



TENNESSEE HUMAN RIGHTS COMMISSION
CENTRAL OFFICE
ANDREW JOHNSON TOWER
710 JAMES ROBERTSON PARKWAY, SUITE 100
NASHVILLE, TENNESSEE 37243-1219
(615) 741-5825 FAX (615) 253-1886
www.tn.gov/humanrights

January 23, 2009
Telephonic Board of Commissioner's Meeting
Minutes

Commissioner's Present:

Commissioner Cocke
Commissioner Davis
Commissioner Garrett
Commissioner Hewitt
Commissioner Jones
Commissioner Miller
Commissioner Osborne
Chair Pierce
Commissioner Pride
Commissioner Starling
Commissioner Walker
Commissioner Wurzburg

Commissioner's Absent:

Commissioner Blalock
Commissioner Hakeem
Commissioner Wiggins

Staff Present:

Beverly Watts, Executive Director
Tiffany Baker Cox, Deputy Director
James. E. Davis, Housing Director
Shay Rose, General Counsel (via Phone)
Kelly Sheeman, Associate General Counsel
Esperanza Soriano, Communications Director
Lisa Lancaster, Executive Director's Assistant

Guests:

Allen Staley, Shared Services Solutions

Call to Order

Chair Pierce called the meeting to order at 9:00 a.m. She reminded the board to identify themselves when they speak and asked for a moment of silence for the board to reflect on the events of the week, the successes of the Commission in 2008 and to prepare for the challenges of 2009. Roll call was taken. Minutes of the November meeting were reviewed. Commissioner Starling made a motion to accept the minutes. Commissioner Miller seconded the motion. A vote was taken and passed.

Committee Assignments

Chair Pierce read the committee assignments for 2009. Chairman, Patricia Pierce; West Division Vice Chair, David Cocke; East Division Vice Chair, Edwin Osborne; Middle Division Vice Chair, Stacey Garrett; Secretary, A.J. Starling; Law & Legislation Committee: Chair: Middle Division, Karla Hewitt; East Division, Ruby Miller; East Division Ralph Davis; West Division, David Cocke; West Division Dennis Blalock; Middle Division, A.J. Starling; Education and Outreach Committee: Chair: West Division, Jocelyn Wurzburg; West Division, Dennis Blalock; East Division, Ralph Davis; Middle Division, A.J. Starling; Middle Division, Spencer Wiggins; Budget & Audit Committee: Chair: East Division, Edwin Osborne; West Division, Jocelyn Wurzburg; Middle Division, Spencer Wiggins; Middle Division, Joseph Walker; West Division, Nathan Pride.

Commissioner Hewitt made motion to accept the committee assignments. Commissioner Starling seconded the motion. A vote was taken and passed.

Executive Director's Report

Executive Director, Beverly Watts welcomed the commission members and updated them on the new Legislature, noting that House committee assignments took place on Thursday, January 22 and that information will be shared as soon as it is available. It appears that six Democrats and six Republicans will chair committees. This is important information because we are set to go before the Legislature for a Sunset Hearing and Budget Hearings. One bill has been introduced that would transfer Title VI to THRC. Title VI is currently housed in Human Resources and all funding for it was eliminated in the first round of budget cuts.

Martin Luther King's birthday was January 19th and special events and speaking events attended by Executive Director Watts began on Wednesday, January 14th and wrapped up on Monday, January 19th in Chattanooga, Knoxville and Nashville and included Tennessee State University, Vanderbilt University and Belmont University and Jefferson Street Baptist Church.

In December THRC held an all employee staff meeting which was attended by Commissioner's Wiggins and Pierce at which time the Employee of the Year Award was presented to Frank Carr. Part of the award was a resolution from the Commission. A draft is included in your materials that will need to be approved by the Commission and will be presented to Mr. Carr. The process for selection of the Employee of the Year is nomination by peers followed by supervisor review, and an all staff vote. Commissioner Osborne noted that the word resolved was misspelled throughout the document but otherwise was great. It was noted that the Employee of the Year received a Gift Card purchased by Executive Staff and a Clock. Commissioner Cocke made a motion to accept the draft of the resolution with corrections. Commissioner Osborne seconded the motion. A vote was taken and passed.

Chair Pierce noted that the staff was pleased with the nominee and the presentation was lovely and Mr. Carr was very gracious in his acceptance of the award.

The All Staff meeting also included training on customer service and Title VI.

The Budget and Audit committee met on December 10, 2008 to discuss the Financial Integrity Document that was due by December 31, 2008 and was scheduled to be submitted on December 18th. The document was created to identify medium to low risk in the agency and then defined what actions and methods would be taken to prevent possible risks.

The Committee met again on January 12, 2009 concerning the Budget. The process started in July and the cuts requested were for 3%. Executive Director Watts noted that our Fiscal Officer, Allen Staley was present to assist with explanations and clarification that may be needed. The second request was for 15% cuts. During the Budget office meetings with THRC we were advised to expect additional cuts. After the last commission meeting, a call came in and the request went to 15%. We usually get our notice by way of a press conference held by the Governor and then we get official notice from the budget office.

In mid December we submitted a request to make above the line cuts noted in the budget summary included in your materials. The cuts included a reduction in equity which included salary and benefits for \$21,800; Intake legal assistant position eliminated for \$42,500; and below the line items to include media, advertising, travel, mailings and legal subscription services for a total of \$123,800 in cuts.

Additional cuts were requested so I met with Allen Staley and Tiffany Baker Cox for about three hours reviewing penny by penny, dollar by dollar to find the amounts in Tier I. Tier II became an issue as well. We have two vacant investigator positions which we did not want to eliminate but could not make the money up any other way. The two positions were eliminated which accounted for \$73,200. This is Tier II.

Tier I we know is surely going to go. Tier II we are not sure, it depends on revenue, the stimulus package and other gifts from somewhere that we are not sure about. We then submitted a proposal with the elimination of a filled position. Before we got here we made the decision to do equity and equity was going to be with respect to salary and benefits. We had already eliminated \$21,300 and we decided to eliminate another \$39,000 to make it so that we would not have to lay off anyone. That plan was rejected by our budget analyst and the budget office.

A day or two after Christmas I spoke with Allen Staley and talked about a filled position but also recommended that we do what would be a rolling lay off. Over a period of twelve months staff would take off 3 to 4 hours per pay period without pay to achieve this amount. This plan was also rejected by our budget analyst and the budget office.

We have had to include the elimination of one filled position in the new year that has to be at least \$39,000. We have not identified the position and will not identify the position until we need to. As close to the July 1 start of the new fiscal year as we can. We will be analyzing where we are and looking at federal revenues to see if we can make up the shortfalls. We are hoping that we don't have to eliminate this position. We will be choosing a position that will disrupt the agency operations the least. I have no idea where that will be at this point.

In addition to the budget shortfalls we recognize that we also need to enhance production to offset the reductions and that will be starting this fiscal year. We have talked about cross

training which will take place on Monday and Tuesday of next week. We will train 6 individuals in employment investigations. One eliminated position is a housing investigator and the other an employment investigator. We currently have an additional two individuals that are cross trained in housing but are not assigned cases. One employment investigator will be trained in housing as well. We are also looking at some staff reassignments and those details are being worked out. We currently have someone from intake working the front desk in addition to supporting intake. Frank Carr from the front desk is working as an assistant in the Intake unit. These changes took place before December.

We are looking at identifying a number of areas to continue our advertising and other kinds of public education and outreach as cheaply as possible. We are working on a program that will utilize editorial columns in papers across the state. I hope to have the program unveiled for you at the March meeting and at that time I will be able to talk about your role in that program. We hope that you will be able to serve individually for some of the editorial columns. Staff would assist in putting those together to get the word out in various communities so that we could have a different kind of way to get the message out. All of our advertising dollars were cut in this upcoming budget. We are also trying to look at talk radio that is neutral and favorable to positive discussions about civil rights. We do not want to debate on conservative talk radio. We are also going to look at a newsletter and other areas and avenues which we are trying to unveil sometime later this year.

We will also be asking for your assistance in your local communities to assist in getting the word out by doing some things that will assist us. In doing that you become a public figure so we know that might make them believe that they can bring complaints to you directly. We are going to make sure that you have details that encourage you to refer them to the 800# as opposed to taking complaints directly or talking with complainants too much about issues and we will make sure you are provided with brochures and materials.

Allen Staley noted that on the budget reductions we are still waiting to hear back from the office of budget on what actually is going to be put in the Governors recommended budget that is expected to be presented to the Legislature next month. Until we get the official word we won't know the extent of THRC budget reductions. Hopefully they will be limited to Tier I. If the federal stimulus package comes through, hopefully we won't be required for the Tier II reductions. Budget also stated that if the sales tax revenue continues to decline it could be that agencies might have to come up with an additional 5% but no formal instructions have come to the agencies about that so hopefully that won't happen.

Commissioner Cocke asked if that would be Tier III. Allen Staley answered, "Yes" that would be Tier III. They said in the instructions for Tier I and II to be thinking about how you would address an additional 5% if that comes to fruition. Hopefully it won't be as bad as this appears at this point but agencies are to be prepared for the worst.

Executive Director Watts noted that Allen Staley works for Shared Services Solutions and is our Fiscal Officer and asked if there were further questions. She also noted that the Budget & Audit committee minutes were included in meeting materials for the boards review. This concluded her report.

Chair Pierce asked if there were questions and noted that these were difficult times for the agency to have to look at cutting the budget. All commissioners should look at doing some PR that needs to be done and that we could do without using any funds.

Commissioner Wurzburg noted that she was unable to open the budget document that was sent via email. Commissioner Miller noted she also had the same problem. Commissioner Osborne noted that the extension was left off of the attachment creating the problem with opening. Lisa Lancaster noted that the original document was scanned through the copy machine and when attached to the email it was converted. The problem will be reviewed and resolved by the next board meeting.

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

Employment Case Report

Deputy Director Tiffany Baker Cox reported on the period from November 1 to December 31, 2008 when 129 inquiries were received; 87 were accepted as charges; 80 were dual filed with EEOC and 7 were THRC only. 57 cases were closed. The breakdown is Title VII cases, Title VII/ADEA cases, then ADEA only cases being the top three categories of cases closed over the last three months.

During the time period 4 settlements were reached, 4 successful mediations conducted with \$15,410 in benefits received for complainants. One case was caused and the average case age was 272 days. Inventory at the end of the October was 530 cases. Charges accepted were about the same as 2007 with inquires being down some. Cases closed are down because we are working without one investigator and another investigator is on leave currently but will be returning in February.

Mediations and settlements are up because the mediation program is up and going well which will cause benefits to be up. The fiscal year comparison period for EEOC is October 1 to September 30. Total charges accepted remain the same; number of cases closed are down; inventory is up due to one investigator being out and others in and out; charge age is up, but not significantly; settlements are up due to the mediation program.

Upcoming year goals are the mediation program open to all complainants which will cause the settlements and benefit numbers increase steadily. Deputy Director Cox thanked Commissioner Wurzburg for assisting mediators with a refresher course that will take place in March. Cross training is planned for Monday and Tuesday of next week which will include 2 housing staff, communications division staff and 1 intake staff person. Deputy Director Cox will also cross train in housing investigations by attending the 5 week course at NFHTA in Washington DC with the first week being attended in February and another employment investigator attending around June.

Education and Outreach is being reviewed and the possibility of partnering with other agencies and chamber of commerce's when they have events so that we don't have to fund events in full and can continue our outreach mission. The Employment Law Seminar is coming up in March.

Chair Pierce asked if the increase in benefits was due to the mediations. Deputy Director Cox noted that 4 settlements totaling \$3,700 were received and those were due to mediations.

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

Housing Case Report

Housing Director, James Davis reported on the period November 1 to December 31, 2008. He noted that 62 inquiries were received and that 36 inquiries were from the Morristown incident that made the national news media. In all, 24 complaints were accepted; 18 complaints were closed. All were dual filed and none were THRC only; Counties represented were Blount, Davidson, Hamilton, Jefferson, Macon, Montgomery, Rutherford, Sevier, Shelby, Sullivan and Washington.

The main basis of complaints closed was familial status which is unusual as most complaints are race or disability based. 6 cases closed were familial status; 6 disability (3 mental & 3 physical); 1 race; 1 national origin and 1 religion. 10 cases were closed as no cause, 3 conciliations with \$2,000 in monetary benefits received; 2 cases withdrawn with resolution and 1 withdrawn without resolution; 2 cases were closed due to failure to cooperate with the investigation.

Average case processing age is 124 days and the current closed case inventory is 71 cases and total open inventory 82 cases with 1 case in Legal.

Goals for the upcoming year include sending housing investigators to some form of Fair Housing training by April of 2009; Education and Outreach in rural areas of the state per a discussion with Robert Bright, former THRC Housing Director, who now works at HUD and when he finds himself in remote, rural areas and notices that there may be an opportunity for outreach that he will notify THRC of the needs. The goal to close 50% of all cases within 100 days has been addressed. All investigators with cases older than 100 days have prepared a plan to accomplish the goal complete with an expected date of closure.

Commissioner Starling made a motion to accept the housing report. Commissioner Hewitt seconded the motion. A vote was taken and passed.

Legal Report

Assistant Counsel, Kelly Sheeman gave the legal report covering the November 1 through December 31, 2008 time period. In employment legal closed 35 cases leaving 1 in inventory and 84 investigative plans were reviewed and 21 remain in inventory and 1 reconsideration was completed with none left in inventory and 2 cases were sent back to investigators for correction. Of the closed cases 4 were THRC only 4 were administrative closures with the breakdown being: 1 withdrawal, 1 right to sue requested, 1 non-jurisdictional and 1 less than 8 employees. One settlement was completed.

In housing 15 cases were reviewed and closed with none left in inventory; 2 investigative plans were reviewed with none left in inventory; 1 reconsideration in inventory and 2 cases sent back for corrections. Of the closed cases, none were THRC only, 6 were

administrative closures with the breakdown being: 2 failure to cooperate, 3 withdrawn with resolution, 1 withdrawn without resolution and 1 settlement.

Updates include the EEOC complaint filed by a former employee has been dismissed; the rules update has been sent to the Secretary of State for approval and are set to become final on April 30, 2009 after they receive approval from the Joint Government Operations Committee; Employment Law Seminar will be March 18, 2009 at the Willis Conference Center. An invitation was given to all commissioners to attend and it was noted that attorneys attending will receive 6 hours of CLE credit.

Executive Director Watts requested that a brochure be sent to all board members and those wishing to attend the Employment Law Seminar contact Lisa Lancaster who can make the arrangements for them.

The employment cause case update included the old public accommodations case based on national origin in which mediation is being set for sometime in February 2009; the sexual harassment case mediation failed and it has been docketed for a hearing in February; the harassment and retaliation cases based on race, mediation failed and party has requested a right to sue and THRC will settle with the respondent; the disparate treatment case based on race have agreed to mediation.

The housing cause case update failure to rent based on familial status case is set for hearing on March 31, 2009 in Knoxville. We have filed a motion for summary of judgment and submitted a request for discovery admissions and interrogatories.

Commissioner Wurzburg asked if the cases that are being heard are being heard by ALJ's or commissioners. Kelly Sheeman answered that they were ALJ's.

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

Kelly Sheeman noted that the additional materials found in the legal documents include the Supreme Court Case Watchlist which includes the cases we are tracking in the Supreme Court regarding laws that we use. Executive Director Watts noted that the bill correcting the issues in the Ledbetter Supreme Court decision was approved in the House this week and has gone to the Senate and looks as though it might pass.

Commissioner Wurzburg asked for refresher on the case. Executive Director Watts noted it was the case was filed by Lily Ledbetter after she retired based on unequal pay and the court indicated in its decision the statute of limitations had run on her case. She contends that she found out upon retirement about the retirement benefits issue indicating she was being paid less than others, particularly males in the facility while she was employed by Goodyear. The Supreme Court struck it down. The bill indicatess when your time runs and how long the statute of limitations runs and has now passed in the House.

General Counsel, Shay Rose, noted that another issue in that case was whether or not every pay check she got was a new discriminatory act. The Supreme Court said it wasn't, and that it should go back to when the managers decided that she should get that pay. Most courts in the past have said that every time you get a paycheck it is a new

discriminatory act. Congress is changing it to a continuing violation which is a notice issue or when you have notice of the discrimination. The bill passed by the House states that every time you get a paycheck it is a continuing violation. The Supreme Court said that she should have known when they decided her salary.

Outreach & Education

Communications Director, Esperanza Soriano, reported on the period November 1 through December 31, 2008 where THRC participated in ten outreach events. Special Projects Coordinator, Frank Guzman attended Hispanic Disability Pathfinders at Vanderbilt University where he spoke about the role of the agency to approximately 50 attendees. November 15th the agency supported the NAACP Freedom Fund event in Johnson City TN and the speaker was journalist George Curry. On November 19th the Knoxville Office staffed a booth at the Knoxville Area Urban League which 35 people attended. November 24th Housing Director, James Davis spoke about housing discrimination on "Where the Heart is" radio program and provided brochures to the station.

Executive Director Watts attended the Governor's Housing Summit along with 600 other attendees and on December 4th she spoke about the Universal Declaration of Human Rights at UT's Library Committee program which 40 people attended. On December 10th at the International Human Rights Day events she served as moderator. Guest speakers were Rev. James Lawson, John Seigenthaler and State Historian Linda Wynn. Approximately 60 attended and was recorded and will be shown on Channel 3 during the month of December.

Communications staff member, Kimyona Hix attended the weekly Interdenominational Fellowship Meetings at the Jefferson Street Baptist Church where community issues are discussed. Approximately 50 people attend. On December 18th Frank Guzman and the Hispanic Disability Pathfinders spoke on Spanish Radio La Ley about the role of THRC including housing and disability portions of the statute. He then traveled to Jackson to participate in the Hate Crimes panel in conjunction with the Department of Justice Community Relation Service, Southern Poverty Law Center; Memphis based Assistant US Attorney Jim Powell and Clayton Goldsmith of the FBI which was sponsored by the NAACP. Commissioner Blalock attended along with approximately 50 others.

Frank Guzman is also working 5 Housing cases and Kimyona Hix attended a mediation class to keep her Rule 31 certification.

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

Executive Director Watts noted that she would call to set up a meeting with Commissioners Osborne and Wurzburg to discuss the hearing officer issue.

Chair Pierce thanked the staff for their reports and Commissioner Wurzburg for her willingness to assist with mediations and training and requested that they bring a report back to the board after meeting with Executive Director Watts and Commissioner Osborne. She announced that the next meeting will March 27th and a special presentation would be made to her predecessor as Chair, Spencer Wiggins and asked all to make a special effort

to be present. She also thanked Allen Staley from Shared Services for being present and assisting with questions about the budget.

With no further business to address, the meeting was closed at 9:55 am.