee worked there for six years and taught both secular and religious courses and was diagnosed with narcolepsy and went on a leave of absence and was eventually fired because they did not want to deal with the issue. The employee sued under the ADA for disability discrimination.

The court recognized a ministerial exception where ministers of religion can't sue their churches for employment discrimination. This is an exception which has been recognized in lower courts but the Supreme Court has never dealt with it. They are saying that by recognizing the exception that the government does not have the right to interfere with a churches employment relationship with someone in the ministerial staff.

In the cause case update in housing case for failure to negotiate for rent case, the respondent has withdrawn all offers and the case will go to hearing. The second case of the squatter who advertised for a male white roommate settled for \$1 and he agreed not to post any more ads and agreed to do 40 hours of community service.

Commissioner Wiggins made a motion to accept the legal report. Commissioner Wurzburg seconded the motion. A vote was taken and passed.

## **Outreach & Education**

Bobbie Porter reported on the November 1, 2011 to December 31, 2011 timeframe noting that during this time we reached 1,300 individuals bringing our year to date total to 9,680 and with this being the middle point of the fiscal year we are on target to meet our goal of 95 events for the year. We have 50 events already. Our number of individuals reached will greatly increase due to Black History Month and Fair Housing month. During the time period we had three exhibits; four speaking engagements and two education and outreach events that we participated in.

Of note was the International Human Rights Day event on December 7, 2011 where Executive Director Watts was MC and Commissioner Starling who also participated in the event which was attended by approximately 120 people. The event was shown on TV Metro Channel 3 several times after the event was recorded. Also the West Tennessee Roundtable was held on December 6, 2011 in Jackson, Tennessee. Commissioner Blalock was thanked for providing the venue and luncheon for the event. There were 45 attendees that represented 25 different organizations. West TN Legal Services was thanked for their participation as well. This event was attended by Commissioner Blalock, Commissioner Pride, Commissioner Wurzburg, Executive Director Watts, General Counsel Rose, Special Projects Officer, Francisco Guzman, Contract staff, Paula Casey and Executive Assistant, Bobbie Porter. There were articles in the *Jackson Sun* and the event was very successful.

Executive Director Watts also wrote an op-ed about the International Human Rights Day event that appeared in the *Tennessean*. Commissioner Wurzburg thanked Commissioner Blalock for the lovely luncheon and for hosting this event.

Bobbie thanked everyone for her time at the commission and noted the difficulty of the decision to leave. She thanked Director Watts for the opportunity and the learning experience she has received while employed with the agency.

The next Roundtable will be in Chattanooga on February 21, 2012 at Commissioner McDaniel's Church the Second Baptist Church from 11 to 2 and notices will go out next week.

Commissioner Pierce made a motion to accept the Communications report. Commissioner Miller seconded the motion. A vote was taken and passed.

## **Title VI Compliance Report**

Marcus Thomas, Title VI Compliance Program Director reported on the time frame of November 1, 2011 to December 31, 2011 and shows that 32 implementation plans have been submitted and reviewed for comment, which is 76% complete as of January 6, 2012. We plan to complete the final 10 plans by tomorrow and send them out with comments. Next we will give notice of final findings after agencies have been given time to cure noted issues.

We notified Department of Corrections that they were out of compliance by failing to submit a plan. They submitted their plan on January 10, 2012 which was 90 days late.

LaShondia Chambers has come onboard as Compliance Review Officer and on site compliance reviews will begin in February. The Department of Corrections will be the first one done. We intend to complete four departmental on site reviews by the end of the fiscal year.

We are currently investigating a case at the Tennessee Arts Commission where there was no Title VI Compliance Coordinator on staff so THRC is leading the investigation. The complainant alleges intentional discrimination, unfairness and disparity in the funding and grants review process on the basis of race.

During the period 68 inquiries were received, 9 complaints filed and 1 case was closed. Yearly we usually have approximately 400 inquiries so we are on track to have about the average number submitted.

A motion to accept the Title VI report was made by Commissioner McDaniel and seconded by Commissioner Davis. A vote was taken and passed.

### **Announcements**

Bobbie Porter noted that the Employment Law Seminar would be held on Thursday, June 21, 2012 at the Century One Conference Center and save the date notices will go out soon.

The CABLE Power of Inclusion Luncheon is coming up on February 8, 2012 and Nicki Giovanni is the speaker. The THRC table is full but if you want to go, call Director Watts.

Our next meeting is March 16, 2012 and is an in person meeting. Please mark your calendars.

With no further business to address Chair Garrett adjourned the meeting at 10:00 a.m.