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**May 21, 2010**  
**Board of Commissioner's Meeting**  
**Minutes**

**Commissioner's Present:**

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

**Commissioner's Absent:**

Commissioner Pride

**Staff Present:**

Beverly Watts, Executive Director  
Shalini Rose, General Counsel  
James E. Davis, Jr., Housing Director  
Bobbie Porter, Special Assistant to the Executive Director  
Marcus Thomas, Title VI Compliance Director  
Lisa Lancaster, Executive Assistant

**Guests:**

Allen Staley, SSS  
Arlene Martin-Norman, DCS  
Jim Harrison, State Audit

**Call to Order**

Chair Pierce called the meeting to order at 9:00 a.m. and roll call was taken. Chair Pierce noted that THRC and 13 other organizations participated in the Nashville, Middle Tennessee YWCA "Stand Against Racism" on April 30, 2010 and that at our March Board meeting this body approved a Resolution that was presented to the YWCA by Executive

Director Watts. On the YWCA's website they have their "Pledge against Racism" which was read aloud.

As an individual committed to social justice, I stand with the YWCA against racism and discrimination of any kind.

I pledge to challenge any expression of racism in my presence by my family, my friends, my co-workers and those I encounter.

I will commit to a lifetime of promoting peace, justice, freedom and dignity for all people in my community and in the world.

Chair Pierce asked that a moment of silence be taken to think about these powerful words and the importance of the work of the THRC. Roll Call was taken.

Minutes of the March meeting were reviewed and three changes were requested. Commissioner Wiggins made a motion to accept the minutes with those changes. Commissioner Hewitt seconded the motion. A vote was taken and passed.

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

Executive Director, Beverly Watts began her report updating the board on the status of our building as it applies to the flooding. According to the facility management, the building is operational but there are some safety issues that have not been resolved such as the fire pump not working. It is possible that we could be allowed to return as early as Tuesday of next week.

She noted that Executive Staff have been working from home since the beginning and other staff are now working from home and Pat Ladd and Lisa Lancaster are working from space located in the Tennessee Towers. Staff who answer phones are not working but are being paid by administrative leave and one investigator is hospitalized and having surgery due to a fall before the flood. It should be noted that the team pulled together and things are going well. We should also note that the Knoxville Office has been answering our 800 number and we thank them for their assistance. A notice is also posted on the website with contact information for anyone wishing to contact us.

The Comptrollers office called to schedule an entrance conference for our Performance Audit to begin. Deputy Director Cox and Director Watts will attend this meeting in the Comptrollers office on Monday, May 24<sup>th</sup> at 10:00 a.m. After that meeting the Budget and Audit Committee will be convened to discuss the scope of the Audit and timelines.

The meeting was turned over to Allen Staley who handed out a budget document reviewed the budget with the Commission. The review was for the time period July 1, 2009 through April 30, 2010 and is 83% of the fiscal year completed. We have expended 63% of our funds and will end the year under budget. We are expected to meet the targeted reversion amount of \$127,000. The supplies and materials line item is over budget due to software upgrades and also grants and subsidies due to training and sponsorships.

Overall we are doing well this year and next year we will have to address budget reductions if they are enacted. The professional services from other state agencies represents billing such as Office of Information Services for mainframe usage, motor vehicles, telephone services, etc. These are normal spending issues.

THRC pays premiums to the emergency risk management fund to cover damage to furniture, computers and supplies if necessary. Commissioner Jones asked if the fund would pay for the agency to lease a location if necessary due to a natural disaster. Mr. Staley noted he would follow up with an answer.

Commissioner Wurzburg asked if we could rollover budgeted funds. Director Watts noted that only Federal funds could be rolled over and state funds must be used or lost. Mr. Staley noted that any funds not expended would be reverted back to the general fund unless there is a carry forward clause in the budget and the Commission might want to consider that in the future.

Commissioner Wurzburg questioned if carry forward options might be used to assist with funding for long range planning for Education and Outreach events. Director Watts noted that grants for federal funds would have to be written effectively and we do not currently have grant writers on staff.

Director Watts talked about a phone call she received from Rep. Hardaway regarding sufficient resources to fund Title VI. Our answer was no, the director position was the only funded position with the legislation. We would need 2 additional positions for this division which is required to review Title VI Plans, conduct training and review compliance review for 40 state agencies. We have supplied Rep. Hardaway with the required justification and our request is in the legislative budget process.

Legislative update included the English only Drivers License bill and the English in the Workplace bill. The Drivers License bill passed in the Senate and went to Conference in the House. There is an attempt to attach it to another bill. There are exemptions for Volkswagen, Nissan, and other foreign nationals attached to these bills that would affect immigrants who might be on the lower economic scale and people of color. The Department of Justice is reviewing the Title VI implications of the bill that would affect their LEP requirement.

The English in the Workplace is the second bill and we have worked with Rep. Hill and the Tennessee Immigrant and Refugee Coalition to draft a bill which passed in the House that has language that says employees are allowed to do certain things and the English in the Workplace bill mirrors the current Title VII guidance on the subject. There is another bill in the Senate that reads like the first House bill which says it is not discriminatory for employers to do these things. By saying this gives employers a false sense that they have the right to do certain things. This bill has passed the Senate and is in conference.

Commissioner Wurzburg asked about BFOQ (Basic Bona fide Occupational Qualification) and this bills implications. The Title VII guidance says that if it is necessary for customer service or safety it is allowed. It is not a BFOQ in that instance it is a standard and a requirement for employment as stated on the EEOC website.

The Drivers license is being pushed because it will save money and for safety reasons. Currently the Drivers test is given in German, Japanese, Korean and English. Economic Development waiver states that foreign nationals that come with the company would be exempt.

April was Fair Housing Month and THRC participated in three events. Media days were held in Memphis in association with the West Tennessee Listening Session and in Johnson City the day before the East Tennessee Listening Session. Commissioner Davis was thanked for his help in making arrangements for Johnson City.

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

### **Employment Case Report**

Deputy Director, Tiffany Baker Cox reported on the employment division for the period March 1, 2010 to April 30, 2010 and noted that some numbers will not be complete due to the flood. We have accepted 117 charges with 103 being dual filed and 14 are THRC only. We closed 104 cases of which 97 were dual filed and 7 were THRC only. Of this number 60% were Title VII cases, 11% Title VII/ADEA cases and 9% ADEA age cases.

During the period 7 mediations were held with 4 successful and 3 ending in impasse. Those 4 settlements netted \$51,630 in benefits for complainants. We currently have no cause cases. 28% of cases were Administrative closures and average case age was 310 days with 472 cases in inventory. We are still on track to meet our EEOC contract with no downward modification and that is thanks to the staff, who have worked very hard.

Monica Alexander has been added to the staff of employment investigators. The Director and Deputy will be attending the EEOC Conference from June 9 through the 11<sup>th</sup> in Philadelphia and preparations are being made to have a summer training session for employment and housing investigators. Staff continues to work on the Vision, Mission and Values statements and will meet with the Education and Outreach Committee about holding Mediation Month again this year as several mediators have contacted us about working with us on this project.

Commissioner Wiggins commended the agency staff for the work they do and compared our staff to Pennsylvania Human Rights agency and a case he worked. He noted that case went on and on and there was no communication with employers. Deputy Cox thanked him for his statement and assured him that his comments would be relayed to our staff.

Director Watts spoke about the employment investigators and management staff noting that the Deputy has worked hard to train staff to hit the ground running no matter what the limitations where resources were not available. Employment staff should be commended for their hard work. Chair Pierce also noted the wonderful accomplishment of being ahead of the contract goals.

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

### **Housing Case Report**

James Davis, Housing Director reported on the period March 1 through April 30 that there were 46 inquiries received and 21 of those were accepted as complaints with 3 reactivations from HUD. This is an increase of nearly 50% from the previous period.

Of these inquiries 30% were from Davidson County and 10% from Shelby County and several were received from Hamilton County. Race and disability remain the top bases for complaints. During the period 46 cases were closed, with a year to date total of 121 cases closed.

We have closed twice as many cases as we accepted during this period which has reduced our inventory to 50 cases. We have closed a significant number of our aged cases and we now have more non aged cases than aged cases in our inventory. We should be able to reach the goal of closing all cases within 100 days very soon.

The Knoxville office is fully staffed with 4 fulltime investigators with the addition of Laura Nelson and all investigators with less than one year of experience. We also have a new secretary who joined the staff in January. Training is ongoing.

Commissioner McDaniel asked if cases closed reflected both parties were satisfied. The answer is no. Most of the cases were found to be no cause but there were 10 conciliations where the parties came to a mutual agreement that netted \$58,502 in benefits for complainants.

Commissioner Wurzburg noted that she is concerned that we place more importance on closing cases than we do about receiving justice for complainants. Executive Director Watts noted that closed cases go through many hands from the investigator to legal to the supervisor and then to the Director before they are closed. The numbers we report to you are the information you have asked for as a commission. If a complainant does not agree with our decision they have the opportunity to request a reconsideration and the case will receive a 100% review and this process was instituted three years ago.

Chair Pierce noted that in closing cases we receive revenue from EEOC and HUD. Director Watts noted that our staff is better than it has ever been and we receive allegations, investigate the case and recommend the conclusion of the case. It should be noted that settlement does not always mean dollars received it could involve a letter of recommendation, allowance of a service animal in an apartment complex or some other accommodation for a disabled person, it could mean reinstatement to a job or an apology and these things are harder to report to the commission.

Commissioner McDaniel asked what the role of the commissioners when approached by complainants who are dissatisfied with our decision. Director Watts asked that these cases be referred to her. Commissioner Jones asked what the timeframe for reconsideration was. Director Davis noted that reconsideration must be requested within 30 days and all of this is explained in the notice of determination letter that is mailed to parties.

Commissioner Osborne and Davis both noted instances where staff assisted them with follow-ups to cases when requested.

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

## **Legal Report**

General Counsel, Shay Rose reports only include March numbers in which 45 cases were closed and these include no cause cases, non-jurisdictional cases, settlements, conciliations, right to sue letters and administrative closures. Legal has reviewed 58 Investigative plans and 2 reconsiderations for employment. In housing 34 cases were closed of which 17 were administrative closures and 8 were conciliations. We have 2 pre-cause cases each in housing and employment are in review.

General Counsel Rose noted that on June 17 at the Willis Conference Center THRC will hold the Annual Employment Law Seminar invited all to attend, just see Bobbie Porter. She thanked Commissioner Stacey Garrett for agreeing to be a presenter for this event.

The See verses Fortner case has been dismissed after a hearing and the Law and Legislation committee will be reviewing the case as the commission authorized them to do at the last commission meeting. Seth Yu, Associate Counsel will be assisting Chair Hewitt and the committee with this review.

General Counsel Rose noted that Director Watts has already updated the commission on legislation and we continue to monitor these bills. Chair Pierce noted that the Novartis case is a large gender discrimination case with \$250M in damages giving it the distinction of being the highest jury award ever for punitive damages. She asked if commissioners are aware of any such cases she would be happy to share them with the commission.

More information will be made available on the 2 pre-cause cases in employment that are race based and the 2 pre-cause cases in housing that are disability based at the next commission meeting. The second case is the failure to provide a reasonable modification of a ramp and that case that settled for \$1000 and training in which the complainant has passed away and the wife needed money to move and agreed to settle.

Commissioner Hewitt noted that Seth Yu has been keeping her updated on the See verses Fortner case which the Law and Legislation committee will be reviewing and noted that the case could not be discussed with General Counsel as she represents THRC.

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

## **Outreach & Education**

Special Assistant to the Executive Director, Bobbie Porter reported on the Outreach and Education activities for the period. The agency staff and commissioners participated in 16 events which included 8 speaking events and most were for Fair Housing Month is in April. The West Tennessee Listening Session took place in Memphis and Commissioners Wurzburg and Cocke attended. This event was covered by the Commercial Appeal Newspaper.

The agency worked with the YWCA on the Stand Against Racism and the Sister for Sister Conference of 100 Black Women which wants to partner with THRC for speaking events. April 4<sup>th</sup> Foundation was co-chaired by Executive Director Watts and Commissioner Wurzburg was honored by the Women's Foundation of Greater Memphis with its Legends Awards.

Articles are located in your packet about Fair Housing Month one of which appeared in the Memphis Commercial Appeal Newspaper.

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

Commissioner Wurzburg proposed an in person meeting of the Outreach and Education committee and all commissioners in the Commission Office in conjunction with the Employment Law Seminar in June. The staff is developing an outreach plan and calendar and which will be available by the first week in June.

### **Title VI Compliance Program Report**

Title VI Compliance Director, Marcus Thomas reported that the rules approved by this commission have been filed and dates for the public hearings are set. They will be held in Nashville, May 25<sup>th</sup> at the Tennessee Towers at 9 am and Jackson TN on May 27<sup>th</sup> and Knoxville on June 13<sup>th</sup>.

The first Title VI training for state coordinators, agency heads, department heads will take place on June 15<sup>th</sup> from 9:30 am to 11:30 am. This training will include guidelines and details regarding Implementation Plans which are due on October 1<sup>st</sup>.

Since the March Commission meeting we have received 45 written or verbal complaints which have been reviewed and forwarded to appropriate agency officials. THRC will continue to monitor their progress. The office has been working with Rep. Hardaway to address the staffing concerns and some internal decisions may be made to include staff adjustments to assist the department with support issues.

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

Commissioner Wurzburg requested that the Section on the learning segment presented today was not included in the email material packet be emailed to commissioners. Deputy Cox noted the request and will provide the presentation and the Investigative Plan form via email to commissioners.

Deputy Director Cox and Housing Director Davis presented the investigative process learning session.

Chair Pierce reminded the Commission that our Sunset hearing is scheduled for next year. Visitors Jim Harrison from state audit and Arlene Morton from DCS were introduced and the upcoming Tennessee Women's Economic Summit was announced for October. The program from the Athena event was shared with attendees. Chair Pierce will be participating in Vision 20/20 in Philadelphia.

Commissioner Osborne thanked Bobbie Porter for all her help in planning the Listening event in East Tennessee. The meeting was adjourned at 11:35 a.m.