



TENNESSEE HUMAN RIGHTS COMMISSION
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May 15, 2015
Board of Commissioners' Meeting
Minutes

Commissioners Present:

Commissioner Crafton
Chair Houston
Commissioner Martin
Commissioner Sloss
Commissioner White

Commissioners Absent:

Commissioner Horne
Commissioner Selberg

Staff Present:

Beverly Watts, Executive Director
Sabrina Hooper, Deputy Director
Matthew Stephenson, Title VI Compliance Director
Richard Gadzekpo, Housing Coordinator
Shalini Rose, General Counsel
Erica Kesse, Special Assistant to Executive Director/Communications Specialist
Lisa Lancaster, Executive Assistant
Cynthia Bates, Housing Investigator
Sheena Foster, Housing Investigator

Guests:

Allen Staley, F & A Centralized Accounting

Call to Order

Chair Houston called the meeting to order at 9:10 a.m. and asked for a moment of silence. Executive Assistant, Lisa Lancaster, called the roll. The minutes of the March 20, 2015, Commission meeting were reviewed, and Commissioner Sloss made a motion to approve and Commissioner Martin seconded the motion. A vote was taken and passed.

Executive Director's Report

Executive Director, Beverly Watts, reported that Allen Staley would present a budget update if requested and noted that we are on target with the percentage we need to close the year on June 30, 2015 in the black. We did receive some credits from unemployment and Allen Staley will continue to monitor our closing process and notify us of any issues that may arise.

We continue to have one vacant position and will continue to hold that position open until we figure out where we are going. The position will not be filled this year as we are reviewing income and revenue with respect to EEOC which looks to come in very close to the target amount. We do have low inventory and have experienced a lot of staff outages over the period but appear to be in good shape. We will supply a more detailed report to the Commission in July.

Our Employment Law Seminar will be June 16, 2015, and if there are Commissioners that would like to attend please let us know so we can make those arrangements for you.

Some new HUD performance goals are going into effect, but they will talk about those during the housing report. It is also noted that HUD will be paying us more money and that will be retroactive to July 1, 2014.

Commissioner White made a motion to approve the Executive Director's report and Commissioner Sloss seconded the motion. A vote was taken and passed.

Employment Case Report

Deputy Director, Sabrina Hooper, reported on the period March 1, 2015 to April 30, 2015. During this time we received 100 inquires which resulted in 97 charges being accepted for investigation, 82 dual filed and 15 THRC only. Within the same timeframe the agency closed 45 cases with an average of 397 days of investigation. Our open inventory at the end of April 2015 was 237 cases. One mediation was closed within this timeframe resulting in \$20,720 in monetary benefits to the Complainant. Two settlements closed with \$12,367 in monetary benefits to the Complainants.

When compared to last year, we received 141 inquiries which resulted in 75 charges being accepted for investigation. The agency closed 68 cases with an average of 318 days of investigation. Our open inventory at the end of April 2014 was 266 cases. Three mediations and four settlements were closed with the total monetary benefits to the complainants of over \$27,000.

The comparison reflects the charges received have decreased by 29% and the charges accepted increased by 22%. The case closures saw a decrease of 34% while the number of days in investigation increased by 24%. The days of investigation will continue to fluctuate as we resolve cases in mediation and continue to close age cases. The investigators are working diligently to close cases by the end of August which will allow for 30 days for reconsideration so we can close the EEOC contract September 30, 2015.

We received a memo from the EEOC that case processed will receive an additional \$50 dollars; raising the price from \$650 to \$700 per case closure. We will continue to receive \$50 dollars for each intake case and an additional \$1000 dollars for a FEPA proposal for Education and Outreach partnership with EEOC.

The witness customer service surveys for July 1, 2014 to April 30, 2015 details that we placed 123 calls and interviewed 38 witnesses.

.The EEOC Conference will be held in Atlanta, Georgia tentatively the first week of August.

Chair Houston commented that in previous reports of the survey reporting where two witnesses did not remember being interviewed that she appreciated the follow up phone calls to verify that they were contacted. It was a positive outcome that replaced a negative element in our reporting.

Commissioner Crafton asked what drives our acceptance rate of complaints received. Deputy Director Hooper noted that he cases accepted must be jurisdictional for us to accept them. An example for why a complaint would not be accepted is if the allegations were beyond the 180 days timeframe; this would be untimely which makes them not jurisdictional.

Executive Director Watts noted that we are down on receipts currently and noted that there are peaks and valleys. We are reviewing to see if we can access why we are not receiving more complaints. Commissioner Sloss noted that sometimes when there are discrimination stories in the media that will encourage others to file complaints.

Deputy Director Hooper noted that part of our law currently reads that we can take disability but not disability reasonable accommodations complaint. When we receive complaints that indicate an accommodation, for example, I asked for a change in my schedule. They may not say this is a request for an accommodation but the employer should have entered into a conversation with them to figure out what they needed to perform their job.

Our law does not cover accommodations and if we receive a complaint involving a reasonable accommodation request we must transfer it to EEOC. We maintain a log and from July 1, 2014 to April 30, 2015 there were 75 cases transferred due to an accommodation. These transfers have impacted our inventory. Commissioner Sloss asked if this is making a negative impact on our budget. Executive Director Watts noted that we are pretty tight right now. We have had an impact with staff being out from November until April of this year and some of those out were investigators. It is also come to our attention that we will have more staff out between now and the end of the EEOC contract in September.

She reported that we must close 160 cases by August and that translates to 8 cases per investigator and two of those investigators are new and are not producing as many cases as the more seasoned investigators. We are also close on the housing side and this is the reason that the vacant position is not being filled right now.

Commissioner Crafton asked if there was a mechanism to capture the cases coming in that are transferred to EEOC. Deputy Director Hooper noted that we receive \$50 per case for intake work credit and there have been a few cases that we did substantial work on the case that we did get paid for even though we had to transfer part of it to the EEOC.

Commissioner Sloss noted that many years ago private contract investigators/attorneys were hired to work the backlog in cases down. Executive Director Watts noted that practice

ended in 2008 when there was not adequate staff to work cases in housing. With additional training we moved forward. We also found the contracts are cumbersome and hard to manage.

Currently, our inventory is not substantial enough to hire additional investigators. We had a substantial backlog until 2010 when our aged cases were about 20% of the inventory and now we only have 20 cases that are aged. It may also be that companies are being more proactive by Employment Law Seminar attendance for staff training.

When attending speaking engagements I have people say, that happened to me and when questioned about when they may say two years ago. Or if it just happened, when offered the opportunity to file a complaint, some will and some won't follow through with the process. So, we will be reviewing calls and outreach to see what will be the most effective action we can take to increase inventory.

Deputy Director Hooper noted that we are doing call backs each month. Staff calls every person that was sent a complaint form to see if they have questions, have mailed us their form or did not receive the form. If we cannot contact them by phone, we automatically send them another complaint form.

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

Housing Case Report

Richard Gadzekpo, Housing Coordinator, reported that during period of March 1, 2015 to April 30, 2015 in which time 51 inquiries were received and 28 were accepted for investigation and disability was the top bases for complaints. Nineteen dual filed cases were closed during the period and 6 of those were within 100 days. Six of them were administrative closures and five of those were conciliations.

In reviewing the statistics between 2014 and 2015 shows that inquiries received and accepted have increased and the conciliations benefits have decreased slightly. The HUD efficiency goal currently stands at 55% and in comparison to last year we have closed the same amount of cases.

The two staff vacancies have been filled with Cynthia Bates and Sheena Foster who will tell you about themselves at the end of this report.

HUD has now given us new guidance about how cases are processed and paid. They will still require us to meet the 50% efficiency goal of closing cases within 100 days. They will reimburse us regardless of the age of the case without any deductions. They were paying us \$2,600 and this has been increased to \$2,800. In order to incentivize us to conduct investigations fully administrative closures such as failure to cooperate and unable to locate the complainant payment has been reduced from \$2,080 to \$1,400 and this is retroactive to July 1, 2014.

Executive Director Watts noted that every case we have closed since July 1, 2014 we will now be paid \$200 more. Commissioner Crafton inquired if the time element has been removed. Housing Coordinator Gadzekpo noted that the time element will impact us in our performance assessment. If we are able to close cases within 100 days then the campaign and the assessment might impact us negatively but we are still incentivized to make sure that we are closing cases within 100 days.

Regardless of the age of the case they will pay us \$2,800. Commissioner Crafton asked if there is a mechanism in place that if you are working on a case and somebody is not being cooperative can you document that effort. Mr. Gadzekpo noted that when cases are submitted for closure we explain why the age is over and why we believe we should be paid the full amount. Sometimes we are successful and sometimes not.

Executive Director Watts noted that these are considered administrative closures and we run the risk of losing dollars in those cases. The question becomes what did we do, how much did we do and what were the results and that is the instance where we are the most vulnerable and that classification drops from \$2,080 to \$1,400 payment which is a loss of \$680 per case.

She also noted that the interesting thing is that TEAPOTS is an automated system and everything we do goes into this system and HUD can see it all instantly. We hope that our monitor will cooperate. Mr. Gadzekpo noted that the saying is that "If it is not in TEAPOTS, it did not happen".

Commissioner Martin noted that in comparison to last year the cases are up and wondered why that happened. Mr. Gadzekpo explained that when a new investigator comes in they spend a month or two conducting intake and they are focused on reviewing the complaints when they come in and calling and asking why. If we could have a full time intake person we would do very well.

Commissioner Crafton asked if a landlord has rental units and they are not accessible to a person using a wheelchair but they would like to rent the unit, is a landlord required to put in a ramp for wheelchair access. Mr. Gadzekpo noted that there are some exemptions to some buildings if they were built around 1991 to 1994. But if there is reasonable modification then the applicant would have to ask the landlord to give them permission to build a ramp or make it accessible at the tenants cost.

If it is a HUD federally funded property then the management company would have to pay for the modifications. Commissioner Crafton noted a case where a veteran who lived with his sister asked for a modification and the homeowners association where the home was located did not want to approve the request and questioned if HOA's could have rules like that. The answer was no they cannot.

Commissioner Sloss made a motion to accept the Housing report and Commissioner Crafton seconded the motion. A vote was taken and passed.

Commissioner Sloss noted that it was good to see that reimbursements are going up instead of down.

Cynthia Bates introduced herself and noted that she started on March 23, 2015 and has lived in Tennessee for 12 years and prior to that spent 22 years working for the federal government across the country. She has worked for the Defense department, the Treasury, Customs doing criminal and intelligence investigations.

Sheena Foster came on board March 16, 2015 and noted she was born and raised in East Tennessee. She was a private attorney for a year and a half doing civil litigation and criminal defense before coming to THRC.

Legal Report

General Counsel, Shalini Rose, reported on the March 1, 2015 to April 30, 2015 period. Legal closed 18 employment cases and 18 housing cases, most of which were full investigations - no cause cases - or settlements.

There was one cause case in housing that was settled. THRC has several cause cases coming through the pipeline. Legal has met with the Executive Director and Deputy Director and discussed cause cases and should be completing findings in the next month or so.

Legal trained the new housing investigators in March, and in April, General Counsel attended the Fair Housing Matters Conference, ADA Legacy Tour Stop and the Princeton Price Race Relations Award Luncheon.

In the cause case update, all the cases are the same as the last meeting. The first involves an African American Corrections officer who we found was fired because of his race. The hearing was held on November 29, 2012, and the ALJ took it under advisement. Proposed Findings of Fact were submitted on February 25, 2013. We are still waiting for an order.

In housing, the first case is a disability case about failure to grant a reasonable accommodation where the tenant requested a first floor apartment due to mobility impairment. We found the Respondent did not grant her request and also required the requests be in writing which is not compliant with the law. Both the Complainant and Respondent are represented, and we have set up mediation with their counsel on May 19, 2015 in Memphis.

The second housing case is also a failure to grant a reasonable accommodation. We found the Respondent felt the Complainant was a nuisance due to emergency responders being called to her residence often, and she also requested a companion animal. This case has been successfully mediated by Saadia Williams, a housing investigator/mediator, with \$3,250 going to the Complainant, \$2,000 to THRC for Education and Outreach and landlord will attend training to include reasonable accommodations and develop a policy that includes reasonable accommodations in compliance with fair housing laws.

Commissioner Crafton asked if a deposit could be increased to cover possible damage by a companion animal. General Counsel noted that a landlord can charge for damage done to the unit by a companion animal only on the backend if more than normal damage was caused. She noted that the companion animal should be looked at as a medical device such as a wheelchair or hearing aid, and the tenant cannot be charged extra for having one.

With regard to legislative updates, Senate Bill 0006 is the “Racial Profiling Prevention Act” and is the only one that passed. It requires all law enforcement agencies to adopt a policy prohibiting racial profiling. It was noted that the other bills THRC was watching may come up again next year when they reconvene on January 12, 2016.

Commissioner Crafton noted that in a lot of the bills, the word “reasonable” appears and General Counsel noted that “reasonable” should be defined in the law.

Commissioner Sloss asked about the Springfield incident about bullying of an African American student. Executive Director Watts stated that Title VI Director Matthew Stephenson has attended community meetings in Springfield where a coach stepped down from coaching the baseball team which is where the alleged bullying was occurring. Executive Director Watts was interviewed by the media, and she explained that people have a right to file complaints to determine whether or not there is discrimination occurring.

Commissioner Martin made a motion accept the Legal report. It was seconded by Commissioner Sloss. A vote was taken and passed.

Title VI Compliance Report

Matthew Stephenson, Title VI Compliance Director, commented on the Springfield issue and noted that we cannot confirm if there are complaints filed but you probably heard that it was found that they never desegregated. It has been 50 years and they never completed desegregation. There have been multiple settlements and the most recent one where Department of Justice is making them rezone, the school board has to have an adequate proposal in place by August 6, 2015. They have accepted a plan that rearranges the high schools and are moving on to elementary schools.

There has been a lot of back and forth between the Department of Justice and the local school board. THRC has been present several times and spoken with community organizations and instructed them how to file complaints.

Commissioner Crafton asked if a complaint is filed and discrimination is found then what happens. Director Stephenson noted that federal funding could be removed if they did not withdraw from that community. Most cases there are corrective actions that go into place and THRC helps develop that plan.

He reported on the March 1, 2015 to April 30, 2015 timeframe during which 48 inquiries were received, 11 of which were accepted for investigation. Eight cases were closed during the period. He indicated that we currently have 21 open cases 20 of which are with the Department of Corrections and one with the Department of Education.

In comparison to last year there were 62 closures in that time period. There were several months without a Title VI Director and that represents a backlog of cases.

Regarding Implementation Plans in comparison to last year we were still reviewing IP's and this year they were completed in December with 100 % compliance from all 42 departments. We have begun this year's implementation plan process by notifying coordinators of the guidelines and notified them of training in July.

We have just completed our compliance review of the Administrative office of the Courts. They were found to be in compliance and were issued no findings. We have completed our compliance review of Finance and Administration and have not sent out our initial findings on that but that will happen in the next couple of weeks as there are some issues there we want to work through.

We are conducting a compliance review of the Alcohol Beverage Commission and this will be the last compliance review for the year. Total for the year will be five compliance reviews and we intend to increase that next year to eight for the upcoming fiscal year.

Commissioner Craft asked how many agencies there were and Director Stephenson gave between 40 and 43 agencies receive federal funds each year. Some years there are two or three that don't receive federal financial assistance and they are not required to file an implementation plan. He noted that the goal is to review all agencies every five years.

In some instances a compliance review might be called for due to issues that arise that would call for a review. Also in the case of an agency that received findings and a follow-up review is necessary to make sure they are complying.

We received no requests for technical assistance during the period and we did receive contact from the auditors in the Comptroller's office to help them audit other agencies to confirm their compliance with Title VI.

Commissioner Crafton asked about agencies that are out of compliance and what we do to get them into compliance. Director Stephenson noted there were three ways that include ongoing training with Title VI Coordinators annually, Implementation plan submission for compliance and guidelines are posted annually on the website and then there are the compliance reviews we conduct.

Executive Director Watts added that we send a report card to executive directors which we started issuing three years ago. The first year one department head noted that they had no idea what was happening with regards to the Title VI Implementation Plan and vowed that it would never happen again. This has increased knowledge of Title VI from the Director down and this has corrected issues we were seeing repeatedly.

Commissioner Sloss noted that he submitted a Title VI report yesterday for his agency which receives federal money via DHS for child support.

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

Communications Report

Erica Kesse reported on the period March 1, 2015 to April 30, 2015. The staff participated in 22 education and outreach events. Eleven of the events were speaking engagements. We reached 5,049 people for the period and the year to date total of people reached is 26,890.

There were four articles where Chair Houston was interviewed. The other articles are included in the report.

There were 39 new likes on FaceBook with 17 posts and on YouTube there were 281 new views and 1 new subscriber.

The West Tennessee Fair Housing Celebration was wonderful and evaluations showed that attendees enjoyed the information that was presented. Bryan Greene the Deputy Assistant Secretary for Fair Housing and Equal Opportunity of HUD was the Keynote speaker.

Conversations on the Status of Human Rights have been conducted in Knoxville on April 16, 2015, and evaluations showed that the event was informative to those attending. The goal is to collect feedback on the Status of Human Rights in Tennessee that was released last year. It was noted that last year's conversations did not include police misconduct discussions, and mayors talked about cultural diversity and what they are doing about training. The mayors of Knoxville, Memphis and Nashville showed no issues, and if the discussions were to take place today there would be much testimony about police misconduct.

We will contact every city that was included last year including Jackson and Johnson City again for feedback. Commissioner White asked about mayoral response to the issues today. Executive Director Watts noted that she is working with the Deputy Commissioner of the Nashville Police Department, Damian Huggins, to evaluate their work. The Chief wants to have a conversation on race, but such a conversation has to be handled properly.

Commissioner Sloss asked how THRC works with the Metro Human Relations division so they don't feel that we are stepping over them. Executive Director Watts noted she works with the Metro Human Relations Commission on various projects as well as its former and current director. This was the result of a discussion with Deputy Chief Huggins who was a Leadership Nashville classmate. I will share with the Commission details on my assessment on topics such as "Train the Trainer" and inclusion of the cultural norms and issues including my suggestion have MNPd go out Nolensville Road and experience the multiple cultures. I suggested and they have also been to the Nashville Library to get Civil Rights history on what it was then and what it is now.

Commissioner Crafton noted he would like to see police getting out into the communities when they are not at work so that it would not always be a negative contact with people. Executive Director Watts noted that this is area where the most money has been eliminated from budgets. More information will be shared at the July meeting. We will be sure to contact mayors as we go into those communities.

Commissioner White asked to make sure that mayor is involved in the discussions and police department officials and union officials also need to be included.

Erica Kesse thanked Chair Houston who is also the Director of the Office of UT Disability Services for providing staff to assist with making the Status of Human Rights in Tennessee report accessible to the disability community. Both versions are now posted on the THRC website.

Erica Kesse thanked Commissioner Martin for attending the CABLE Power of Inclusion Luncheon where Shelia Johnson was the keynote speaker which THRC sponsored. She reminded Commissioners that the Employment Law Seminar is coming up on June 16, 2015 and if you would like to attend please contact her.

Commissioner Sloss and Crafton noted they were sorry they missed the Power of Inclusion event. Commissioner Martin noted that it was a great event.

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

Administrative

Executive Director Watts updated the commission on the Auditors' return to complete our performance audit that was initiated last year. We were told that they were coming back to complete the audit, and we still have not heard from them. They identified three or four items. One in Housing, one in Title VI and they said communications was not counting numbers right for event attendees. They said they would come back and review those issues, and if we have corrected them that they probably would not cite us for them.

They have been coming since the first of May, but last year from June through September they were coming to do an exit conference and then we did not hear from them until April. We will meet with the Budget and Audit committee once they come back, and they will approve our responses to their findings.

Commissioner Sloss noted that while he was at THRC there was an audit every year either a sunset audit, performance audit or financial audit. And then there was the legislatures request for a special audit. We were required to provide them office space inside our offices. We are waiting for them, and we were extended to 2017 and if they are consistent we would have a sunset audit in 2016.

Chair Houston moved to appoint a nominating committee chaired by Commissioner Martin, with Commissioner Horne and Commissioner Selberg serving with him on the committee. Chair Houston reminded everyone that at our first meeting in January, we pulled together a slate of officers from the group we had and had them serve until the fiscal year ended, which will be June 30, 2015.

Commissioner Sloss wished to simplify the process, and noting that we are still two members short, made a motion to keep the officers in place as they are. He noted that he

felt like things were running smoothly, and new members are getting a chance to learn the process. He noted to Executive Director Watts that he is thoroughly impressed with the preparation of staff and her. He didn't see the need to go through another process since this has only been in place since January.

Executive Director Watts noted that the bylaws will allow Commissioners to make a motion from the floor. Commissioner Crafton noted that if Chair Houston is okay with continuing as Chair then he would second the motion. Chair Houston noted that she was okay with continuing. Commissioner Martin agreed 100%. Executive Director Watts noted that a time limit should be attached to the motion.

Commissioner Sloss suggested that those serving should continue to serve until June 30, 2016, and Commissioner Martin seconded the time frame. A vote was taken and passed.

It was noted that Commissioner Crafton should be appointed to a committee.

There is still an opening for a Vice Chair in East Tennessee, and we will fill those as new appointments are made.

Chair Houston noted that she appreciates the commission's vote of confidence and this area is one of her passions and she enjoys working with the Commission and agrees that the preparation of the staff is amazing and the work that we are able to get done. She looked forward to serving in this capacity again, and thanked everyone.

Announcements

Erica Kesse asked that the commissioners please stay after the meeting for a group picture to use in the annual report and on the website.

Chair Houston announced that the next Commission Meeting will be July 17, 2015 and will be held telephonically. If Nashville commissioners would like to attend in person they may. She thanked the Commissioners for their work and moved to adjourn the meeting at 10:35 a.m. CDT.