



TENNESSEE HUMAN RIGHTS COMMISSION
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November 17, 2023
Board of Commissioners' Meeting Minutes

Commissioners Present:

Commissioner Crider
Commissioner Kelly
Commissioner Pérez
Commissioner Raymond
Commissioner Rosales
Commissioner Upton

WebEx:

Michelle Rios
Vee Weatus
Laura Bell
William Wade, Associate General Counsel
Ben Silverman – Director of Appointments –
Governor's Office
Court Reporter, Liam MucKala
Paige McAllister
Betty Sanchez
Court Reporter-

Staff Present:

Muriel Nolen, Executive Director
Veronica McGraw, Deputy Director
Lynn Cothren, Operations Manager/Special
Assistant
Jacob Aparicio, Communications Director
Allen Staley, Fiscal Officer
Seth Lankford
Tremecca Doss, General Counsel
Cheryl Cole
Michelle Petrey, Training Officer II
Seth Lankford
Tracy Davidson

Call to Order

Executive Director, Muriel Nolen, called the meeting to Order at 9:04 a.m. CST. Six (6) Commissioners were present at roll call.

The Director introduced Ben Silverman, Director of Appointments for the Governor's Office, who explained the process that the Governor's Office uses during the selection process for Commissioners. He stated that he considers himself a "recommender" for the Governor. His previous experience is that of an aid to the Governor. In total, the Governor selects 200 positions across the state for various agencies. An appointment is a lengthy process. It consists of the gathering of candidates and then the process of gathering recommendations. Individuals involved in the various organizations network, recommend others to serve as Commissioners, and express

how they believe those candidates will best represent the Governor. There are some statutory requirements that must be met regarding oaths of office.

Commissioner Kelly then nominated Commissioner Upton to serve as the Committee Chair. Commissioner Rosales seconded the motion. All Commissioners voted to approve the nomination. The Director handed the gavel to Commissioner Upton making his new title official.

The Director then asked that the Commissioners consider their nominations for Co-Chair and Secretary to be part of the Executive Committee. She proceeded to state that their focus in June will need to be Education and Outreach Committee followed by the Budget Committee in July. Commissioner Pérez asked about voting for chair of the Law and Legislative Committee. Commissioner Kelly moved that they consider filling the various committees by the end of the year. Commissioner Kelly then nominated Commissioner Crider for Co-Chair. Rosales seconded the nomination. All Commissioners voted in favor of the nomination. The Director clarified that the role of Secretary will be vital when they discuss the Annual Report and when reviewing previous meeting's minutes for approval or correction. Commissioner Pérez nominated Commissioner Kelly for the position of Secretary. Chair Upton seconded. All Commissioners voted yes.

There was a discussion to designate Committees at a later date. Rosales suggested that he and Pérez head the Law and Legislative committee which will be discussed at a later time.

Financial Report

Fiscal Officer Allen Staley was introduced. A current Fiscal Report (see attached) had been distributed amongst the Commissioners prior to his arrival. It was the financial report through mid-October. The Budgeted column is what was approved by the Legislature for FY 23/24. He proceeded to explain that the Fiscal Year runs from July 1 to June 30 of the following year. It is broken up between Personnel costs (referred to as "above the line") and Operational costs (referred to as "below the line"). He stated that THRC is "on track" at this point in the year. Travel was reflected to be 47% of the budget currently. The total amount spent of the budget at this point in the year was 21.9%. The last column on the report reflects the difference between the budget and actual spent. Commissioner Kelly asked for clarification whether the report presented "typical" spending for the agency. Mr. Staley stated that there were no major "concerns" regarding the budget at this time. He stated that based on total appropriations, spending could be above the account line. Chair Upton asked for the status of anticipated hiring of new personnel. He wanted to know if that would raise an issue with the budget. Mr. Staley stated that the new hires would not impact the budget. The Director spoke to the budget, informing the commissioners that the initial budget starts with the previous year's budget. If there were any "increases", it is reflected by reducing spending in another area of the budget. Commissioner Kelly commented that is also known as Zero Sum Budgeting. He proceeded to

ask about the agency’s Operational costs, asking whether they were “below” the line”? Mr. Staley clarified that any additional spending that occurs is spent against State Appropriations. State Appropriations comes from a general fund that is funded from sales taxes received from the state. Professional Services which are listed on the budget are spent from an Internal Service fund. For example, the Internal Service funds involve spending for services provided by DOHR, phone services, I.T. and Billing Services. Commissioner Kelly asked how many agencies THRC bill out to. Commissioner Pérez asked about the federal line which comes from EEOC and HUD funding. These are paid from accrued receivables. Revenue has been “booked”. There will be cash received in 2024. Mr. Staley stated that the money will “reverse or wash out”. Commissioner Kelly moved to accept the Fiscal Report. Commissioner Rosales seconded the motion. All Commissioners voted to accept the report. All Commissioners approved the motion.

Tennessee Human Rights Commission Annual Report

Communications Director Jacob Aparicio presented the Annual Report for the Fiscal Year 22-23. The Annual Report is published annually and highlights Education and Outreach as well as the history and general activities for the commission. He stated that it reflects a snapshot for what the agency has done over the past year. It had been presented at the last meeting, with the vote to approve being postponed until this meeting. He proposed that due to there being a new Commissioner, Amos Raymond, the commissioners consider amending the current Annual Report to include his photo and assignment. Commissioner Pérez moved to approve and Commissioner Kelly seconded the motion. All Commissioners agreed to amend the report.

Title VI Annual Report

Communications Director Jacob Aparicio presented the Annual Report for the Fiscal Year 22-23. He stated that it will be published for the public and will highlight Title VI compliance across Tennessee departments and agencies and provide a general overview of Title VI unit. Commissioner Pérez moved to approve the Title VI annual report. Commissioner Kelly moved to second. All Commissioners agreed.

Case review #1

The Director asked if the Commissioners were ready to vote. Chair Upton proceeded to read the Deliberative Script (attached). They must decide if there is Reasonable Cause. The Court Reporter’s transcript is attached for reference. The CP is “CP1”. The RP is “RP1”. Chair Upton asked if any Commissioners have a Conflict of Evidence. Each Commissioner was asked 3 questions.

1. Do you have a Conflict of Interest?

Crider-	No	Raymond-	No
Kelly-	No	Rosales-	No
Pérez-	No	Upton-	No
2. Have you discussed the contents of this case?

Crider-	No	Raymond-	No
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Kelly-	No	Rosales-	No
Pérez-	No	Upton-	No
3. Have you been able to review the facts of this case?			
Crider-	Yes	Raymond-	Yes
Kelly-	Yes	Rosales-	Yes
Pérez-	Yes	Upton-	Yes

Deliberating on this matter were all present Commissioners. They agreed that they were all ready to proceed. Chair Upton defined “Burden of Proof” as “Reasonable Cause, meaning that it is more likely than not that the Respondent engaged in unlawful discrimination,” may be proven through direct and indirect evidence. The Commissioners may vote to either Affirm Cause, No Cause, or Remand it back to the Tennessee Human Rights Commission for further investigation.

Commissioner Crider asked for clarification for the term “affirm”. If it is affirmed, it would continue to an Administrative Law Judge. If it is remanded, it would return to the agency for continued investigation which may result in a settlement, depending on the case.

The attached transcript contains detail of the discussion.

Regarding the first case under consideration, the Commissioners cast the following votes:

Crider-	Affirmed No on Cause
Pérez-	Affirmed Yes on Cause
Raymond-	Affirmed Yes on Cause
Rosales-	Affirmed Yes on Cause
Upton-	Affirmed Yes on Cause

A Notice of Determination will be prepared. This matter is concluded.

Case review #2

Chair Upton proceeded to read the Deliberative Script (attached). They must decide if there is Reasonable Cause. The Court Reporter’s transcript is attached for reference. Chair Upton asked if the Commissioners have a Conflict of Evidence. Each Commissioner were asked 3 questions.

1. Do you have a Conflict of Interest?			
Crider-	No	Raymond-	No
Kelly-	No	Rosales-	No
Pérez-	No	Upton-	No
2. Have you discussed the contents of this case?			
Crider-	No	Raymond-	No
Kelly-	No	Rosales-	No
Pérez-	No	Upton-	No

3. Have you been able to review the facts of this case?
- | | | | |
|---------|-----|----------|-----|
| Crider- | Yes | Raymond- | Yes |
| Kelly- | Yes | Rosales- | Yes |
| Pérez- | Yes | Upton- | Yes |

Deliberating on this matter were all present Commissioners. They agreed that they were all ready to proceed. Chair Upton defined “Burden of Proof” as “Reasonable Cause, meaning that it is more likely than not that the Respondent engaged in unlawful discrimination.” May be proven through direct and indirect evidence. The Commissioners may vote to Affirm Cause or No Cause or may Remand it back to the Tennessee Human Rights Commission for further investigation.

The attached transcript contains detail of the discussion.

Regarding the first case under consideration, the Commissioners cast the following votes:

- | | |
|----------|--------------------------------|
| Crider- | Affirmed No on Cause |
| Kelly- | Remand for more Investigation |
| Pérez- | Remand for more Investigation |
| Raymond- | Affirmed Yes on Cause |
| Rosales- | Affirmed No on Cause |
| Upton- | Remand for more Investigation. |

Questions were posed to be explored by the investigator.

1. Chair Upton-What does HUD say about Service Animals?
2. Commissioner Pérez- Is the obligation to provide documentation determined at the time of application?
3. Commissioner Kelly- The point of compliance is determined when the need is established.
4. Commissioner Raymond-What is the common practice of these landlords in terms of their application process? Do they require a full application at time of viewing property?
5. Commissioner Pérez- What was the CP knowledge regarding Service Animals (pet policy v Service Animal policy)- Knowledge of their rights? Why didn't they submit an application? What actually occurred on the August 20th phone call with the realtor.
6. Commissioner Crider- Did the respondent know that the CP had an existing service animal at the time of denial?

This will be revisited at the January meeting.

Meeting Minutes for October 13, 2023

Chair Upton asked if the Commissioners have had a chance to review the minutes from the previous meeting on October 13, 2023. Commissioner Kelly moved to accept. Commissioner Pérez seconded the vote. All Commissioners voted to accept.

The Executive Director

The Director reported that she is waiting on the FY2025 Budget instructions from the House. She

will appear before them for what she presented over the Summer after the Governor had presented his proposed budget.

The organization chart should be current as previously submitted. Title VI does have two vacant positions which will be posted as well as an investigator position in Memphis. A recent position has been filled in Nashville. The Director asked if she should have job descriptions available at the next meeting. Commissioner Kelly said that it is not necessary.

The SNO (Service Now) portal will allow remote access for IT assistance.

Supervisors have completed employee efficiency assessments. DOHR started a study to compare staff salaries with fair market value. The Director will have a meeting with DOHR at the end of the month.

The HUD contract is concluding for this Fiscal Year 2024. HUD is finalizing its assessments. Based on HUD assessments, three more investigators are needed in the Housing Unit. These positions will be presented in the 2026 Budget package.

The Employment unit just closed its year on September 30. The current goal for 24/25 is 180 dual filed cases. Last year 225 cases were closed. It is under review if modifications will be made in April. Intake has tripled from this time last year. An additional person has been added to staff for a total of three individuals in that unit.

The TN State Council for Human Resources had their annual SHRM Conference in Chattanooga. THRC had sponsored the event and hosted a booth. DOHR had a seminar, “Our Culture Units Us”, for state employees at which the Director gave a presentation. The annual Employment Law Seminar occurred recently. This was the 18th year for the seminar. The Tennessee Human Rights Commission is currently planning the Commission’s 60th Anniversary celebration tentatively set for July 2, 2024. A venue has been selected. Commissioner Rosales suggested First Horizon Bank as a potential sponsor. Commissioner Kelly moved to approve the Director’s report. The Commissioners voted to collectively approve.

The Enforcement Report

The Deputy Director presented for the reporting period of September 1-October 31, 2023. She provided an update on the enforcement efforts in the THRC employment and housing units.

Employment:

For the reporting period, the employment unit received a total of 172 inquires. The middle Tennessee region received the highest percentage of complaints of discrimination in employment during the reporting period. During this period, 38 cases were prepared for investigator assignment by the deputy director. For the reporting period, the employment unit closed a total of 22 cases. There were no mediations conducted during this period.

Housing:

For the reporting period, the housing unit received a total of 156 inquires, Davidson County received the highest number of complaints of discrimination followed by Shelby County. During this period, 28 cases were prepared for investigator assignment by the deputy director. For the reporting period the housing unit closed a total of 14 cases. During this period, three conciliations were successfully conducted.

Additional Items:

During the last Commission meeting it was mentioned that the reports should show additional information related to how housing intakes are reported. The report has been updated to include intake closures and pending intakes for further clarification.

It was also asked what additional resources are provided to complaining parties whose inquiry lacks jurisdiction in housing. In addition to sending a letter for lack of jurisdiction to a complaining party, the intake unit may refer complainants to HUD, a Legal Aid Society, and or Consumer Affairs. Commissioner Raymond moved to approve the report. Commissioner Rosales seconded. The Commissioners voted to collectively approve.

Title VI

Title VI Director, Cheryl Hines, presented for the reporting period of September 1-October 31, 2023. A total of 49 Implementation Plans were received by October 2, 2023. A total of 56 Inquiries were received during reporting period. Of the 56, 17 were jurisdictional and were assigned to state agencies for investigation. The remaining 39 were non-jurisdictional and were either referred to state agencies or administratively closed. There are 8 open complaints. Three are assigned to the Department of Corrections; one is assigned to the Department of Intellectual and Development Disabilities; two are assigned to the Department of Human Services; one to the Department of General Services and one assigned to the Department of Mental Health and Substance Abuse. Of the eight, one was an external complaint. Regarding technical assistance, there were 45 requests. Topics of technical assistance were Implementation Plan assistance, complaint processing assistance and one subrecipient oversight question. Commissioner Kelly asked for clarification on the total number of IP Plans. Chair Upton asked for a definition on “external submission”. Ms. Hines clarified that it did not come through our office. Commissioner Kelly moved to approve the report. Commissioner Raymond seconded. The Commissioners voted to collectively approve.

Legal

Presented by General Counsel Tremecca Doss with an acknowledgement of Associate General Counsel William Wade for the reporting period of September 1-October 31, 2023. Sets forth the statistics for Employment, Housing and or Public Accommodation cases with respect to pending litigation. The Legal report that had been previously provided was referenced and the floor opened for questions. In cases in which there are Courts of Law proceedings, the Attorney General is involved. Commissioner Kelly moved to approve. Commissioner Rosales seconded. The Commissioners voted to collectively approve.

Communications

Presented by the Communications Director, Jacob Aparicio, for the reporting period of September 1 – October 31, 2023, THRC’s education and outreach efforts included 15 events and a reach 15,170 people, bringing our total outreach for FY 2023-24 to 29,352 people. Outreach efforts THRC participated in this reporting period, include events THRC staff attended like the Williamson County Chamber of Commerce’s “Insights from Hispanic Leaders” Panel in Franklin, TN; events THRC hosted booths at such as the TN State Council for Human Resources SHRM Conference in Chattanooga; events THRC sponsored like Disability Rights Tennessee’s Disability Employment Awareness Luncheon in Nashville; and educational presentations we hosted including 2023 Employment Law Seminar that was hybrid.

The 2023 Employment Law Seminar (ELS) was an annual training the Commission organized, in partnership with the U.S. Equal Employment Opportunity Commission (EEOC) and the Tennessee Department of Human Resources (DOHR). The ELS took place on Thursday, October 12th both in-person in Nashville, TN and online via Webex. The ELS aimed to provide attorneys, human resource professionals, employment law professionals and others with the knowledge necessary to support the latest best practices in the workplace. The seminar featured Keynote Speaker Fred Bissinger of Ford Harrison. Executive Director Nolen presented on behalf of the agency on “THRC: Where We’ve Been and Where We’re Going”. Other speakers included District Director Edmond Sims of the EEOC Memphis Office, Melanie Koewler and Andrew Puryear of the DOHR, Luther Wright Jr. of Ogletree Deakins, and Buddy Stockwell of the Tennessee Lawyers Assistance Program. Commissioners Crider, Kelly, Pérez, and Upton were in attendance along with several THRC staff and the ELS planning committee. There was approximately 140 people in attendance.

In terms of online engagement, we had a total of 2,521 followers between our social media platforms. For the reporting period, the THRC website had a total of 23,337 views. Regarding internal education efforts, staff reported a total of 592.7 hours of training, leadership, and professional development.

Upcoming projects and events the Communications division is working on for the reporting period of November – December include our quarterly All-Staff meeting on December 1 and the Tennessee Celebration of International Human Rights Day on Wednesday, December 6. Beyond the November – December reporting period, will be participating in several events in Nashville, TN for the week of Martin Luther King Day including the Labor & Human Rights Breakfast on Friday, January 12 and the MLK Day March and Convocation on Monday, January 15. Additionally planned is the 60th Anniversary event on July 2, 2024. Commissioner Rosales moved to approve the report. Commissioner Pérez seconded. The Commissioners voted to collectively approve.

There were no Public Comments. The next meeting is slated for January 26, 2024. When asked when the board may review more cases, the director stated that she anticipates reviewing proposals to create a case review schedule at a later time with Chair Upton. Commissioner Kelly asked if they may have a dedicated “Case Day” which would be an intense review that would enable Commissioners to get through several cases. Director Nolen proposed a Commissioner Retreat that would consist of a two-nighttime frame. There will need to be pending discussion to create an overall plan.

Crider asked that they consider the max number of cases that could be thoroughly reviewed and decided on in a day. Realistically, it was commented that 2 or 3 in total is probable. Will Wade stated that 80% of the pending cases are Housing in nature. Commissioner Kelly stated that he believes that their understanding for the application of law will improve the more they are familiarized with the issues and the law.

Chair Upton moved to approve the adjourn. Commissioner Pérez and Commissioner Crider seconded. The Commissioners voted to collectively approved the adjournment at 12:15pm.