



TENNESSEE HUMAN RIGHTS COMMISSION
WILLIAM R. SNODGRASS TENNESSEE TOWER
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NASHVILLE, TN 37243-1102
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September 25, 2015
Board of Commissioners
Meeting Minutes

Commissioners Present:

Commissioner Eric Crafton (Phone)
Commissioner Robin Derryberry
Commissioner Chrystal Horne
Chair Annazette Houston
Commissioner Bill Martin
Commissioner Rieta Selberg (Phone)
Commissioner Julius Sloss (Phone)
Commissioner Ralph White

Commissioners Absent:

None

Staff Present:

Beverly Watts, Executive Director
Sabrina Hooper, Deputy Director
Matthew Stephenson, Title VI Compliance Director
Shalini Rose, General Counsel
T Graham Howell, Communications Officer
Lisa Lancaster, Executive Assistant

Guests:

Allen Staley, F & A Centralized Accounting
Karla Miller, Special Counsel for the Commission

Call to Order

Chair Houston called the meeting to order at 9:00 a.m. and asked for a moment of silence. Executive Assistant, Lisa Lancaster, called the roll. Chair Houston welcomed newly appointed Commissioner Robin Derryberry. The minutes of the July 17, 2015, Commission meeting were reviewed, and Commissioner Derryberry made a motion to approve and Commissioner Horne seconded the motion. A vote was taken and passed.

Law & Legislation Committee Presentation by Committee Chair Sloss

Chair Sloss thanked committee members Commissioner Selberg and Chair Houston as well as Commission staff for their preparation of materials in a timely manner. He also thanked former Commissioner Karla Miller for assisting the committee as special counsel.

Holsey vs Coffee County Summary

- Termination of an officer in the Coffee County Sheriff's Office who alleged race discrimination in his termination. THRC issued a cause finding in the case and proceeded to hearing before an ALJ. Decision from ALJ was received on May 27 2015 (2 ½ years after the hearing and only after a formal request was made) finding in favor of Coffee County.
- After review of the decision, a request for reconsideration by THRC was made. On July 2, 2015, the ALJ denied the reconsideration and the decision remained the same.
- The case was referred to the Law and Legislation Committee for review and recommendation regarding the Commission's responsibility and action.
- The committee met on September 3 and 10, 2015, with the Executive Director, the Deputy Director and subsequently with Karla Miller (Pro Bono legal advisor). NOTE: Both THRC attorneys were involved in litigating the case and as such are not able to provide legal advice to the Board of Commissioners on this case.
- Law & Legislation Committee members have reviewed the THRC Findings of Fact & Conclusions of Law, hearing transcript, Coffee County Findings of Fact & Conclusions of Law (provided on September 10), and the ALJ decision. The committee initially decided to accept the findings of fact and conclusions of law submitted by the THRC staff and recommend the full Commission overturn the initial order of the ALJ.
- After further discussion and deliberation, the Committee is recommending that the Commission conduct a further review of the ALJ decision before making its final decision including requesting from both Coffee County and THRC whether they want to submit a brief or have the Commission review the proposed findings of fact and conclusion of law submitted to the ALJ. Attorney Miller noted that a timeline of 30 days is reasonable for this request. She further noted that 10 days could be set to determine if they wanted to have the Commission review the proposed findings of fact and conclusions of law or submit a brief. If submitting a brief then it would be expected in 20 days. Attorney Miller suggested the notice could say something to the effect that pursuant to T.C.A. Section 4-5-315. you may submit a brief that outlines your position with regard to the merits of this case, or you may request that the Commission rely on your submitted proposed findings of facts and conclusions of law. If you wish to submit a brief or proposed finding of facts and conclusions of law, please notify us within 10 days. If you chose to submit a brief, the brief must be submitted twenty days after that.
- Upon notification and/or receipt of a brief, the Committee would develop a proposed order, and provide all necessary materials(Findings of Fact and/or brief, transcript, & ALJ orders) for the full board to review and confirm/reject the propose order within 30 days.
- Other items requiring additional information or clarification are the proposed award to Mr. Holsey and the awarding of attorney fees in the THRC proposed findings of fact and conclusion of law.

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

Commissioner Horne made a motion to notify the parties and provide the full board with case materials and move forward with the Commission review. Commissioner Sloss seconded the motion. A vote was taken and passed.

Executive Director Watts produced a request that was reviewed by Special Counsel Miller for Chair Houston to sign and thanked former Commissioner Miller for her assistance and excused her from the meeting.

Education and Outreach Committee Report

Chair Martin thanked the committee members Commissioner Derryberry, Commissioner Horne and Commissioner White, and the staff including T Graham Howell for taking care of preparing all the materials and making meeting arrangements. He turned the report over to Mr. Howell to summarize.

Mr. Howell noted that it was a brief meeting that included some housekeeping issues. The committee reviewed the agency Annual Report and the Title VI Annual Report. Commissioner Derryberry was welcomed to the committee. The Agency Work Plan was also reviewed and communications strategies were discussed.

Chair Martin discussed the continuation of the Jocelyn Dan Wurzburg Award, the process for nominating recipients and the time line of when the award would be given.

The committee recommended that we continue to give the award. Executive Director Watts noted that the full body could decide when to give the award. She noted that last year's recipient was Carol Berz, Chattanooga City Council President and the first award recipient was Jocelyn Dan Wurzburg during the THRC 50th Anniversary Celebration.

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

Presentation of the Annual Report

Executive Director Watts introduced the Annual Report and noted that the Unit Work Plan Presentations would be presented by staff and would identify weaknesses and threats. Throughout the process staff have created some opportunities and made some gains and met goals that were in doubt. The Agency goals and objectives are to improve case processing efficiency; Ensure/monitor state agencies compliance; and educate on rights and responsibilities under the law.

Currently we have 29 staff positions but only 27 are filled and one staff person is out on prolonged leave. It was noted that the mediators listed are agency staff. We maintain contracts with EEOC (9/30) and HUD (6/30) from which we receive approximately \$550K in revenue each year.

Deputy Director, Sabrina Hooper, reported the Enforcement Division Employment and Housing SWOT analysis showed that the Strengths were Standard Operating Procedures combined with competent staff. Weaknesses were limited budget; Public knowledge of THRC's charge; Staff absences. Our opportunities were to define THRC's role and our threats were unexpected staff absences and losses and compensation to our staff.

Our Annual Report shows that we met our renegotiated EEOC contract which runs from 1 July to 30 June.

In Housing, we have two new investigators but were still able to close 112 cases for the contract period. Our HUD efficiency goal was 56% of cases closed within 100 days which we met for the 5th consecutive year.

For the next year, our goals for employment are to identify and train 4 new mediators; complete internal audits; update SOPS; more training. Calls on the main line are recorded for training purposes to improve customer service quality.

For employment, we contracted to work 341 cases for EEOC and they will snapshot our progress which will set our contract for the following year. Because of this our contract for next year is down to 270 and if that is all that we produce our budget is in trouble.

There is currently not a backlog in inventory, cases are newly received. To meet this contract we would need to close 68 cases per quarter. If we could close 90 cases per quarter and looking at cases closed at this time we are standing at 117. If we continue at this pace we can ask for an increase in our contract.

Goals for Housing are to close a minimum of 100 cases which will give an additional bonus of 18% administrative costs. That would be 25 closed cases per quarter. They have currently closed 4 cases which puts them behind. Our goal is to close 53% of cases within 100 days.

Commissioner Sloss asked what the reimbursement was for HUD and EEOC per case. HUD pays \$2,800 and EEOC pays \$700 per case. Has the agency ever considered performance based contract investigators to help reduce aged cases, help meet federal contracts and increase our federal revenue?

Executive Director Watts suggested staff look at this issue and produce a report of statistics and information and bring to the Commission at our January meeting. She noted that our biggest issue is that our inventory is down and so is EEOC's inventory. We will review how many staff are cross-trained and see if we need to adjust staff responsibilities. She noted that our mediation program is our best asset for moving inventory quickly.

General Counsel, Shay Rose, reported the strengths of the legal division were being knowledgeable and experienced in laws, policies and rules; institutional knowledge and teamwork. Weaknesses are that workload is dependent on others; reduced resources such as no administrative staff and compensation. Opportunities are to enhance our law; increase cases reviewed. Threats are unexpected absences and staff burnout.

During the last fiscal year both attorneys were on extended leave and were still able to review 243 cases; caused 6 cases; completed 4 reconsiderations; 27 copy requests; resolved 1 cause case through mediation.

Our goals for the upcoming year are to provide legal services to staff and commissioners, focusing on case investigations, legislation, and policy and community education. We hope to resolve the 6 cause cases by mediation or hearings; Review 68 employment and 25 housing cases in the 1st quarter; Monitor legislative session and include two possible changes to our law; work with UT Law class on THRC electronic complaint form and plan for the Employment Law Seminar; provide internships for two law students; and be responsive to staff and commissioners.

Executive Director Watts recognized Shay Rose, Rachel Appelt and Sabrina Hooper for their dedication in meeting our EEOC and HUD contracts in spite of the obstacles.

Title VI Compliance Director, Matthew Stephenson identified his unit strengths as a knowledgeable staff that has been established as an authority on discrimination issues.

He noted the weaknesses as limited staff; complex processes that involve other agencies. Opportunities were that there was high public interest in Title VI issues and this was also viewed as a threat.

The annual report numbers for the 42 agency implementation plans for the first time shows they were 100% timely and 100% in compliance; we completed 5 compliance reviews. During the year we processed 370 inquiries; 82 complaints; closed 46 cases and completed two direct investigation; and answered 39 requests for technical assistance.

Our goals for the upcoming year are to repeat our 100% Implementation Plan submissions by 1 October; complaint processing 10 day turnaround; Increase case detail from other agencies; Compliance reviews schedule 8 per year and streamline the review process; Complete Title VI investigation of complaints training in November; Sub recipient monitoring guidance; online Title VI training tool for state employees; consolidating Statewide Title VI websites.

Commissioner Sloss asked about the Department of Corrections complaints from incarcerated offenders and what those complaints look like. DOC reported complaints from last year numbered 1400 and of the 370 inquiries that we processed 273 were from DOC and many times are not Title VI related per their complaint bases. Inmates are given a manual with instructions on how to file a Title VI complaint.

The Communication Division information was reported by T Howell, Communications Officer. The strengths reported were strong partnership/collaborations with 112 outside agencies; efficient/capable staff; history of department effectiveness. The weaknesses identified are budget limits and small staff. Opportunities are increasing social media contact and consistent message through different platforms and threats are budget shortfalls and staff hours.

The Annual Report numbers reported 140 outreach events reaching 34,400 individuals which is an increase of 4%; 40 media interactions which would include print, broadcast and radio; 3,236 engagements on social media; 3M individual reached.

Employment Law Seminar was attended by 178, new record attendance; held public conversations on the Status of Human Rights in Tennessee; Engaged 318 community members with 3 Fair Housing events across the state; 2 webinars partnering with EEOC attended by 175; and coordinated the Jocelyn Dan Wurzburg Civil Rights Legacy Award recipient Carol Berz.

The work plan is to meet and exceed 32 outreach events in the first quarter; analyze the efficiency of the outreach events; develop 3 additional Webinars; identify educational opportunities; expand conversations on the Status of Human Rights in Tennessee; continue our upward trend in outreach; assist Title VI with development of presentation on investigation.

Our communications strategy includes increasing traditional media coverage; creation/implementation of strategic media and public communication plans for important activities; consistent messages on Facebook, Twitter and YouTube; Use email marketing to communicate with the public; website revision; branding for materials, logo, forms and publications.

Commissioner Derryberry offered kudos to the agency for getting on the social media train. She noted that within 10 years nobody will be reading the papers.

Executive Director Watts wrapped up the presentation of the Annual Report and work plan presentation. Commission Martin made a motion to accept the Annual report and Commissioner Derryberry seconded the motion. A vote was taken and passed.

Budget and Audit Committee Report

Chair of the Budget and Audit Committee, Commissioner Selberg noted that the committee met on September 9, 2015 to review the budget documents and approved the annual budget for FY 2017. She turned the meeting over to Allen Staley, Fiscal Officer for an overview for the July 1, 2016 to June 30, 2017 budget. The total budget request is for \$2,495,300 which includes \$1,980,800 for personnel expenses and \$514,500 for other expenditures. The departmental revenue from EEOC and HUD is \$783,000 and state general funds in the amount of \$1,712,300 will fund the total budget request.

Mr. Staley noted that the federal spending authority from HUD with regards to the Katrina Grant money that we received in 2006 without reducing our spending authority was overstated in the budget request. This was in answer to a question about why the federal revenue was overstated that was asked by Commissioner Sloss. If we reduce the actual budget expenditure authority we would need to request additional state dollars. He noted that staff are working to determine the best way to address the issue.

The request also includes the agency's 29 positions and a third request for \$20K increase request for education and outreach funds.

The following pages include a further breakout of actual and estimated budget amounts and where the budget request is by programs such as Administrative, Housing, Employment, Legal, Communications and Title VI. And the next pages explain the \$20K increase request.

The last pages show where the 3.5% reduction dollars that have been requested will come from. These reduction requests have been required for the last 8 years and some have been taken and some have not. We have identified \$55,300 from operational expenditures, and \$4,600 from benefits equity to reach the \$59,900 or 3.5% of our budget.

The process is that there will be budget hearings in November with Finance & Administration which we do not have a date yet. Then F & A will compile the information and submit it to the Governor who will recommend his budget to the legislature next year. Then there will be legislative hearings in the spring.

For closing Fiscal Year 2015 we closed within budget and saved \$65K which increases our carry forward amount to \$135K.

Commissioner Derryberry made a motion to accept the Budget and Audit Committee report. Commissioner White seconded the motion and a vote was taken and passed. Chair Houston asked for a ten minute break and asked Commissioners to return by 10:40 to resume the meeting.

Executive Director's Report

Executive Director, Beverly Watts reported that the Law and Legislation Committee, Education and Outreach Committee and Budget and Audit Committees all met since our last meeting. It was mentioned that HUD has brought a proposal to have us work some of their older cases for additional income.

We will come back to the Commission with further details after upcoming discussions. We will also include case load information and policies about contracted investigators and what is required to hire them. We will have this compiled for Commissioners by the November meeting.

We have entered into a partnership with University of Tennessee and law students to develop an electronic version of our complaint form that would be user friendly and have a pop up to answer questions for user filing out the form. The updated version would be posted on our website.

We currently have an open position in employment and will be filling that soon.

Chair Houston commented that with the automation of the complaint form we need to be sure that it is accessible and offered the services of her office in assisting with this task. She has also shared her resources in the release of our Annual Report on line. THRC noted its thanks for her staffs' assistance.

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

Employment Case Report

Deputy Director, Sabrina Hooper, reported on the period July 1, 2015 to August 31, 2015. During this time we received 126 inquiries which resulted in 73 charges being accepted for investigation. There were 90 complaints closed with an average age of 280 days of investigation. Our open inventory at the end of August 2015 was 224 complaints. Three mediations and two settlements closed within this timeframe resulting in \$52,410 in monetary benefits to the Complainant.

When compared to last year, there was a 6% increase in charges being accepted for investigation, 40% increase in charges accepted and 91% increase in complaints closed. The staff worked diligently to close aged cases and this decreased the open charge age by 72 days for the time period.

During these months a lot of attention is given to closing complaints in an effort to complete the negotiated contract. The FY 2015, contract was set for 341 complaints. As stated earlier, we experienced multiple staff with extended leave at various times throughout the year. These absences directly impact our ability to submit and close complaints. Given this, our contract was re-negotiated and decreased from 341 to 310. Even this new contract was quite a challenge. I like to publicly thank the investigators and the legal staff for diligently working to meet this new goal.

For the witness surveys for Employment, Public Accommodation and Housing from July 1, 2015 to August 31, 2015 we placed 31 calls and interviewed 8 witnesses. All agreed that their contact with the agency was positive and professional and that they would refer others to our agency.

For the ten questions surveys for Employment, public Accommodation and Housing for the same period 92 surveys were sent out and 5 were returned with their answers also positive except for the one that said they had no opinion for all questions. Survey Monkey results were 44 sent out and 2 were received.

For the Housing Report for the same period 50 inquiries were received and 37 were accepted for investigation, four cases were closed and three of those were under 100 days placing our HUD efficiency goal at 75%. There were two conciliations resulting in \$500 in monetary benefits to the complainant.

In comparison to last year 2014, we received 62 inquiries and 32 were accepted for investigation. We closed 11 complaints of which 7 were under 100 days or 63% for the HUD efficiency goal. Four complaints close as conciliation resulting in \$4,798 in monetary benefits to the complainant. There is a need to increase complaint closures. Investigators have been asked to identify three complaints which they will be able to close and work at having them close by end of month.

On July 21-23, 2015, The Housing Division successfully completed the FHAP Performance Assessment for 2014/ 2015 fiscal year. We have not received the official report however, based on the exit interview we exceeded the HUD efficiency goal for processing 50% of complaints within 100 days and closed 100% of all aged complaints. Even with all the staff challenging, this goal has been met or exceeded for the past five years. It should also be noted, the HUD monitor has requested to use our complaint templates as examples for other FHAP agencies. Sincere thanks the Director, Deputy Director, our Legal Staff and the Investigators for a great job well done.

Commissioner Derryberry made a motion to accept the Employment and Housing reports and Commissioner Horne seconded the motion. A vote was taken and passed.

Title VI Compliance Report

Matthew Stephenson reported on the July 1, 2015 to August 31, 2015 timeframe during which 46 inquiries were received, 13 of which were accepted for investigation. Nine cases were closed during the period leaving 37 in open inventory to include 33 in Corrections, 1 at DHS and 3 in Education. In comparison to the previous year we received fewer inquiries.

Implementation plans are beginning to be received and the reviews have commenced. Our compliance review of ABC is complete and corrective action plan was agreed to which related to their training policy and the adoption of a plan to track racial information of those denied a license or those suspended.

During the month of July we held our annual Technical Training there were 56 attendees. Report cards were issued to Department heads during the morning session and new coordinators were trained and then all coordinators were updated on the guidelines During the period 5 requests for technical assistance were received.

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

Legal Report

General Counsel, Shalini Rose, reported on the July 1, 2015 to August 31, 2015 period when legal closed 79 employment cases. Five were administrative closures and three were settlements and two were cause cases. We also reviewed four investigative plans and completed one reconsideration.

In housing we closed 4 cases. There were three settlements, and we have three cause cases. There were no reconsiderations, and four copy requests were completed.

We have an intern from Vanderbilt University. Her name is Tracee Clements, and she is a second year law student. We are looking to find sponsors for two possible bills in the legislature this year. One is to add disability accommodations to employment law. The other is to update our law regarding going to court once a cause case is found. Our law is a little different from HUD's law, and they have indicated that we need to attempt to change our law regarding this provision to match theirs.

General Counsel Rose participated in a panel at the Labor Management Conference in August and in September participated in the University of Tennessee Law collaboration to automate our complaint form.

The Commission-initiated case about potential discriminatory advertising in employment is moving along, and mediation has been requested. They have already removed the ad from Facebook.

The first cause case is the Holsey case which is being reconsidered by the Commission.

The second cause case was caused on June 1, 2015. 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 she felt 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. They have tentatively settled and terms will be presented at the next meeting.

In housing, the first cause 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. The parties have tentatively reached a settlement.

The second housing case is also a failure to grant a reasonable accommodation for two support animals. One animal was a dog and the other was a snake, and the Complainant had a doctor's statement stating her separate needs 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 stereotypes of the snake. Both parties are interested in mediation.

The third is a housing case involving a failure to grant a reasonable accommodation asking that the landlord change the date that Complainant's rent was due so she wouldn't be charged late fees because she did not receive her disability check until after the date that late fees were charged. She always paid her rent in full each month. The respondent would not grant the accommodation requested. When the Complainant needed a THDA form filled out to get a voucher, we found Respondent told her that he would not fill it out unless she got THRC off his back. When she indicated she couldn't do that, he then gave her a notice to vacate. We caused the case for failure to accommodate and for retaliation. Mediation on August 6, 2015 was an impasse, and the case was filed with the Administrative Procedures Division last Friday.

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

Communications Report

Communications Officer, T Howell, reported on the period July 1, 2015 to August 31, 2015. The staff participated in two education and outreach exhibits, seven speaking events and 13 education and outreach events. We reached over 2,770 people for the period and the year to date total of people reached is 3,120. One advertisement was placed for the EEOG fund raising gala event.

There was one media interview in July when Director Watts was interviewed by the Women's Radio network where 50,000+ were reached. One press release went out announcing Commissioner Derryberry's appointment to our Commission and there was one article published that came out of the Speaker of the House' office.

There was a blog post that specifically mentioned our agency but we have no record of the person that wrote it.

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

Executive Director Watts noted that Francis Guess, who recently passed away, served on this Commission for over thirty years and served as Chair of the Board a good number of those years. The Community Foundation of Middle Tennessee is setting up a Bridge to Equality Fund in his honor. We will collect funds from Commissioners and staff and make one donation from the Commission to the fund in early December.

Commissioner Martin made a motion to accept donations and Commissioner Derryberry seconded the motion.

The next Commission meeting will be November 20, 2015 is scheduled to be telephonic unless it needs to be in person. Commissioner Derryberry made a motion to adjourn and Commissioner Martin seconded the motion. A vote was taken and passed. The meeting was adjourned at 11:12 a.m. CDT.