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**March 18, 2011**  
**Board of Commissioner's Meeting**  
**Minutes**

**Commissioner's Present:**

Commissioner Blalock  
Commissioner Cocke (phone)  
Commissioner Davis  
Commissioner Garrett  
Commissioner Hewitt  
Commissioner Miller  
Commissioner Osborne  
Chair Pierce  
Commissioner Pride  
Commissioner Starling  
Commissioner Wurzburg

**Commissioner's Absent:**

Commissioner Jones  
Commissioner McDaniel  
Commissioner Walker  
Commissioner Wiggins

**Staff Present:**

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

**Guests:**

Kaleda Bentley-THRC Investigator  
Allen Staley-Shared Services Solutions  
Irwin Venick-Tennela  
Doug Janney-Tennela

### **Call to Order**

Chair Pierce called the meeting to order at 9:00 a.m. Roll call was taken. Chair Pierce reminded the Commission that March is Women's History Month and read a portion of an article that she wrote that was published in the Morgan County Newspaper. "Women of every race, class, and ethnic background have made historic contributions to the growth and strength of their community and our country in many ways; both recorded and unrecorded...More role models and mentors, both men and women, are needed to meet the changes and challenges of the 12st Century. It is my hope that our future generation of women can realize their full potential and dreams and that the barriers, prejudice, and discrimination will be a part of our past history." All present were asked to observe a moment of silence. Minutes of the January meeting were reviewed and Commissioner Miller made a motion to accept. Commissioner Davis seconded the motion.

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

Executive Director, Beverly Watts noted that last week she, Chair Pierce, Doug Janney, Irwin Vinnick and Wade Cowan met with Senator Herron to talk about bills that are currently in the Legislature that deal with sole cause as the basis for discrimination claims. Hard copy talking points were shared with attending members. She noted that if these bills pass that THRC stands to lose approximately \$600,000 because we would no longer be substantially equivalent with federal law.

She then introduced Doug Janney of the TN Employment Lawyers Association who is the current president to speak about upcoming legislation. He introduced Irwin Vinnick who is the Secretary and treasurer and TENNELA is the official state affiliate organization of NELA which is the National Employment Lawyers Association whose focus is to assist plants and employees with employment discrimination.

The bills submitted to the Legislature this term are of great concern to TENNELA due to their impact should they pass. THRC must be in substantial compliance with Title VII federal law of EEOC which requires the complainant in a discrimination suit to prove that race, gender, national origin; religious belief was a motivating factor in an adverse employment action. What the bills seek to do is impose a sole cause standard, instead of saying that the motivating factor says, you would have to prove that the protected characteristic was the sole cause, the exclusive cause, the only cause, was the reason for the adverse employment action and that is impossible to prove.

The sole cause bills would legalize discrimination in this state and would probably eliminate the TN Human Rights Commission because we would no longer be in substantial compliance with Title VII or EEOC. The research proves that there is no other state that has a sole cause standard which would take Tennessee from mainstream to super extreme if this legislation is adopted. As recently as March 1, 2011 the Supreme Court pointed out that oftentimes injuries have multiple causes, contributing factors, motivating factors that cause harm to a person.

The bills sponsors are Senator Kelsey, a republican who is on the Senate Judiciary Committee and Vance Dennis on the House side. Director Watts, Irwin Vinnick and I will meet with Senator Kelsey on Tuesday and try to find out what the origin of this bill is and

explain the gravity of the bill to him. This is bill SB939/HB1642 and is duplicated in SB938/HB1152 Senator Kelsey's Tort bill in section 2.

Several meetings are scheduled with Senator Ken Yeagar, Senator Overby on the Judiciary Committee. Five votes are needed to quash this bill and we think we have three. It is important that we continue to meet with folks, write letters to the editors, set up meetings with editorial boards of the newspapers, write letters to the Bar Journals and create an awareness of these bills so that they are not slipped in as an afterthought to Torte reform which is the main focus of the Legislature.

The question was asked if anyone has met with the Governor to find out what his position is on this issue. The answer was no. That meeting has not taken place. Talk has been confined to Senators and Lawmakers trying to figure out what his position is and currently the feeling is that this is below the Governor's radar. We have talked with Susanne Keith; the Executive Director of the TN Association of Justice who has provided some contact information for the Governor's Legislative Assistant and meet with them to make sure this is on his radar.

It is possible that this bill came from the small business community/organizations who feel that we need to eliminate the shackles off small businesses and this bill would do that. Following a question about the fiscal note, Mr. Irwin Venick stated that because of the attitudes of some in the Legislature in regards to state expenditures, a larger fiscal note might be a reason to do away with an entity they would rather not have anyway.

Commissioner Starling brought to the Commission's attention a bill allowing hearsay evidence being allowed in Unemployment Compensation Hearings and noted that it might also have an impact on THRC.

Chair Pierce asked Commissioner's to review THRC's talking points and strategy for how to handle these contacts provided by Bobbie Porter, noting the importance of consistency in communication from the Commission members.

Senate Bill 940/HB1641 and SB1113/HB1357 was discussed by Mr. Janney who noted that Mr. Wade Cowan received a decision from the TN Supreme Court last year in Gossett verses Tractor Supply which stated that a legal doctrine called the McDonald Douglas burden shifting paradigm is inapplicable at the summary judgment pretrial stage of an employment discrimination case. What this bill seeks to do is codify a judicially created procedural rule for handling pretrial motions for summary judgment and it is our thought that this violates separate powers. The Tennessee Supreme Court is the body that is empowered to create rules of procedure and rules by which the courts operate. We think this bill is unconstitutional and if it should pass we will challenge it.

This bill is also inconsistent with Tennessee summary judgment jurisprudence and will change the way a motion to dismiss an employment case before trial is handled and will impact how the courts evaluate those motions. Tennessee summary judgment laws and rules are pretty favorable. In 2008, the Supreme Court issued a decision that the employer has to negate an essential element of the plaintiff's complaint in order to get summary judgment. What this bill would do is to remove employment discrimination cases from that summary judgment practice and treat them differently from any other civil case. This would

make it the burden for the plaintiff of proving a prima facie case and proving the employers reason for adverse employment action was an excuse for discrimination and leave no burden of proof for the employers.

It was noted that several meetings with THRC staff, Commissioner's and legislators are set up for the next week and all in attendance were asked to reach out to those who might also oppose these bills. Executive Director Watts shared that talking points and copies of the bills would be distributed to Commissioners. Director Watts and Chair Pierce have met with Irwin Venick, Doug Janney, Attorney Cowan and Senator Herron to discuss issues with the goal to contact as many members of the Judiciary Committee as possible to try to defeat it at Committee level. Chair Pierce will meet with Senator Yeager in the near future.

Director Watts spoke about other legislation that is reflected in the chart supplied to attendees. The Sunset hearing that was on the calendar and would have given THRC another year has been taken off notice. The audit is not complete and must be released before a Sunset hearing can be held.

There is an equal access to interstate commerce act on the calendar for Wednesday and is the bill that would create a definition of sex in the THR Act to be an individual as a male or female as indicated on the individual's birth certificate. It would also limit local governments from developing laws which are more expansive than state and federal laws with respect to anti discrimination, health insurance benefits, and minimum wage or family leave requirements. It is thought that this bill is to prevent Nashville from expanding its ordinance to include sexual orientation requirements for contractors.

HB1317/SB1132 is meant to expand the THR Act as it would add sexual orientation to the list of characteristics on which discrimination is prohibited in our Act. Sexual orientation is defined as heterosexuality, homosexuality or bisexuality. The bill is sponsored by Senator Marrero and Representative Jones.

There is also Senator Ketron's bill requiring that all drivers' license written exams be in English and this bill is opposed by the TIRRC and other groups. HB1242/SB1862 affects all state agencies and requires paper to be eliminated by 5% by 2012. HB0650/SB0231 requires agency heads to be trained on compliance with the provisions of the Regulatory Flexibility Act. HB0764/SB0008 requires state and local governments to verify all employees hired after July 1, 2011 are not illegal aliens. All of these bills will be closely followed by staff and when necessary they will be present at the legislature when discussion and votes are taken.

Commissioner Starling noted that a bill sponsored by Rep. White allowing hearsay evidence as a reason to deny unemployment compensation which would supersede the Supreme Court's decision is also making its way through the system. Director Watts noted we would check on this bill and determine its impact on THRC and report back to the Commission.

Director Watts spoke about the Governor's State of the State Address presented last week and noted that the \$100,000 improvement that THRC requested was still in the budget that was released. The improvement was for Title VI to hire an additional person to assist with Compliance Review Initiatives and will provide travel funds for training.

Allen Staley from Shared Services solutions shared a brief overview of the 2011-2012 Budget and noted that last year THRC's budget was cut by 9% and this year the budget includes a 5% increase for a total of \$2.4M submitted to the Governor and only \$12,000 was a .8% reduction was taken. This budget must be heard by the Senate and the House Finance Ways and Means Committee's before it is approved.

The reversion target for 2011-2012 is \$100,000 and it is expected that we will meet that goal. Last year's reversion amount was \$125,100 which was met with an additional \$12,000 that we were able to carry forward. Director Watts noted that the Budget Hearing before the House Ways and Means Committee will be March 29<sup>th</sup> at 3:00 p.m. with the Senate Questions due on Tuesday, March 22, 2011. Those questions will be provided to Commissioners via email as an FYI item.

Director Watts noted that Francisco Guzman has returned following his surgery and is doing well. Lila Stafford of Customer Services, retired after 22 years with the state of Tennessee and a resolution recognizing her years with the agency has been written and will be read for your approval.

The Audit was completed and distributed to us on February 4<sup>th</sup> and staff are working on the responses. We are not at liberty to release it to the Board at this public meeting as it is a confidential document so the audit and our responses will be released to you by the Chair. There were four findings and five observations noted by the auditors and staff have met with them on multiple occasions to remove some language that was deemed unnecessary. Guidance was provided by Chair Pierce and Commissioner Osborne, Chair of the Budget and Audit Committee.

The Comptroller will release the audit with a press release; it will then be heard by the Joint Government Operations who will then set the date for the Sunset hearing. When we know when the audit is released we will let the Board members know.

Executive Director Watts commented that the Memphis, West TN Listening Session has been held and the East TN session will be held in Johnson City on April 19<sup>th</sup> and the Middle TN session on April 28<sup>th</sup> in Nashville. The Fair Housing Matters Conference will be held April 7<sup>th</sup> in Nashville. All Fair Housing Month events will be sent to Commissioners. The UT Baker Center is having its annual symposium on March 30 and the topics are Housing and Health matters and will be held at UT Knoxville at the Baker Center. The April 4<sup>th</sup> Foundation is holding its Annual Dinner in Memphis on April 4<sup>th</sup>.

The YWCA will host the Stand Against Racism again this year. In 2010 the Commission did a resolution and this year we will do a letter commending them for continuing the practice and for their work last year when 3,000 people attended and/or signed their pledge to stand against racism here in Nashville. The letter will be signed by the Executive Director and Chair of the Board.

Chair Pierce read the resolution commemorating Lila Stafford's service to the agency upon her retirement. Commissioner Hewitt made a motion to accept the resolution and Commissioner Garrett seconded the motion. A vote was taken and passed.

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

### **Education and Outreach Committee Report**

Chair Wurzburg reported on the February 15, 2011 meeting that was held via telephone and the conversation centered on the Roundtable discussions that mirror the one held last year in Morristown that was put together by Commissioner Osborne. The goal was to make THRC more visible to communities and that included radio and TV spots to promote the session by Executive Director Watts.

It was noted that there are five seats available for the April 4<sup>th</sup> Dinner in Memphis if any Commissioners are interested in attending and Rev. Jeremiah Wright will be the speaker for the evening.

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

### **Employment Case Report**

Tiffany Baker Cox, Deputy Director's employment report covered the months of January and February 2011 when 141 inquiries were received that resulted in 73 charges of which 57 were dual filed and 16 were THRC only. The agency closed 103 cases that included 87 dual filed and 16 THRC only and Title VII, Title VII/ADEA and ADEA cases were the top three bases. There were seven mediations held and four were successful and three reached an impasse.

During the timeframe benefits in the amount of \$89,085 were received. No cases were caused and 23% of case closures were administrative closures with the average case age was 304 days and inventory stands at 395 cases with an average charge age of 280 days.

It was noted that the year to date comparison is significantly down on inventory from 481 cases in 2010 to 395 in 2011 and the reason is that staff is at 100% and the focus is to close cases in a quicker manner and the decrease in benefits received is due to the successful Mediation Month for 2010. Also the closed charge age is down from 344 days in 2010 to 295 days in 2011.

We are working with the Federal Mediation and Conciliation Service to schedule another training for the agency and if Commissioner's are interested in attending, please notify Deputy Cox. Also interviewing applicants for the Information Resource System Specialist II position and will be hiring by mid April.

A motion to accept the Employment Report was made by Commissioner Hewitt and seconded by Commissioner Garrett. A vote was taken and passed.

### **Housing Case Report**

The housing report was given by Housing Coordinator, Richard Gadzekpo who reported on the timeframe of January and February 2011. The division received 32 inquiries and accepted 16 as complaints with the majority of those being from Davidson and Knox Counties. Race (50%) and Disability ((31%) were the top bases for complaints followed by gender 16% and familial status 3%

During the timeframe 28 cases were closed. Mr. Gadzekpo thanked the legal staff and Deputy Cox for their help in closing 18 of those cases in under 100 days. He also thanked Executive Director Watts for her visit and celebration with staff for meeting this benchmark. The staff is making improvements with 52% being closed within 100 days last month and the internal goal is to close 53% within 100 days. The HUD target is to close 50% within 100 days.

It was announced that April is Fair Housing month and there will be many events across the state in observance of this. Chair Pierce congratulated the staff for a great job done to close cases.

A motion to accept the Housing Report was made by Commissioner A.J. Starling and seconded by Commissioner Hewitt. A vote was taken and passed.

### **Legal Report**

General Counsel, Shay Rose reported on the January through February 24<sup>th</sup> timeframe as she was out of the country on vacation and she thanked Associate Counsel Seth Yu for doing a fine job of taking care of the legal department in her absence. In the employment division 75 cases were closed with 16 of those being administrative closures with most being failure to cooperate and withdrawals. There are currently 2 cause cases and 72 investigative plans were reviewed and 1 reconsideration completed.

In housing 27 cases were closed, 3 of those being administrative closures. Currently there is 1 cause case and 20 investigative plans have been reviewed and 2 reconsiderations completed.

There are 10 bills that legal is following and preparing fiscal notes on, all of which were reviewed earlier in the meeting. The Employment Law Seminar will be June 23 at the Willis Conference Center in Nashville and all Commissioners' are invited to attend.

Ms. Rose will be speaking to the Human Resource Director's for the Board of Regents at the end of the month at the Montgomery Bell State Park and the topic will be position statement responses.

The cause case update included 2 employment cases out of East Tennessee with the first case in the hands of the complainant's attorney and the second is a retaliation complaint and the respondent has agreed to attend training and pay \$100. The complainant has returned to Mexico. In housing the cause case the complainant alleged sexual harassment and her lease was not renewed and both parties are interested in conciliation.

Chair Pierce noted that several attorneys have commented that our Employment Law Seminar is the best and look forward to attending every year.

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

### **Outreach & Education**

Bobbie Porter reported that the Employment Law Seminar would be Thursday, June 23, 2011 at One Century Place formerly the Willis Center and the General Counsel of the

Equal Employment Opportunity Commission has been invited to be the guest speaker and we should know by April if this will be confirmed.

Her report covered the timeframe of January 1 to February 28, 2011 during which 6 speaking events were attended that included the West Tennessee/Memphis Roundtable and Listening Session held at the Stax Museum on February 24<sup>th</sup>. The roundtable included 33 participants that represented 28 different organizations. Commissioner's Wurzburg and Cocke made introductory comments followed by attendees introducing themselves. Executive Director Watts gave an overview of the Commission and an open discussion followed. The Listening Session was attended by 15 people.

The East Tennessee Roundtable/Listening session will be in Johnson City at the Carver Rec Center on April 19<sup>th</sup> and the Middle Tennessee session will be in Nashville on April 28<sup>th</sup>. All sessions will follow the same format and timeframe and press releases will go out next week and invitations have been sent.

In January Deputy Cox gave a presentation to 25 attendees at Vanderbilt Law School on Mediation and Executive Director Watts spoke at the NAACP Race Relations Summit. She was also a guest on Let's Talk Radio Program, the Memphis Jazz TV program and attended 5 different MKL Day events.

A response from the HUD Fair Housing Initiatives Grant that we applied for has been received and we were not selected to receive funding due to the fact that there was not enough money to give to all that qualified with a score of 75 or above. Our score was 87. We have inquired of HUD as to what was approved and what our grant should include for future submissions.

The Commission is now on Facebook and receiving about 75 weekly inquiries per week. Anyone interested in attending the April 4<sup>th</sup> Foundation dinner which will be held at the Cook Convention Center at 6:30 p.m. please contact Bobbie Porter. Commissioner Hewitt asked about name tags for the Commissioners who attend events. Commissioner Pride asked about Outreach events in the area between Nashville and Memphis. Ms. Porter and Executive Director Watts will be in touch with Commissioners Pride and Blalock to discuss a future event(s) in that area.

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

Executive Director Watts announced that Mr. Enoch Hagans from the Clarksville Title 6 committee had passed away in February; Commissioner Garrett has been nominated for an Athena Awards to be held at the Parthenon on March 31<sup>st</sup> ; Director Watts is Chair of the Nashville Power of Inclusion luncheon May 11<sup>th</sup> in Nashville and the commission is sponsoring a table. Esta Silver Parker is the speaker, Chief Diversity Officer of Wal-Mart, President of the AT&T Foundation and past President of the International Women's Forum. Also Tiffany Baker Cox is now on the Tennessee Association of Professional Mediators Board. Congratulations were offered to all.

## **Title VI Compliance Report**

Marcus Thomas, Title VI Compliance Program Director reported on the timeframe January 1 to February 28, 2011 when 46 inquiries were received resulting in 5 complaints. During the timeframe 6 cases were closed and 4 referred to Department of Corrections and 1 referred to Board of Regents.

Implementation Review is taking longer than expected and notices of findings are being sent to the departments affected notifying them of deficiencies and issues and giving them 10 days to respond.

Our new rules are effective as of February 13, 2011 and will be posted on our website in the near future. Work continues on our Standing Operating Procedures and Implementation Plan Review and Compliance Review. We are excited about the additional funding that has been approved and look forward to additional staff to assist with these reviews. Policy guidelines for LEP should be completed by the May Board Meeting.

Commissioner Hewitt asked if the bill requiring driver's license testing to be in English would be in violation of the Title VI law and Mr. Thomas agreed that it would be a problem.

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

Deputy Director, Tiffany Baker Cox presented a brief educational session titled Reasonable Accommodations in Housing: Service v. Support Animals.

### **Announcements**

Executive Director noted Commissioner Osborne's mother has been admitted to the hospital and surgeons are attempting to save her foot and he has requested our thoughts and prayers for her recovery.

Chair Pierce received a motion to adjourn from Commissioner Hewitt and a second from Commissioner Davis. A vote was taken and passed and the meeting was closed at 11:05 a.m.