



TENNESSEE HUMAN RIGHTS COMMISSION
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January 21, 2022
Board of Commissioners Meeting via WebEx
Minutes

Commissioners Present:

Commissioner Joseph Albright
Commissioner Scott Arnwine
Commissioner Gary Behler
Chair Robin Derryberry
Commissioner Annazette Houston
Commissioner Bill Martin
Commissioner Julius Sloss

Commissioners Absent:

1 Vacancy
Commissioner Eric Crafton

Staff Present:

Beverly L. Watts, Executive Director
Muriel Nolen, Deputy Director
Saadia Williams, Housing Coordinator
Tanya Webster, Title VI Director
Dawn Cummings, General Counsel
Veronica McGraw, Communications Director
William Wade, Associate General Counsel
Allen Staley, Finance and Administration
Lynn Cothren, Special Assistant
Dazaly Reyes-Montalvo, Administrative Assistant

Staff Absent:

Guests:

None

Call to Order

Chair Robin Derryberry called the meeting to order at 9:01 a.m. CST. Lynn Cothren took the roll call with five Commissioners present and two logging in a few minutes later. Chair Derryberry asked for a review and approval of the December 3, 2021, Board meeting minutes.

Commissioner Behler made a motion to approve the December Board meeting minutes. Commissioner Albright seconded the motion. All Commissioners voted to approve the Board meeting minutes.

Executive Committee Report

Chair Derryberry reported that the Executive Committee met on January 14, 2022, to hear updates from Legal Counsel regarding an update on the *Olivia Piatt v. H&Y Consulting Corporation*. They decided to present it to the full board for discussion and vote.

Commissioner Albright made a motion to approve the minutes of the Executive Committee Report. Commissioner Martin seconded the motion. All Commissioners voted to accept the Executive Committee Report.

Executive Director's Report

Director Watts asked if there were any questions concerning the Executive Director's Report that was previously provided to the Board. Director Watts introduced new staff in Nashville that started on January 18, 2022. Lacey Murphy is an investigator in employment. McKayla Green is also an investigator. Cheryl Cole will be working at the front desk in customer service. There are currently three vacancies which include the Compliance Officer, ASA 2 in Title VI, and Human Rights Representative in housing.

In December, the Commission received notice from HUD about unused funds from 2021 which involved training. The total was \$35,200. The funds had not been vouchered and have been deobligated. There is an outstanding amount of \$10,955.05 to be returned which includes \$6,500.00 from elocs due on February 24, 2022. In 2020 and 2021, the staff attended virtual trainings at no cost to the agency. By limiting in-person trainings, the Commission has extra money and will be unable to carry it over. The Education and Outreach grant was \$41,700 and \$10,955.05 was deobligated and must be returned to HUD. The Commission has also been awarded an Education and Outreach grant for \$13,500 in partnership which will run through June 2022. Additional funds for administrative cost for \$13,000 will be added to our administrative trainings for this fiscal year.

Director Watts concluded the Executive Director's Report. Commissioner Houston made a motion to accept the Executive Director's Report. Commissioner Albright seconded the motion. All Commissioners voted to accept the Executive Director's Report.

Personnel Committee Report

Commissioner Houston reported that the Personnel Committee met on January 7, 2022, to discuss operations, staff turnover, and ways to assist the agency. The Committee would like to compare the turnover rate with other agencies within the state and see data for the past three years. In addition, the Committee would like to survey staff to determine what attracted them to the agency and whether they considered their position a career or a job.

Commissioner Houston noted that Chair Derryberry suggested that the Commissioners engage with employees and reach out to new employees as they come on board. New employees can also be acknowledged in the next meeting if they are in attendance. Another idea is to do a 360 evaluation of the Executive Director. The Chair and the Executive Committee would receive the data and be able to discuss and give the employees an opportunity to evaluate the Executive Director on a regular basis.

The exit interviews were discussed to determine if any trends should be reviewed of persons terminated for cause or employees that resigned. Chair Derryberry noted that the TN Department of Human Resources was contacted for assistance in determining reasons people are leaving the agency as compared to other agencies.

Director Watts noted that the Department of Human Services is conducting a state-wide compensation study.

Commissioner Martin made a motion to accept the minutes of the Personnel Committee. Commissioner Arnwine seconded the motion. All Commissioners voted to accept the Personnel Committee Report.

Employment Report

Deputy Director Nolen reported for the two-month period from November 1 through December 31, 2021. The employment unit received 118 inquiries of which 93 were received through the online form which is 79% and is a 27% increase compared to the same period last year. There were 39 inquiries that were accepted: 32 dual filed and 7 THRC only. As of December 31, 2021, there were 58 pending inquiries. The agency closed 20 cases: 14 dual filed and 6 THRC only. There were 12 cases closed as no cause determination and 8 were administratively closed. During the period of October 1, 2021, through December 31, 2021, 49 dual-filed complaints were closed. At the end of December 2021 there were 460 pending cases in the inventory: 358 dual filed with EEOC and 102 THRC only. During the EEOC contract period, October 1, 2021 – September 30, 2021, 41 out of 178 cases have been closed to fulfill the contract. As of October 31, 2021, there were 168 cases in the intake unit awaiting assignment. Cases are being assigned to investigators on a consistent basis.

The staff continues to work with the TN's Strategic Technologies Solutions (STS) on the agency's case management project. Testing by staff began in September 2021. The next meeting is scheduled for January 12, 2022. The tentative date for preview presentation to staff has been slated for March 7, 2022. In addition, the EEOC previewed their Agency Records Center (ARC) which replaced IMS on January 18, 2022. Training will be ongoing throughout the year.

The Memphis office has been cleaned and cleared to reopen after recent flooding damage, as of December 21, 2021.

Deputy Director Nolen concluded the Employment Report. Commissioner Sloss made a motion to accept the Employment Report. Commissioner Behler seconded the motion. All Commissioners voted to accept the Employment Report.

Housing Report

Housing Coordinator Saadia Williams reported on the period from November 1, 2021, to December 31, 2021. During this time the housing unit received 113 inquiries of which 26 were accepted as complaints. The most common reason for complaints continues to be disability, followed by race. The HUD 50% efficiency goal, at the end of December is at 40%. All acceptance and notifications letters for the same time were sent timely (within 10 days) to the respective parties.

Housing Coordinator Saadia Williams concluded the Housing Report. Commissioner Arnwine made a motion to accept the Housing Report. Commissioner Albright seconded the motion. All Commissioners voted to accept the Housing Report.

Title VI Compliance Report

Title VI Director Tanya Webster reported on the period from November 1, 2021, to December 31, 2021. As of December 21, all 49 agencies' initial reviews have been completed and the initial review memos have been sent to the Title VI Coordinators to make revisions. Due to extension

requests from agencies, the Title VI unit expects to receive and review all revisions by the end of January.

The final reviews are expected to be complete by the middle of February. The final finding letters are expected to be sent before the end of February. The agency received 44 inquiries and of those, 21 were determined to be jurisdictional and were assigned to state agencies for investigation. The remaining 23 inquiries were determined to be non-jurisdictional. There were 17 cases closed to-date. There are 153 open Title VI complaints. The increase in the numbers of open complaints is a result of state agencies reporting their internal complaints to the Commission.

The Title VI staff received (158) technical assistance requests which included implementation plan assistance, complaint processing, Limited English Proficiency, sub-recipient monitoring, and investigation questions.

Title VI Director Webster concluded the Title VI Report. Commissioner Martin made a motion to accept the Title VI Report. Commissioner Behler seconded the motion. All Commissioners voted to accept the Title VI Report.

Legal Report

General Counsel Dawn Cummings reported on the judicial review of *Echevarria v. JKA Properties*. The hearing was set for December 13, 2021, in Montgomery Co. Circuit Court and it was postponed. The Judge gave the Respondent thirty days to obtain new counsel. The Commission received notice that the Respondent moved out of the country, however, the Respondent still owns property in Tennessee and the hearing is to be rescheduled.

There is an election housing case that the Complainant or Respondent has decided to forego the administrative process and the Commission, according to statute, must maintain with the AG's Office. There was a Motion to Dismiss a Party and Challenge Venue and a Motion to Stay Discovery filed in November and there will probably be a hearing in February.

As for the cases awaiting decisions from ALJ, a default judgement was issued in *Dye v. Ferguson* in June 2021. In the *Woods v. KCDC*, the Administrative Law Judge issued an Initial Order on December 27, 2021, making a finding of discrimination. Judge Cambron awarded the aggrieved party \$6,120.00 in compensatory damages and \$10,000.00 for pain, suffering, and embarrassment. Judge Cambron also awarded the Commission \$5,000.00 for its Education and Outreach Fund and all costs incurred litigating this matter. The Respondent was also ordered to undergo 16 hours of Fair Housing Training. Notice of Intent to Review the Initial Order was filed with Administrative Procedures Division on January 4, 2022.

The legislature opened its session on January 11, 2022. The Legal Unit will continue to monitor the sessions, however, there is nothing to report at this time.

General Counsel Cummings concluded the Legal Report. Commissioner Houston made a motion to accept the Legal Report. Commissioner Arnwine seconded the motion. All Commissioners voted to accept the Legal Report.

General Counsel then began a discussion of the case, *Piatt v. H & Y Consulting*. General Counsel indicated that there had been an executive session held prior to the Commission meeting with the Executive Committee to discuss this matter. During the Executive Session, General Counsel

provided a summary of the *Piatt* case and took questions from Committee members. General Counsel indicated that the decision by the Chancery Court may have an adverse effect on the way the Commission does business. The General Counsel indicated to the Board that the parties involved in the *Piatt* case agreed to sign an Order to Vacate the decision.

Commissioner Sloss began the discussion by quoting from Tenn. Code Ann. §4-21-202(3) which discusses the Commission Board's powers and duties. This portion of the statute states the following: The Commission has the power to "...annually appoint an Executive Director, fix the Director's compensation with the approval of the Governor, and delegate any of its functions and duties to the Director in the interest of efficient management of the appropriations and resources of the agency."

Commissioner Sloss emphasized that "any" powers and duties may be delegated to the Executive Director. Commissioner Sloss pointed out that the Commission Board had lengthy discussions throughout the past twelve months as to whether the Commission Board members can be involved in investigations. He indicated that the Board concluded that the Commission Board members may be involved in an investigation if they so decided as with any functions of the Commission.

Commissioner Sloss asked if the Court's Order was provided with the Commission meeting materials. General Counsel Cummings indicated that it was included. Lynn Cothren indicated that it was an attachment sent with the Commission meeting materials.

Commissioner Sloss indicated that if the Board does not have the authority to delegate in this case, then it would be the same for other cases. Commissioner Sloss noted he would be in favor of appealing the decision on this case instead of vacating the decision. Commissioner Martin suggested a permanent fix. General Counsel Cummings explained that a permanent fix would mean to open the TN Human Rights Act and modify it through legislation. Both Commissioner Sloss and Commissioner Behler indicated that there are risks involved in opening the TN Human Rights Act.

Commissioner Sloss indicated that he believes the Chancery Court made an error and the purpose of an appeal would be to fix that error.

Commissioner Behler indicated that he agreed with Commissioner Sloss' interpretation of the delegation provision.

Commissioner Sloss made a motion to appeal the decision of the Chancery Court. Commissioner Behler seconded the motion. There was no further discussion or questions. Chair Derryberry asked for a roll call vote. Lynn Cothren conducted the roll call vote. The following Commissioners voted in favor of pursuing an appeal: Commissioner Arnwine, Commissioner Behler, Commissioner Albright, Commissioner Houston, Commissioner Martin, Commissioner Sloss and Chair Derryberry. Chair Derryberry stated the motion passed. Director Watts clarified the appeal would have to be handled by the AG's Office in conjunction with the Commission's Legal Department.

Communications Report

Communications Director Veronica McGraw reported that THRC's Communications produced two Human Rights Day virtual events and THRC's annual Employment Law Seminar for the reporting period. The Virtual Employment Law Seminar took place on December 9, 2021, in partnership with TN Department of Human Resources. Director Watts and TN Department of Human Resources

Deputy Commissioner Lesley Farmer gave remarks. General Counsel Dawn Cummings was the seminar moderator. The presenters included Nashville attorney Luther Wright, Nashville attorney Kim Vance, and Edmond Sims and Faye Williams of the EEOC. There were 170 people virtually in attendance.

The Chattanooga International Human Rights Day Virtual celebration was held on November 30, 2021, and Mayor Tim Kelly was the featured speaker. Chair Derryberry and Director Watts gave remarks during the program along with Commissioner Behler who presented the Human Rights Day Governors Proclamation. Hamilton County Mayor Jim Coppinger and University of Tennessee Chattanooga Vice-Chancellor of Diversity and Inclusion Stacy Lightfoot also gave remarks. There were 75 people in attendance.

The Nashville International Human Rights Day Virtual celebration was held on December 9, 2021, Chair Derryberry presented the Human Rights Day Governors proclamation. Director Watts was the event emcee that featured a conversation with Nashville Council Member-at-Large Zulfat Suara and David Plazas, Opinion and Engagement Director and op-ed editor for the Tennessean. There were approximately 45 to 50 people virtually in attendance.

Included in the Commission package is the Commission's Education and Outreach calendar through June 2022. The Wurzburg award presentation is at the top of the to-do list for Communications. The Communications unit is currently receiving the active COVID-19 numbers in preparation for the in-person Wurzburg award presentation in Memphis.

The agency was recently awarded partnership funds from HUD in the amount of \$13,500.00 for Fair Housing Education and Outreach activities. The activities included in-person and/or virtual Fair Housing Educational sessions. Two are planned to take place in-person. One in April to coincide with Fair Housing month and the other will take place in June to close out the fiscal year. Partners will be identified for the sessions. These events will be moved to a virtual platform in the event of high COVID-19 numbers. The other activities include statewide Fair Housing radio advertising through iHeart Media. The ads will be like the ads that were heard this past summer. Communications is in the early stages of planning these activities and will have a more detailed plan.

Chair Derryberry offered an open invitation for anyone who would like to participate in the Women's Policy Conference and Mayor's Council for Women to please reach out to Communication's Director McGraw. Director Watts pointed out she will be presenting along with former Deputy Director Tiffany Cox on the topic of sexual harassment. Director Watts also noted that Deputy Nolen will be in attendance.

Communication Director McGraw concluded the Communications Report. Commissioner Houston made a motion to accept the Communications Report. Commissioner Behler seconded the motion. All Commissioners voted to accept the Communications Report.

Closing Remarks

No visitors were present at the meeting. Chair Derryberry gave a follow up from the TN Department of Human Resources investigation mentioned at the last Commission meeting. Chair Derryberry received a memo regarding the investigation. The memo was forwarded to the Personnel Committee. Commissioner Houston, Chair of the Personnel Committee will be working with the Personnel Committee to address the matter and make recommendations to the Board.

Chair Derryberry noted that she has not received a full report. A memo has been received and Chair Derryberry anticipates receiving a full report in the coming days. The memo will be treated as a public document for the Board to view. The full report that will be received from the TN Department of Human Resources and their legal advisor is attorney client privileged and will not be a public document.

The next Commission meeting will be held on March 18, 2022, at 9:00 a.m. CST. Commissioner Sloss made a motion to adjourn. Commissioner Behler seconded the motion. All Commissioners voted to adjourn the meeting. The meeting was adjourned at 11:09 a.m. CST.