



**TENNESSEE HUMAN RIGHTS COMMISSION**  
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**July 17, 2015**  
**Board of Commissioners'**  
**Telephonic Meeting**  
**Minutes**

**Commissioners Present:**

Commissioner Crafton  
Commissioner Derryberry  
Commissioner Horne  
Chair Houston  
Commissioner Martin  
Commissioner Selberg  
Commissioner White

**Commissioners Absent:**

Commissioner Sloss

**Staff Present:**

Beverly Watts, Executive Director  
Sabrina Hooper, Deputy Director  
Matthew Stephenson, Title VI Compliance Director  
Richard Gadzekpo, Housing Coordinator  
Shalini Rose, General Counsel  
Lisa Lancaster, Executive Assistant

**Guests:**

Allen Staley, F & A Centralized Accounting

**Call to Order**

Chair Houston called the meeting to order at 9:05 a.m. and asked for a moment of silence to remember the violence in the state. Executive Assistant, Lisa Lancaster, called the roll. The minutes of the May 15, 2015 Commission meeting were reviewed, and Commissioner Martin made a motion to approve and Commissioner Horne seconded the motion. A vote was taken and passed. Chair Houston noted that we would defer the report of the Law and Legislation Committee to later in the meeting and proceed to the Executive Director's report.

**Executive Director's Report**

Executive Director, Beverly Watts, welcomed Commissioner Robin Derryberry to the Board of Commissioners.

Executive Director Watts began her report by noting that the agency currently has two vacant positions. She noted that Erica Kesse, the special assistant to the Executive Director left on July 1, 2015 to return to school full time. We posted the position and initial interviews have been completed. Second interviews will be conducted next week with two candidates. We expect a decision by the end of next week. It was also noted that the Administrative Services Assistant II position on the front desk is still open.

She noted that General Counsel Shay Rose will give more detail about the upcoming Legislative session during her report but a meeting has been set to meet with Senator Massey to talk about expanding the Tennessee Human Rights Act with respect to ADA as it relates to employment issues. We currently have ADA requirements under housing but not under employment. As a result we are sending about 80 cases each year to EEOC because we cannot investigate them based on our current law as they relate to accommodations. The loss of these cases is a budget issue which we will try to cure with this legislation. She noted if anyone had questions about this she would be happy to answer them.

She indicated the newsletter that was scheduled to go out this week is now on hold due to the position vacancy and we are beginning the work on the Annual Report which will be released in September.

Executive Director Watts noted that the Annual EEOC Fair Employment Practices Conference will be held in Atlanta, Georgia from August 3 -6, 2015 which will be attended by the Executive Director and the Deputy Director, Sabrina Hooper.

She also advised that the HUD Performance Review is scheduled for next week and the Executive Director and the Deputy Director and Housing Coordinator Richard Gadzekpo will be in Knoxville all week to participate. Chair Houston has agreed to come and meet the HUD review team on July 21, 2015 at 9:00 a.m. CDT. There will also be a HUD Intake Training for staff on July 27 & 28, 2015 and the HUD Police Conference will be in Washington DC September 1-3, 2015 at the HUD Headquarters building.

Executive Director Watts then began her presentation of the THRC 2014-2015 Initial Assessment and 2015-2016 Work Plan PowerPoint presentation (Copy Attached). The presentation included an overview of agency strengths and opportunities as well as weaknesses and threats, a preliminary 2014-15 accomplishments and 2015-16 work plan for each unit. She indicated that this was preliminary and each division will provide more details regarding their 2014-15 accomplishments and work plans at the September presentation of the Annual Report. She noted that staff was asked to identify our strengths, weaknesses, opportunities and threats, accomplishments and preliminary work plan for the upcoming year.

During her presentation about Communications strategy for social media, Commissioner Derryberry noted that social media is so important as more businesses are utilizing this resource and if you don't have a good strategy in this area you will get way behind quickly. Commissioner Derryberry noted her organization suggests developing social media

strategies a couple of months in advance so that everything is approved before it ever shows up.

Executive Director Watts indicated that staff compensation was being reviewed and in some instances THRC staff salaries was lower than other agency staff. Commissioner Crafton asked if in regards to staff compensation issues throughout state government, are the jobs classified similar to civil service jobs where we could redo job descriptions to better compensate our staff. Executive Director Watts noted that job descriptions are being reviewed as well budget so we can begin the process. We initially will look at two positions. We will be discussing these items with the Department of Human Resources within the next week or so. Commissioner Crafton thanked her for her hard work to address this issue. She noted there were other positions but the outcomes will be linked to dollars and cents so we may not be successful in implementing all the changes this fiscal year.

At the end of her presentation which lasted about 20 minutes, Executive Director Watts noted that FY 2014-15 year has been challenging but we continue to review and assess our progress monthly and we accomplished the majority of the goals set for this fiscal year. Additional information and details will be provided at the September board meeting when the Annual Report is released.

She notified Commissioners that the Audit that was held last year was not completed. The Auditor's office met with THRC last year beginning in early 2014 through June. They met with us in June of this year to inform us that they were suspending the Performance audit. In via letter sent to us recently they noted the issues they found which were the failure to send 100 day letter as required on HUD housing cases and that case processing in Title VI was not consistent with standard operating procedures. These issues have been corrected and we continue to monitor these issues. The Auditor's office will provide this information to auditors conducting the THRC Sunset auditor which is set for 2017 but auditors will probably start in the spring of 2016. This audit and details will be discussed with the Budget and Audit committee.

Chair Houston asked if Commissioners could have a copy of the letter the auditors sent to suspending the audit. Executive Director Watts noted that she would email that letter to Commissioners. Both issues have been corrected as reported to the Commission in July of last year.

Commissioner Selberg made a motion to approve the Executive Director's report, it was seconded by Commissioner White. A vote was taken and passed.

### **Employment Case Report**

Deputy Director, Sabrina Hooper, reported on the period May 1, 2015 to June 30, 2015. During this time we received 127 inquires which resulted in 54 charges being accepted for investigation, 45 dual filed and 9 THRC only. Within the same timeframe the agency closed 34 cases with an average of 280 days of investigation. Our open inventory at the end of June 2015 was 249 cases. Five mediations closed within this timeframe resulting in \$11,410 in monetary benefits to the Complainant.

When compared to last year, we received 111 inquiries which resulted in 62 charges being accepted for investigation. The agency closed 77 cases with an average of 276 days of investigation. Our open inventory at the end of June 2014 was 236 cases. Six mediations and two settlements were closed with the total monetary benefits to the complainants of over \$26,000.

As of July 1, 2015 there were 52 mediations had been conducted and complainants were represented 7 times and respondents were represented 29 times. The comparison reflects the charges received have increased by 14% and charges accepted increased by 14%. The case closures saw a decrease of 55% however we have 34 cases in review, when closed the difference would be 12%.

Investigators are working diligently to close cases by the end of August to allow for a 30 day reconsideration period. The EEOC contract will close on September 30, 2015.

On July 9, 2015 staff training was conducted for investigators in employment during which we reviewed the SOP's to assure consistency in case processing and provided additional tools to streamline the process.

The witness customer service surveys employment, public accommodation and housing for July 1, 2014 to June 30, 2015 details that we placed 143 calls and interviewed 49 witnesses and 11 of those witnesses made comments. There were no new comments for this time period.

For the ten question surveys for Employment, Public Accommodation and Housing, 315 surveys for were sent out and 51 were returned.

At the beginning of the fiscal year, we implemented the use of Survey Monkey for the 10 question surveys. We sent out 322 surveys via email and we received 38 responses (12%). Of those responses 90% were positive.

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

### **Housing Case Report**

Richard Gadzekpo, Housing Coordinator, reported that during period of May 1, 2015 to June 30, 2015 in which time 78 inquiries were received and 26 were accepted for investigation and the primary bases for these complaints were disability, race and national origin. Twenty six no probable cause dual filed cases were closed during the period and of those were administrative closures 6 of those were within 100 days. Eleven cases or 46% of those were administrative closures and one was a withdrawal with resolution.

The chart at the bottom of the page indicates the age of the cases when they were closed.

In reviewing the statistics between 2014 and 2015 shows that there has been an increase in the number of inquiries and a decrease in the number of charges accepted. Case closures have also increased. The HUD efficiency goal currently stands at 56% and in

comparison to last year we have closed more cases but the case processing age increased. He noted that staff changes were responsible for the increase in age of cases.

The HUD performance Assessment is scheduled for July 20 – 23, 2015. Due to the focus on case closures and the HUD assessment for the month of June our monthly outreach was suspended.

Thanks were offered to staff for their dedication and the legal staff, the Deputy Director and Executive Director and appreciation was noted.

Commissioner Horne asked about the Lincoln Park situation in Chattanooga and what the position of the commission was. Title VI Compliance Director, Matthew Stephenson noted that was under his department and not the housing division.

Commissioner Selberg made a motion to accept the Housing report and Commissioner Crafton seconded the motion. A vote was taken and passed.

Executive Director Watts noted that the Lincoln Park issue is in the public view and that it was not a complaint that we could deal with because nothing had actually happened. The complaining parties have talked to the press but we will talk with you offline and let you know what is going on but we do not want this to go into the public view and the press.

We have sent information to both the complaining parties and the City of Chattanooga. We will contact both Commissioner Horne and Commissioner Derryberry from Chattanooga after the meeting.

### **Title VI Compliance Report**

Matthew Stephenson reported on the May 1, 2015 to June 30, 2015 timeframe during which 52 inquiries were received, 14 of which were accepted for investigation. Eight cases were closed during the period. He indicated that we there were 47 inquiries last year and 7 were accepted as complaints and 7 were closed.

For the total fiscal year we received 370 inquiries resulting in 82 complaints and closed 46 cases. Of those complaints received 69 were from the Department of Corrections. We have 32 open complaints of which 30 are with Department of Corrections and 2 with the Department of Education.

During the time period there was no activity with Implementation plans but we did release the upcoming year's guidelines in April and the annual training will take place at the end of July.

We have just completed five compliance reviews this year. We have completed our compliance review of Finance and Administration and received their comments. We have also completed the review of the Alcohol Beverage Commission and will be meeting with them to give them our initial findings. By the next board meeting we will present the complete reports from both of these reviews.

We received nine requests for technical assistance this period and involved appropriate complaint procedures; guidelines about non-discriminatory language on brochures; and assistance on how to monitor sub recipients.

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

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

General Counsel, Shay Rose reported that the Law and Legislation committee met on June 4, 2015 to discuss a commissioner initiated complaint for a discriminatory ad for employment by a local restaurant that was referred to us by a non-profit that handles disability rights issues. The ad was posted on Facebook and had over 200 likes and some comments. The restaurant is called Peg Leg Porker and we filed a complaint against them on June 16, 2015.

The ad said things like are you normal? Are you planning on checking into a treatment facility? If so, don't apply. Are you a hypochondriac that always thinks they are sick, if so don't apply. Are you an alcoholic, drug addict? Don't apply. If you have anger management issues, don't apply. We thought that these things all applied to people with disabilities.

The owners have requested mediation and it has been assigned to a mediator and will be done in the next thirty days.

The second issue was the Holsy case which we have reported on for the last couple of years and the ruling was not in our favor. The discussion was whether or not to reconsider the case. The committee was in favor of reconsidering the case and more details will follow as information comes in.

Commissioner Selberg made a motion to accept the Law and Legislation Committee report and Commissioner Martin seconded the motion. A vote was taken and passed.

### **Legal Report**

General Counsel, Shalini Rose, reported on the May 1, 2015 to June 30, 2015 period when legal closed 26 employment cases. Five were administrative closures and four were conciliations and two were cause cases. We also reviewed four investigative plans.

In housing we closed 23 cases of which one was an administrative closure; ten were settlements and three cases were caused. A lot of cases were closed in June and thanks were offered to Rachel Appelt, Associate Counsel for her assistance.

Four copy requests were completed and there are none currently in inventory.

Legal updates are that legal attended the THRC Employment Law Seminar and on June 18, 2015 Rachel Appelt attended the Implicit Bias training. We are considering this as a topic for our Employment Law Seminar next year.

We are looking to find sponsors for two possible bills in the legislature this year. One is to add disability accommodations to employment law. We will meet with Senator Massey on September 11, 2015 to discuss her sponsoring this bill.

We also need to update our law regarding going to court once a Cause case is found. Our law is different from the HUD law and they have indicated that we need to attempt to change our law to match theirs. We are also looking for a sponsor for this purposed bill.

Matthew Stephenson was asked to leave as he has been assigned as the mediator in one of the cases we are discussing. He left the room.

The second cause case was caused on June 1, 2015 and the complainant worked for a temp agency and was assigned to work at a business. While there she had some issues with a co-worker who was harassing her and she complained about the harassment regarding gender and race to her supervisor.

The very next day the respondent called the staffing agency and said they wanted to terminate her employment. We found that evidence supported retaliation. The respondent is interested in conciliation and we are having a hard time finding the complainant but we are moving forward with the case.

In housing, the first case is a disability case about failure to grant a reasonable accommodation where the tenant requested a first floor apartment due to mobility impairment. The respondent did not grant her request and also required the requests be in writing which is not compliant with the law. Both the complainant and respondent are represented, the respondent has agreed to move her when a place is available and mediation will be scheduled.

The second housing case is also a failure to grant a reasonable accommodation for two support animals that was caused in June. One animal was a dog for paranoia and the other was a snake for anger management and she had a doctor's statement stating her need for the animals. The respondent denied her request for the snake but approved her request for the support dog.

Per our investigation we felt she had shown a need for both animals and the respondent should not have denied her request based on his own stereotypes of the animal. Both parties are interested in mediation. The respondent says that they cannot have a snake in public housing.

The third is a housing case and a failure to grant a reasonable accommodation asking that the landlord change the date that her rent was due to her being charged late fees because she did not receive her social security check until after the date that late fees were charged. She always paid her rent in full. The respondent would not grant the accommodation requested.

She needed a THDA form filled out to get her voucher but he told her that he would not fill it out unless she got THRC off his back. He then gave her a notice to vacate. We caused it

for the accommodation and retaliation. Both parties have agreed to mediate and Matthew Stephenson has been assigned as the mediator.

Commissioner Selberg made a motion accept the Legal report. It was seconded by Commissioner Martin. A vote was taken and passed.

### **Communications Report**

Executive Director Watts reported on the period May 1, 2015 to June 30, 2015. The staff participated in 15 education and outreach events. Seven of the events were speaking engagements. We reached over 4,000 people for the period and the year to date total of people reached is 31,000+.

During the time period the Employment Law Seminar was held. We were in the press twice. One, which involved a bullying case in Springfield and WXMV television interviewed her about how individuals could file complaints. The other involved a homeowner association asking a resident to remove a wheelchair ramp that was put there to assist the husband who had suffered a stroke. There was a face time interview with WXMV about rights and responsibilities as it relates to these issues.

This is an ongoing issue that we will continue to review but it is in the public view and involves the HOA and was quite contentious because the attorney for the HOA wrote a letter to the homeowner threatening that if the ramp was not removed within ten days that they would take it down and charge them a fee.

The homeowner was a pastor and the HOA thought that he was holding church services at his home because there were a lot of cars there because he received a lot of visitors. Negotiations are taking place and we will continue to monitor the situation.

The Employment Law Seminar which we partnered with Department of Human Resources on was held on June 16, 2015 and was attended by 179 and Chair of the EEOC, Jennie Yang was the keynote speaker. We received 91 evaluations back and on the 5 point scale only 2 included less than 4 or 5. Kim Vance with Baker Donelson got high marks; attendees liked Chair Jennie Yang and they liked the employer issues.

Some suggestions were for next year were ADA, FMLA, GINA, and Social Media and bullying in the workplace. Thanks were offered to Erica Kesse, Shay Rose, Frank Guzman, Matthew Stephenson and staff that helped to make the event run smoothly. She noted that 179 attendees was the largest group we have ever had and that we are quickly outgrowing the space. There were ten people that showed up and wanted to attend but there was no room.

We will begin planning for the event for 2016 in November of this year and we will keep you informed of that progress.

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

### **Holsey Case Discussion**

Shay Rose, General Counsel, spoke to the Commission about the Holsey vs. Coffee County case that went to a hearing in 2012 with the ALJ. In 2010, the Commission found that the evidence showed that Complainant who was a corrections officer with the Coffee County Sheriff's Department was terminated because of his race which is African American.

The main issue had to do with the Sheriff's Department's inconsistency throughout the investigation when it gave reasons for his termination. They could not settle on one reason. All the other corrections officers were Caucasian and had done things that we found to be worse than what they were saying Mr. Holsey did, and we felt like he was treated differently.

For example, one of the other corrections officers had a drug problem, one let an inmate escape and ultimately they said the reason that Mr. Holsey was terminated was that he had a bad attitude when he served breakfast. Then later it was because of job abandonment.

It went to a hearing in November of 2012, and we received the initial order at the end of May of 2015. It took two and a half years to get that which is very unusual. We had very little time once we got the initial order to decide what we were going to do. The Law and Legislation Committee met, and they decided to give us permission to reconsider it. Since there was no action taken on the reconsideration, it automatically expired after 20 days. That became effective on July 2, 2015.

That gives us 15 more days before it becomes a Final Order which will end tomorrow. Today is the last day that the Commission can do something, if you want to do something. The options are to take the case up on your own motion to review it and decide if you think it should be affirmed meaning that you agree with the ALJ; you could decide that it be remanded and sent back to the ALJ with new instructions; or you can decide that it should be reversed, meaning the Commission could reverse the decision and come up with your own order.

This is because the ALJ is considered the Commission's hearing officer, so the Commission has the ultimate control over the outcome of the case. The final option is that you do nothing which affirms the ALJ's position, and it becomes a Final Order.

General Counsel Rose explained that because she and the other attorney were both involved at the hearing level, they could not advise the Board as the attorney for the agency. When a decision is made, you must take a vote on what you will do. If you want to take it up, you will have to provide a reason why. *At this time, the meeting was turned over the Executive Director Watts.*

Executive Director Watts noted that the decision did not have to be made today but the Board needed to decide if whether to reconsider. The Law and Legislation Committee has heard issues on this and asked to move forward with the initial appeal back to the ALJ. We are asking for the full board's vote to either consider this case or to not consider it.

We could provide you all the materials along with an attorney that we can find to advise you about the law. It could be done by the full board or the law and Legislation Committee. Commissioner Derryberry said that she would like to see it go over to the committee and get a recommendation from them back to the board. Commissioner Horne agreed with the suggestions of Commissioner Derryberry. Commissioner Martin agreed.

Commissioner Horne made a motion to take Commissioner Derryberry's suggestion to send it back to the Law and Legislation Committee who would come back to the full board with a recommendation. The full board would need additional details provided at the September meeting. Commissioner Derryberry seconded the motion. A vote was taken and passed.

Executive Director Watts noted that we will get the materials out and look at a pro bono attorney for the Committee and the full Board so that you will have someone who can provide legal advice regarding anything in the law that you might have questions about and we will get details to the committee and the commission members to include the transcript of the complaint and other details that are part of the public record.

Shay Rose noted that something would need to be filed with the Administrative Procedures Division today, and it will be a general notice that they are going to review the ALJ's decision based on her findings and analysis, and it can probably be specified by the Law and Legislation Committee at a later date. We have to put some kind of a reason, and it will have to come from the Chair. Executive Director Watts noted that we will send it out via email later today.

There were no announcements. Commissioner Derryberry was welcomed. The meeting was adjourned at 10:27 a.m. CDT.

The next meeting will be changed to the 25<sup>th</sup> of September if all commissioners agree. Each Commissioner will be contacted to determine their eligibility to attend on that date.