



**TENNESSEE HUMAN RIGHTS COMMISSION**  
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**September 24, 2010**  
**Board of Commissioner's Meeting**  
**Minutes**

**Commissioner's Present:**

Commissioner Cocke (phone)  
Commissioner Davis  
Commissioner Garrett (phone)  
Commissioner Hewitt  
Commissioner McDaniel  
Commissioner Miller  
Commissioner Osborne  
Chair Pierce  
Commissioner Starling  
Commissioner Walker (phone)  
Commissioner Wiggins  
Commissioner Wurzburg

**Commissioner's Absent:**

Commissioner Blalock  
Commissioner Jones  
Commissioner Pride

**Staff Present:**

Beverly Watts, Executive Director  
Bobbie Porter, Special Assistant to the Executive Director  
Tiffany Baker Cox, Deputy Director  
Shalini Rose, General Counsel  
Marcus Thomas, Title VI Compliance Director  
Lisa Lancaster, Executive Assistant

**Guests:**

Matthew Stephenson, THRC  
Leon King, THRC  
Richard Gadzekpo, THRC  
Dianna Ruch, THRC  
Pat Ladd, THRC  
Seth Yu, THRC  
Kaleda Bentley, THRC  
Monica Alexander, THRC (phone)

### **Call to Order**

Chair Pierce called the meeting to order at 9:00 a.m. Chair Pierce asked that we take a moment of silence to remember that religious freedom was the first liberty and we should never forget that with all the discussions going on about the building of Mosques in New York and Murfreesboro. Roll call was taken. Minutes of the July meeting were reviewed. Chair Pierce noted that on page 5 the word negotiation's is misspelled. Commissioner Hewitt made a motion to accept the minutes with that change. Commissioner Davis seconded the motion. A vote was taken and passed.

### **Release of the Annual Report**

Executive Director Beverly Watts began by noting that the 2010 Annual Report was in the commissioner's material packet and encompasses the agency's activities through June 30, 2010. During the year, many challenges were faced which included the May Flood. The employment staff rose to the challenge and surpassed the contract for EEOC. In the past year we have experienced 100% turnover in housing staff and yet they closed more cases than ever before and eliminated the backlog of aged cases. Other staff left as in the case of Frank Carr and Jay Santiago. Budget losses continue to challenge us on an ongoing basis.

As you review the report it is important to thank the people who rose to meet the challenges and who exceeded the expectations because that is what the report is all about. Executive staff has always done whatever is necessary to make things happen and we thank them for that. The customer Service staff answered 13,000 calls last year which is up 2,000 from the previous year and during the flood the Knoxville office staff answered all of our calls.

Mediation Month was offered to complainants and respondents who had not had an opportunity to mediate. It was very successful. In all, 76 mediations were held of which 46 were settled which translates to a 62% success rate. Mediation is now offered at the beginning of our Intake process. In FY 2010 \$193,000 in benefits to parties were received and 6 settlements did not include any monetary benefits but parties were satisfied.

In employment 597 complaints were accepted and this is up 20 cases from 2008 and 543 cases were closed of which 64 were THRC only cases and 479 were dual filed with EEOC. The number of no cause cases was 350. We closed 65 cases through settlements or withdrawals with benefits.

In housing we received 172 inquiries and filed 98 complaints. In 2008 and 2009 we received 221 inquiries and 145 complaints filed. We closed 155 cases last year which included 37 administrative closures, 30 conciliations, 2 cause cases, 76 no cause cases, and 5 withdrawals with resolution. We received approximately \$69,000 in benefits. About 37% of the inquiries originate in Middle Tennessee, 34% in East Tennessee and 18% in West Tennessee. For employment cases 43% originate in East Tennessee, 40% from East Tennessee and 13% from West Tennessee. We continue to review why the numbers are lower in West Tennessee and are currently conducting an Outreach campaign in that area of the state.

Legal reviewed and recommended 600 cases for closure, approved 365 investigative plans, completed 23 reconsiderations, found cause in 3 cases and conciliated 2 cases.

They also provided legal support and legislative updates and still found time to coordinate the Annual Employment Law Seminar.

On July 1, 2009 we got the Title VI Compliance Program. We hired Marcus Thomas as the Director in November. The rulemaking process has been completed and we are awaiting the AG's signature. Training was held for 36 Departments on Title VI and the Implementation Plans. We received 209 complaints which have been forwarded to 9 different state agencies for action.

More than 3 million people have been reached through our website, printed materials and media opportunities. Newspapers printed 11 news stories and 2 editorials and we made appearances on 10 radio programs. We conducted 89 Education and Outreach events across the state that included Commissioner Listening sessions in Clarksville, Memphis and Clinton. This is up from 68 events the previous year.

The Commissioner's showed their appreciation with applause for all the hard work of the staff. It was noted that Annual Report CD's would be mailed to Commissioner's.

Commissioner Osborne made a motion to accept the Annual Report. Commission McDaniel seconded the motion. A vote was taken and passed.

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

Executive Director, Beverly Watts began her report by giving an overview of the last 60 days as they relate to the budget closing on June 30, 2010 and also the budget for 2011. The budget for the last fiscal year was \$2,471,800.00 and we have spent \$2,148,934.78 or 86.94% noting that budget surpluses are due to the loss of 2 staff positions. Commissioner McDaniel asked if there was any carryover. Executive Director Watts noted that federal dollars carryover but state dollars do not.

Revenue for programs is showing \$741,100 federal dollars but actual revenue is between \$500,000 and \$600,000. We are looking at ways to generate additional revenue in the upcoming year. The budget for 2011 is \$2,343,100 and that includes a 9% cut. At the November meeting we should have the updated numbers for last FY.

The 2012 budget will include a 1% to 3% cut and the Budget and Audit Committee will review the proposed budget prior to the Budget hearing on November 7<sup>th</sup>. A request for more staff will be asked for at that hearing. The good news is that the employment division was able to receive an upward modification of 30 cases which translates into \$18,500 more revenue. The HUD contract will lose \$23,000. We will present the current and proposed budget for 2012 at the November meeting.

Commissioner Starling asked if there were going to be additional reductions for 2011 and Executive Director Watts noted that she has not heard of any except for the 2012 cuts. She noted that we are exploring alternate ways to cut costs such as reducing space in regional office, decreasing the number of phones and also looking to see if there are grants available to us.

Title VI Director Marcus Thomas and Executive Director Watts met with members of the Black Caucus which included Rep. Hardaway, Rep. Cooper, and Rep. Camper. Director Thomas will share that information with you later.

There are currently 3 vacancies which Deputy Director Cox will speak to later in her report. We currently have a contract with Paula Casey to cover West Tennessee for 10 to 20 hours a month which will end in December. The contract with Edy Nash is complete and we have received her final report. The Audit team is still working on the performance audit.

We are currently working on Emergency Work Force Planning which will consist of what we will do, how we will communicate, who is essential staff, who will work and who won't work in the event of a disaster. The executive staff is working on development of the plan and will present it to the commission in November.

Executive Director Watts spoke at the SHRM meeting September 14, 2010 at the Legal Seminar hosted by Baker Donelson along with Kathy Kores from EEOC. Frank Guzman staffed a display booth. Commissioner Wiggins will speak at the Chattanooga State Conference of the NAACP on Friday and Executive Director Watts will speak on Saturday. THRC has purchased a table at the Freedom Fund dinner on Saturday evening and if you are interested in attending see Bobbie Porter for tickets.

Executive Director Watts indicated she will speak in Knoxville at the Social Workers event on October 5, 2010, at the Kentucky Human Rights 50<sup>th</sup> Anniversary on October 14 & 15, 2010, in Memphis Bar for a CLE meeting on October 25, 2010 for the employment law section and on October 28, 2010 in Knoxville for the Urban League Gala. She also noted that she attended the IAOHRA Conference in Mobile Alabama, where Assistant Attorney General for Civil Rights, Tom Perez spoke to the 85 attendees.

Commissioner Hewitt made a motion to accept the Executive Directors report and Commissioner Miller seconded the motion. A vote was taken and passed.

### **Law and Legislation Committee Report**

Committee Chair, Karla Hewitt reported on the September 10, 2010 hearing for the Ronald See verses Fortner case. The hearing was to decide if the Administrative Law Judge (ALJ) ruled correctly in the case under the law that Ronald See did not have standing to file under the Tennessee Human Rights Act. General Counsel gave a brief at the hearing and those present were afforded the opportunity to ask questions. The committee was unanimous in its decision that the ALJ's decision should be reversed. This was the first time that the THRC has ever appealed an ALJ's decision.

Commissioner Osborne made a motion to accept the recommendation of the Law & Legislation committee to reverse the decision of the ALJ in the See v. Fortner case. Commissioner Wurzburg seconded the motion. A vote was taken and passed.

### **Budget and Audit Committee Report**

Committee Chair, Edwin Osborne gave a brief overview of the September 16, 2010 meeting to update the committee on the status of the performance audit that is ongoing. Executive Director Watts noted that the auditors are still working on the audit and still

anticipating on site completion by September 30<sup>th</sup> and a release of the final report with THRC comments in January 2011.

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

### **Employment Case Report**

Deputy Director, Tiffany Baker Cox, Deputy Director offered thanks to the staff present that included Matthew Stephenson, Kaleda Bentley, Pat Ladd, Dianna Ruch and Monica Alexander for pulling together to get the work done to complete the contract and receive an upward modification of 30 cases which has not happened in 12 years. She also offered thanks to the legal department of General Counsel, Shay Rose and Associate Counsel Seth Yu for reviewing all those cases.

She reported on the timeframe July 1 to August 31, 2010 when we received 176 inquiries which resulted in 98 charges being filed. Of those 86 were dual filed and 12 were THRC only. During this time 77 cases were closed and 63 of those were dual filed and 14 were THRC only. Twenty mediations were held, 10 were successful and 10 were impasses although one settled later. Four settlements closed and six mediations closed with \$111, 493 in benefits received. One case was caused and 17% of the closures were Administrative closures. The average case age was 338 days and the inventory was 496 cases with an average charge age of 255 days.

Of the comparison of Mediation benefits received, the amounts have increased substantially from the previous year. On July 14, 2010 staff attended a training lead by General Counsel, Shay Rose, Associate Counsel, Seth Yu and Deputy Director Tiffany Cox. Work on the Vision, Mission and Values continues and on December 7, 2010 the annual All Staff Training session will be held in Nashville. At the November meeting we will present the agenda for that meeting to the commission.

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

### **Housing Case Report**

The housing report was given by Deputy Director, Tiffany Cox. She introduced the Housing Coordinator, Richard Gadzekpo who was promoted to the position from housing investigator. At commission meetings in the future he will present the housing information. The report covered the July 1, 2010 to August 31, 2010 timeframe. We received 28 inquiries and accepted 20 as complaints with the majority of those being from Davidson County. Race, disability, religion, creed, and familial status were the top issues reported. Seventeen cases were closed and in the future we will also report on the HUD timeframe. Sixty-five percent of cases were no cause, 29% were conciliated and 5% were closed as a failure to cooperate.

Currently we are closing 47% of our cases within 100 days and HUD's goal is to close 53% within 100 days. The comparative data shows that we are accepting more inquiries than the previous year, and closing more cases. Currently we have three fulltime housing investigators and one part-time investigator. Mr. Guzman is currently carrying a full load of cases for investigation and Barbara Gardner, who is trained in housing investigations, is

also helping out. A new housing investigator has been hired to work out of the Nashville office. Lamont Bell will start working on Monday and Richard will be interviewing for the vacant investigator position in Knoxville next week.

Marcus Thomas and Lisa Lancaster will be interviewing for a secretary next week. This position was moved from the Knoxville office to the Nashville office.

There are currently 40 open housing cases and three cause cases. The primary goal for housing is to work on meeting the HUD timeframes for case closures. Training will begin again at NFHTA in DC for all the new staff and those that have not completed the five week course. The HUD Performance Assessment was completed in August 18-20 and we are currently waiting for the summary from HUD. Hopefully we will be able to present it at the November meeting.

Before cases are closed for failure to cooperate many attempts are required and all correspondence must be sent certified mail. If a commissioner receives a question from a complainant about their case they should contact Deputy Director Cox who can check and report back to them. If the person contacts the investigator within 30 days the case will be reopened.

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

### **Legal Report**

General Counsel, Shay Rose reported on the July 1, 2010 to August 31, 2010 timeframe during which time legal closed 56 employment cases, caused one case, one case was pre-cause, reviewed 74 Investigative Plans and completed 3 reconsiderations. In Housing, 17 cases were closed, 4 were caused, 6 investigative plans were reviewed and 4 reconsiderations completed.

What Legal will be doing in the upcoming year is review cases, prosecute cause cases, review investigative plans, do reconsiderations, copy requests and monitor legislation.

Legal attended the HUD policy conference in New Orleans in July and the EEOC Technical Assistance training in Nashville in August. Also a Commission-initiated housing case involving discriminatory advertising was settled for \$500 to be used for training and they will run an ad for six months about discrimination and how to file a complaint with THRC. Executive Director Watts asked commissioners to let the agency know if they encounter any ads in small weekly papers or anywhere that are discriminatory in nature.

It is against the law for landlords to deny housing to people with children under the age of 18. There are legitimate senior housing complexes that can limit rentals to people 55 to 62 years or older.

It was also announced that Seth Yu has a new baby girl, Lucy, who was born on September 13<sup>th</sup>.

The cause case update includes a case caused on August 23<sup>rd</sup> that has to do with terms and conditions of termination and Matthew Stephenson is the investigator. The complainant was an African American corrections officer who was terminated. The respondent was inconsistent with their responses to the investigation and other officers were doing things that they should have been fired for but weren't. The respondent is not interested in conciliation and it will likely go to a hearing.

In housing the See case which was reported by Commissioner Hewitt. The next cases are very similar in that respondents would not allow service animals. In one case the respondent did not believe the complainant and in the second case the respondent thought the dog was too big. In both cases doctor's notes were presented. The first case is in conciliation and the second case has been filed in court. The third case is a retaliation complaint in which the complainant was evicted one month after filing a disability and gender complaint and the respondent could not give a good reason for the eviction.

This week the case of Galtic versus Tractor Supply Company came out. It is important to employment discrimination cases filed in state court. A procedure called summary judgment which is a process where you have to have judgment before a case can go to full trial of the merits. Certain requirements have to be met before you can be granted summary judgment. Now the employer has to prove that the allegations are not true as opposed to the employee having to prove that the allegations are true. Probably summary judgment will not be granted as often for the employer. There is an article in the Tennessean that is available if some are interested.

It could affect THRC as some complainants will go to state court directly because they will have a better chance of settling with a trial and it will probably drop some cases from EEOC as complainants will choose state court as it is better for employee cases. There might be legislation next year to overturn it.

Commissioner Wurzburg asked about a case that she had referred to THRC where the complainant came back to her and said that she was not happy with the procedure. It was determined that the case was not jurisdictional for THRC and multiple conversations were had with the complainant to explain our process and procedures. Executive Director Watts noted that many times these cases end up on her desk or the desk of the Governor. In many cases people don't like our answers. Staff will be happy to continue the conversation following the meeting.

Executive Director Watts noted that THRC does not have sufficient staff to trend where calls are coming from and if calls repeatedly come in about a company in East Tennessee about their possible discriminatory practices we do not have the resources to investigate that. Our process is producing mediations and conciliations and benefits are going up every day. We are resolving issues in the best possible manner where people are satisfied when they walk away. Our job is to investigate, identify the issues and eliminate discrimination. If we had enough staff to do outreach and education full time we that would be preventive and everything that is unfair is not illegal. The courts have changed and what used to be true is not anymore and resolution is not always cause or no cause.

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

### **Outreach & Education**

Bobbie Porter reported on the July 1, 2010 to August 31, 2010 timeframe. She thanked all for the well wishes on Mason's arrival. This fiscal year the concentration will be on improving the visibility of the commission through the use of media, community partnerships and speaking and training opportunities. We will also be investigating if social networking sites, webinars and commission newsletters will be beneficial to Outreach efforts. If beneficial we will begin implementing them during this timeframe.

In July Chair Pierce represented THRC at a presentation to the International Association of Administrative Professionals speaking on the topic of Equality Issues for Women. In August THRC participated in the UMOJA Festival in Johnson City thanks to Commissioner Davis. Commissioner Wurzburg noted that THRC was a sponsor of the 19<sup>th</sup> Turns 90 event which celebrated the anniversary of the passing of the 19<sup>th</sup> Amendment giving women the right to vote.

Tickets are available to the Freedom Fund Award event next Saturday in Chattanooga during the NAACP Convention. Tickets are also available for the Urban League Gala Event on Oct. 28<sup>th</sup>. See Bobbie Porter for more information.

Chair Pierce wrote an article that is included behind the Communications report. Also mailing lists were requested from each Commissioner relating to contact information about organizations each may be involved with. Please turn these in by next Friday to Bobbie Porter.

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

### **Title VI Compliance Report**

Marcus Thomas, Title VI Compliance Program Director reported that he and Executive Director Watts met with the Black Caucus members and gave them the information contained in the Annual Report. The proposed rules were submitted and it recommended that the commission revote on the rules as there were both clerical and organizational changes involved.

A teleconference training session was held on August 17, 2010 that included 27 department representatives who pre-submitted questions that would be discussed at the training as they refer to Title VI Implementation Plans. During the timeframe, 40 complaints were received, 30 were referred to the appropriate agency, one case was closed and 2 remain open or pending.

Implementation Plans are being received and are due by October 1<sup>st</sup> each year. We are working on reviewing them for compliance as they come in and will continue for the next several months.

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

Commissioner Osborne asked if we would be doing investigations for Title VI complaints or if they would be referred to other agencies for investigation and if follow-up procedures are in place. Mr. Thomas explained that complainants start with THRC but the coordinators that are already in place will conduct the actual investigations and report back to us with a summary for follow-up which is being developed now.

Chair Pierce asked for a motion to accept the rules for Title VI. Commissioner Osborne made the motion and it was seconded by Commissioner Hewitt. A roll call vote was taken with Starling, Osborne, Wurzburg, Davis, McDaniel, Miller, Hewitt and Pierce voting to accept the rule changes.

### **Announcements**

Chair Pierce asked Commissioners Miller, Wurzburg, and Wiggins to serve on the Nominating Committee to propose a slate of officers for elections at the November meeting.

Commissioner Osborne echoed the comments made about staff concerning the Annual Report and noted the good work that has been done by staff.

Commissioner McDaniel noted that a Hamilton County building has been named after him. Congratulations were offered by the commission.

Commissioner Miller made a motion to adjourn. It was seconded by Commissioner Hewitt. A vote was taken and passed.

The meeting was closed at 10:55 a.m.