



West Virginia Human Rights Commission

Annual Report
FY 2008-2009



SERVING ALL OF WEST VIRGINIA



**State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HUMAN RIGHTS COMMISSION**

**Joe Manchin III
Governor**

**1321 Plaza East, Room 108A
Charleston, WV 25301-1400
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**Martha Yeager Walker
Secretary**

December 1, 2009

**The Honorable Joe Manchin III
Governor, State of West Virginia
State Capitol Building
1900 Kanawha Blvd. East
Charleston, WV 25305**

**Members of the West Virginia Legislature
State Capitol Building
1900 Kanawha Blvd. East
Charleston, WV 25305**

Dear Governor Manchin and Members:

It is with pleasure that I present to you the 2008-2009 Annual Report which documents a year of the many activities of the West Virginia Human Rights Commission. This report will provide information on the past year's activities and outline future programs which are designed to ensure the Commission not only meets, but exceeds its mission.

The Human Rights Commission vigorously continues to safeguard the human rights laws of the citizens of the great State of West Virginia. The Commission's mandate of administering and enforcing those laws assures equal protection in the areas of employment, housing and public accommodations to all West Virginians.

The support we have received this past year from you, Governor Manchin, and the West Virginia Legislature has enabled this Commission to work more diligently in our efforts to eradicate discrimination and protect civil and human rights in West Virginia.

A handwritten signature in blue ink that reads "Ivin B. Lee".

**Ivin B. Lee
Executive Director**

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MISSION STATEMENT



The West Virginia Human Rights Commission will encourage and endeavor to bring about respect, tolerance, and mutual understanding among all citizens of West Virginia regardless of their race, gender, religious persuasion, ethnicity, or disability.

The Commission will administer and ensure adherence to, through education, investigation, mediation, and adjudication, the Human Rights Act which prohibits discrimination in employment, housing, and places of public accommodation.



DECLARATION OF POLICY



It is the public policy of the State of West Virginia to provide all citizens equal opportunity for employment, equal access to places of public accommodation and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age (40 and above), blindness or disability. Equal opportunity in housing accommodations or real property is hereby declared a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, disability or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

Unlawful discrimination damages both the individual and society in a myriad of ways, not the least of which is shame and humiliation experienced by the victim -- feelings that diminish the person's ability to function in every area of life. Society is damaged by the unwarranted and foolish refusal to accept an individual's talents and efforts merely because of race, sex, religion, age, color, ethnicity or disability. With regard to housing, discrimination strikes at the dignity of the individual. It says to the victim that no matter how much money you have, no matter what your social position, you cannot live here.

DECLARATION OF POLICY (CONT.)

Specifically, the West Virginia Human Rights Act prohibits discrimination by any employer employing twelve (12) or more persons within the state for twenty (20) or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: Provided that such terms shall not be taken, understood, or construed to include a private club, based on race, color, religion, national origin, ancestry, sex, age (40 and above), blindness or disability in the selection, discharge, discipline or other terms and conditions of employment. The Act also prohibits any advertisement of employment that indicates any preference, limitation, specification or discrimination based on race, religion, color, national origin, ancestry, sex, age (40 and above), blindness or disability.

Lastly, it is unlawful under the Act to retaliate or discriminate in any manner against a person because the person has opposed a practice declared unlawful by this Act or because the person has made or filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing concerning an unlawful practice under the Act.

The Fair Housing Act protects each person's right to personal dignity and freedom from humiliation, as well as the individual's freedom to take up residence wherever the individual chooses. This Act prohibits discrimination in housing based on race, religion, color, sex, national origin, ancestry, disability and familial status (the presence of children under the age of 18 years of age in the household). Wide ranges of discriminatory practices are prohibited, affecting a variety of persons and businesses. Realtors, brokers, banks, mortgage lenders, insurance companies, developers, real estate buyers and sellers, landlords and tenants are all affected by the Fair Housing Act. It is important that all those covered by the Act know their rights and duties under the Act.



HIGHLIGHTS OF THE WEST VIRGINIA HUMAN RIGHTS ACT



The West Virginia Human Rights Act (W.Va. Code §5-11) was enacted in 1961 and is administered and enforced by the West Virginia Human Rights Commission.

Employment Discrimination and Harassment **W.Va. Code §5-11-9(1)**

It shall be an unlawful discriminatory practice...For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment...

Public Accommodations Discrimination **W.Va. Code §5-11-9(6)(A)**

It shall be an unlawful discriminatory practice...for any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to: (A) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness or handicap, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations;...

Reprisal Related to Employment or Public Accommodation **W.Va. Code §5-11-9(7)(A)(C)**

It shall be an unlawful discriminatory practice for any person to...(A) Engage in any form of threats or reprisal,...or otherwise discriminate against any person because he has...filed a complaint, testified or assisted in any proceeding under this article.

Housing Related Reprisal and Intimidation **W.Va. Code §5-11-9A-16**

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by sections four, five, six or seven...of this article.

The West Virginia Code is available in public libraries and on the Legislature's web page at <http://legis.state.wv.us/>

THE COMMISSIONERS



Ellen Allen
Mercer County



Helen Bond
Berkeley County



Dr. Darrell Cummings, Chair
Ohio County



Karl Gattlieb
Kanawha County



Wesley Dobbs
Marion County



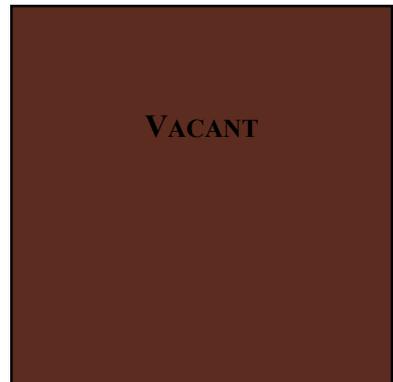
Timothy Hairston
Monongalia County



William L. Williams,
Vice Chair
Logan County



Lisa Younis
Jefferson County



VACANT

ROLE OF THE COMMISSIONERS



- ◆ Set policy for the Commission.
 - ◆ Act as an appellate body for cases appealed from a final order of an administrative law judge. All cases on appeal are confidential and Commissioners should not inform anyone about what is discussed during the deliberation of these cases.
 - ◆ Approve modifications and/or amendments to procedural, legislative and interpretive rules and regulations.
 - ◆ Have an awareness of civil rights issues at the local and state level. Develop appropriate strategies to address these issues with the advice of the Executive Director and the community.
 - ◆ Be visible in their communities and throughout the state.
 - ◆ Provide assistance and information to individuals needing the agency's services.
 - ◆ Form advisory committees and hold public hearings, as appropriate.
 - ◆ Attend monthly meetings. Commission meetings are held on the second Thursday of every month, unless otherwise agreed. All meeting times, location and agenda are posted on the Secretary of State's website. Commission meetings, except for executive session, are open to the public.
 - ◆ Receive ongoing training from the staff of the Human Rights Commission, the Attorney General's Civil Rights Division and other invited members of the community and the West Virginia State Bar.
- 

EXECUTIVE DIRECTOR

IVIN B. LEE



EXECUTIVE DIRECTOR

MY VISION

Ivin B. Lee
Executive Director

I hope to continue to motivate and inspire the Commission's staff to process and bring cases to a timely closure. In doing this, I believe that the people of West Virginia will be better served. To achieve this goal, there are three courses of action I am committed to.

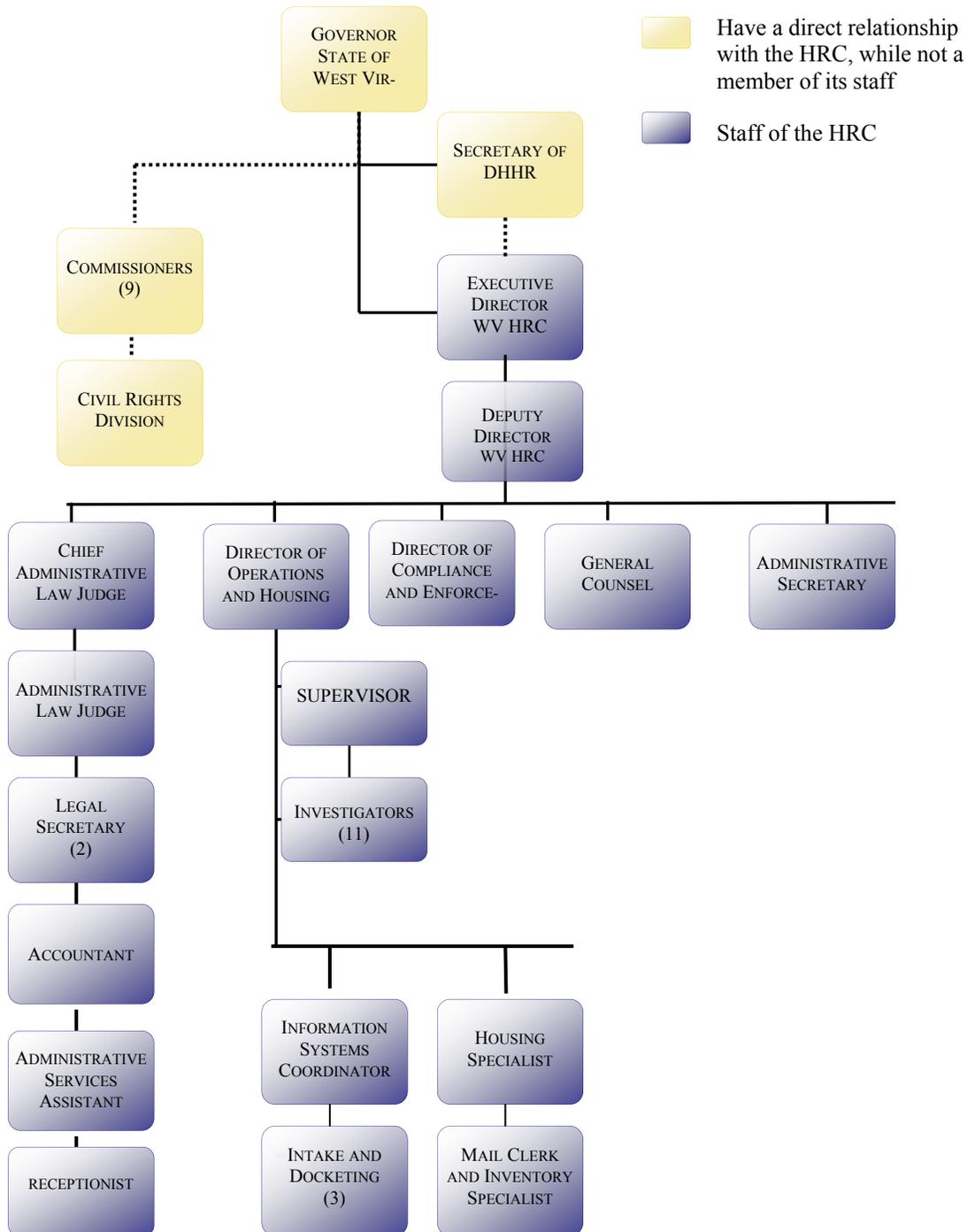
First, I am committed to hiring more experienced investigators who can conduct more efficient and effective investigations. My goal is to process cases in a timely manner without jeopardizing the quality of our investigations.

Second, I am committed to alternative dispute resolution, mainly conciliation and mediation. Conciliation and mediation are effective tools for resolving disputes between parties. That process is less time consuming and less expensive than adjudication. The Commission will continue to maximize its use of conciliation and mediation whenever possible.

Third, I am committed to education. Education is a major key in eliminating all forms of discrimination. I will continue to set up dialogues of understanding between the Commission and all West Virginians to promote public awareness of the goals and objectives of the Commission and reduce the level of intolerance among all cultures.

I am striving to build credibility, team effort and respect between the public and the Commission.

HRC ORGANIZATIONAL CHART



STAFF OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

CHARLESTON OFFICE

OFFICE OF THE JUDGES



Phyllis H. Carter
Chief Administrative Law Judge



Robert B. Wilson
Administrative Law Judge



Rebecca Lester
Legal Secretary



Joyce Knotts
Legal Secretary

EXECUTIVE DIVISION



Brian W. Wells
General Counsel



Monia Turley
Administrative Secretary



Marykaye Jacquet
Deputy Director

**INVESTIGATIVE AND
COMPLIANCE
ENFORCEMENT
STAFF**



Yodora P. Booth
Director of Operations and Housing



Paul W. Cook
Information Systems
Coordinator



Jackie Heath
Director of Compliance
& Enforcement



Marshall Moss
Housing Specialist



Paul Hamilton
Field Investigator



Sally Brown
Investigator



Joshua Brown
Housing Investigator



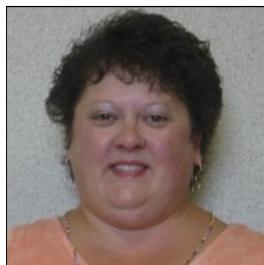
Arthur Duiguid
Investigator



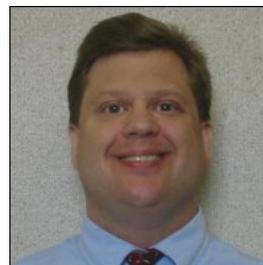
David Fix
Investigator



Richard Mangus
Investigator



Tausha Rucker
Investigator



James Slack
Investigator



Carolyn Smith
Investigator

**FINANCE AND
ADMINISTRATIVE
DEPARTMENT**



James L. Johnson
Director of Finance and
Administrative Staff



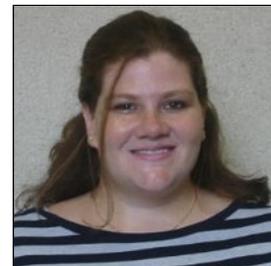
William Bailey
Mail Clerk/Inventory
Specialist



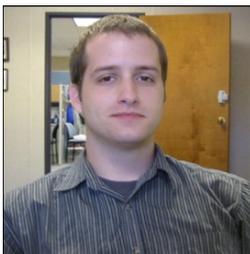
Leola Bateman
Compliance Secretary



Lisa Gist
Administrative
Services Assistant



Esther Hupp
Administrative
Services & Docketing



Christopher Nelson
Receptionist



Wilda McGill
Intake and Docketing



Glenda Sue Means
Intake and Docketing



Alice Riffie
Accountant/Auditor II

Linda “Sam,” Tucker Bowers

February 1953 – March 2008



On March 17, 2009, the staff and friends of Linda Tucker Bowers bid a sad farewell to one who had worked so faithfully for the Human Rights Commission approximately 12 to 14 years.

Linda was one of the two individuals who staffed the WVHRC's Huntington office. She worked there as an Investigator and made frequent trips to the Charleston office to attend the weekly Triage sessions. Linda's passing was sudden and a shock to all those who loved her and enjoyed her jovial personality. She was a tremendous asset to the Commission the entire time she worked for the agency; which reflected in her job performance, professionalism, and her overall dedication to the citizens of West Virginia.

Few individuals knew that Linda silently struggled with diabetes, for she rarely complained or made reference to her illness; which made her sudden passing all the more difficult for her co-workers. She loved people and loved making people happy. Despite diet restrictions of her own, she would often bake Brownies, cookies and other treats for the staff.

In honor of her memory the Commission made the decision to make a donation to the Diabetic Fund of West Virginia Health Right, Inc. The donation will help others who are struggling in their fight against Diabetes. *(Pictured below is Joyce Knotts, a Secretary with the Human Rights Commission, presenting that donation to Pat White, Executive Director of West Virginia Health Right, Inc.)*

*“And He said . . . “Will you follow?” And she with haste replied, I will,
Over every shallow stream and valley” Every low plane and mountain steep hill.”*

He said, “Take my hand and I will lead you, Be not afraid along this quest . . .

For this journey we will travel together,

As you enter your Eternal rest.”

by Margkaye Jacquet

*Parti mais non oublié”
(Gone but not forgotten)*



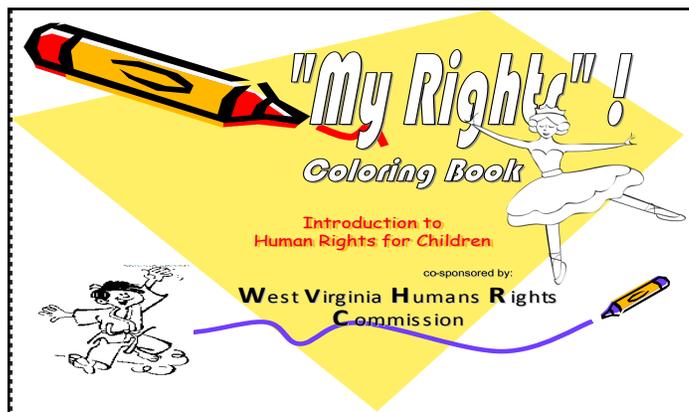
COMMUNITY OUTREACH

Commission staff conducted several training sessions and informational seminars and lectures to community organizations, private corporations, businesses, public agencies and educational institutions throughout the state.

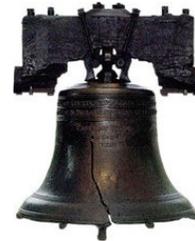
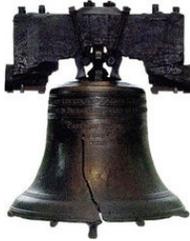
What follows are examples of the Commission's community outreach.

CHILDREN'S RIGHTS AND AWARENESS 2008-2009

A project entitled, "My Rights Coloring Book", spearheaded by Deputy Director Marykaye Jacquet, was developed for young children, Kindergarten through 3rd grade; which introduces them to their rights as young citizens who may fall victim to acts of discrimination; according to the West Virginia Human Rights Act. The Commission presented over 250 copies of the coloring book to students at Piedmont and Grandview Elementary School, as well as presenting a coloring book particularly on "Fair Housing information" to 3rd and 4th grade students at Chandler Elementary.



**West Virginia Civil Rights Day
Luncheon and Awards Ceremony**
February 29, 2009



Joe & Gayle Manchin
Governor and First Lady
of West Virginia

FROM WHENCE WE CAME

Sponsored by:



Proclamation

By Governor Joe Manchin III

Whereas, equal rights and opportunities for all West Virginians are fundamental to our well-being, and these rights and opportunities are protected in our Declaration of Independence and in our state's Constitution; and,

Whereas, equal opportunities in employment, public accommodations and housing are public policy in West Virginia; and,

Whereas, the West Virginia Legislature created the Human Rights Act prohibiting discrimination in employment and in places of public accommodations based on race, religion, color, national origin, ancestry, sex, age or disability; and,

Whereas, the West Virginia Human Rights Commission encourages mutual respect among all racial, religious and ethnic groups within the state; and,

Whereas, it works cooperatively with government agencies, community and civic organizations and representatives of minority groups to promote programs and campaigns devoted to the achievement of tolerance, understanding and equal protection of the law;

Now, Therefore, Be it Resolved that I, Joe Manchin III, Governor of the State of West Virginia, do hereby proclaim **February 29, 2009**, as:

Civil Rights Day

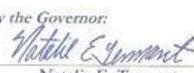
in the Mountain State.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

Done at the Capitol, City of Charleston, State of West Virginia, this the Twenty-second day of January, in the year of our Lord, Two Thousand Eight and in the One Hundred Forty-sixth year of the State.




Joe Manchin III
Governor

By the Governor:

Natalie E. Tennant
Secretary of State

2009 Honorees

On February 29, 2009, in celebration of the Governor's Civil Rights Day, the Commission and its partners presented awards to honor members of the community who have helped champion the cause for equality throughout the state at the 7th Annual Civil Rights Day Luncheon, hosted by the West Virginia State University Student Union. Mary Jo Thompson, the Governor's Office Director of Constituent Services, presented special medallions and plaques to the honorees pictured below. Special thanks to Arnett & Foster for their generous sponsorship of this year's event.



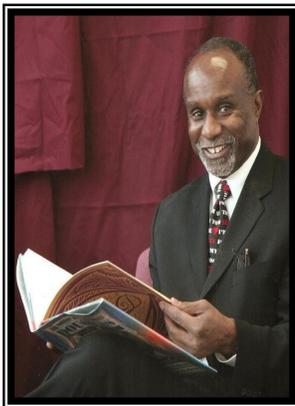
William Anderson



Raymond J. Hammarth



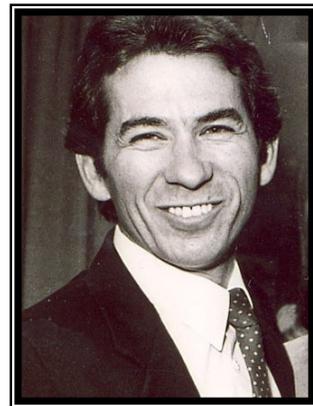
Lenora Harmon
(posthumously)



Gregory T. Hinton, J.D.



Bernice Johnson



James C. Karantonis

2009 Honorees



Mae Stallard



David Stewart



Margaret Taylor



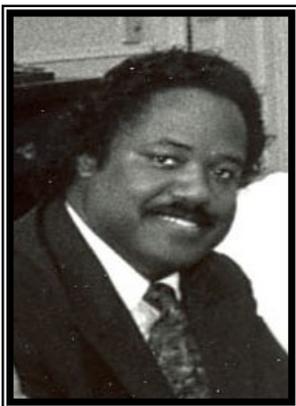
Wendy Thompson



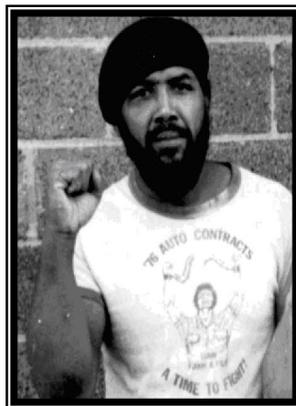
Russell Van Cleve
(posthumously)



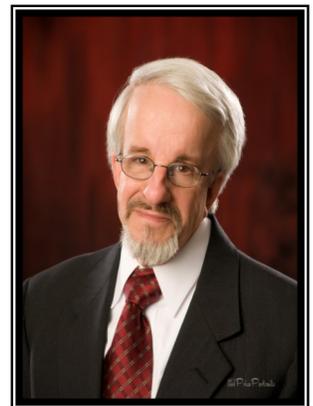
Winifred W. White



Brian Williams



Claude Williams



Thomas Zerbe, J.D.

2009 Civil Rights Day

Photos courtesy of Quewanncioi Casanova Stephens, Sr.



Dr. Hazo W. Carter, Jr., President of West Virginia State University, welcomed guests. West Virginia State University hosted the 2009 event.



Mary Jo Thompson, Director of Constituent Services at the Governor's Office, presented the proclamation from the Governor to this year's sponsor representatives - Jack Rossi and David Hill of Arnett & Foster.



Honorees and those accepting on behalf of honorees await the presentation of the awards. Carlene Hampton accepted for her grandmother, Lenora Harmon. Howard Kenney accepted for friend and former colleague, James C. Karantonis. Brian Williams, Jr. accepted on behalf of his father, Brian Williams.



Guests showed up in record attendance, making the 2009 event the biggest in the West Virginia Human Rights Commission's history.



Guests, like Brandi Klein and Denise Johnson of the Ohio Civil Rights Commission, traveled many miles in order to show their support.

Children's Rights and Awareness

April 1, 2009

The West Virginia Human Rights Commission participated in the 59th Annual Spring Luncheon, sponsored by the Kanawha Valley Inter-Faith Council and Church Women United, at St. John XXIII Pastoral Center. The theme for the luncheon was “Human Rights for Children—Helping to Promote Healthy Children and Families.” The luncheon provided another opportunity to distribute the “My Rights” coloring book for children to the attendees.

Celebrating Fair Housing Month

April 2009

Wednesday, April 15, 2009—Raleigh County Armory, Beckley, WV

In recognition of Fair Housing Month 2009, The West Virginia Human Rights Commission, sponsored several events in celebration of the 40th anniversary of the passage of the Fair Housing Act. The events began on Wednesday, April 15, 2009. The West Virginia Human Rights Commission, in partnership with the Beckley Human Rights Commission, sponsored a Fair Housing Seminar at the Raleigh County Armory in Beckley, West Virginia. The free seminar was co-sponsored by the NW Center for Independent Living.

Speakers for the seminar included a warm welcome from Beckley Mayor, Emmett Pugh. Mary Mason and William Howe, of the West Virginia Housing and Development Fund, were on hand to update the audience on the most recent developments in Landlord/Tenant practices. Carol Boster with the West Virginia HUD office gave a brief update. Other speakers were: Emily Markel, representing the NW Center for Independent Living and Marshall Moss, Investigator/Housing Specialist with the West Virginia Human Rights Commission. The theme for the event was: “Fair Housing is Not an Option. It's The Law!”



Celebrating Fair Housing Month (cont'd)

April 2009



Beckley Mayor, Emmett S. Pugh, III and
Beckley Human Rights Commission Director, Elmer Day

Thursday, April 23, 2009 — Temple of Faith Church, Cross Lanes, WV



The emphasis of the workshop was mortgages and mortgage lending and how to file a housing complaint. Randy Morgan, Vice President of Chase Bank in Charleston, was the guest speaker along with Marshall Moss, Housing Investigation Specialist, with the WVHRC.

Friday, April 24, 2009 — Chandler Elementary School, Charleston, WV

“Know your Housing Rights” - presentation to grades K-3rd graders at Chandler Elementary school.

The “My Rights Coloring Book” was officially introduced and distributed to more than 125 students, making Chandler Elementary the very first school in the Kanawha Valley to receive the books on their premises. Thanks to Principal, Mellow D. Lee, the students were extremely pleased to know they had been chosen for such a special honor.



Faith Based Initiative Through Community Outreach **April 30, 2009**

The West Virginia Human Rights Commission, in partnership with West Virginia State University's College of Professional Studies, the West Virginia Council of Churches, and the Charleston Black Ministerial Alliance, co-sponsored an in-depth, three-part training session, through a Faith Based Initiative that brought Church Leaders together with leaders in the Community to discuss issues in the areas of: **Unconscious Bias, Cultural Diversity, Racial Discrimination, and Domestic Violence.**

The 2008 Initiative ended on April 30, 2009, at West Virginia State University with, keynote speaker, Rev. Dr. Chestina Mitchell Archibald, of Washington, D.C. Rev. Dr., Archibald is a nationally known Christian preacher, educator, and motivational speaker; selected by the Staley Foundation as one of its most distinguished Christian scholar lecturers; named to the list of Who's Who Among American Women in 2007-2008 and a Tennessee Supreme Court Rule 31 Certified Mediator.

Dr. Archibald challenged the attendees, in the following: "Faith, Focus and Follow-through." She instructed community leaders to always make **SMART goals** - (Specific, Measurable, Attainable, Reasonable, Time Table)

Her overall suggested plan for the future of the Initiative is to:

1. Make community-based groups an integrated part of ongoing community and economic development.
2. Support for women and children.
3. Support to fathers who stand with their family and children.

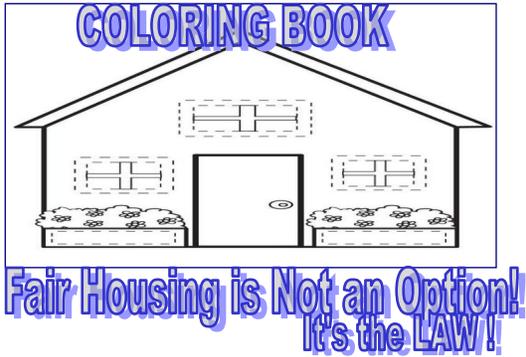


Rev. Dr. Chestina Mitchell Archibald
Keynote Speaker

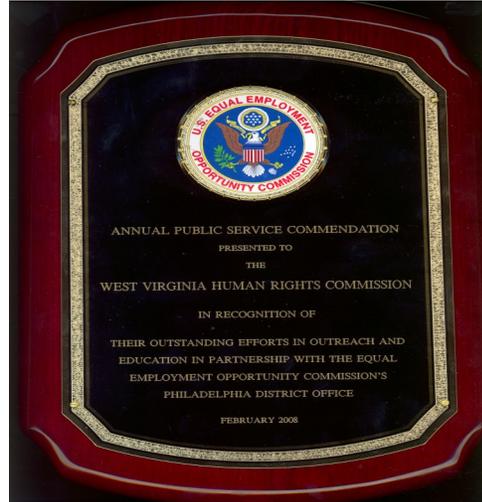


Dr. Robert L. Harrison, Dean
WVSU College Professional Studies

WVHRC OUTREACH 2009



Chandler Elementary School - 3rd and 4th graders learn about Fair Housing Laws and Housing Discrimination, with the help of a specially designed and illustrated coloring book with information appropriate to their age group.



EEOC Public Service Commendation 2008



Goodwill Industries of Kanawha



Special Presentation for Developmentally Challenged



WVHRC receives recognition for its presence and service to the Community



COMMUNITY RELATIONS

The following section represents the relationships the West Virginia Human Rights Commission maintains with community groups, agencies and businesses as part of its effort to educate and serve the community as a whole.

- ◆ **Appalachian Power**
- ◆ **The Charleston Job Corps Center**
- ◆ **The Equal Employment Opportunity Commission**
- ◆ **Marshall University Multicultural Affairs**
- ◆ **Martin Luther King, Jr. West Virginia Holiday Commission**
- ◆ **The National Federation of the Blind**
- ◆ **Upward Bound at West Virginia State University**
- ◆ **West Virginia State University**
- ◆ **West Virginia Women's Commission**
- ◆ **Office of the Governor**

PARTNERS

State of West Virginia, Office of the Governor

West Virginia State University

Charleston Job Corps Center

Appalachian Power

Martin Luther King, Jr. West Virginia Holiday Commission

Marshall University Multicultural Affairs

Appalachian Power **Charleston, West Virginia**

Through its partnership, Appalachian Power supports the many outreach activities conducted by the Commission and provides valuable resources. The Commission, in turn provides valuable training opportunities to the management and staff of Appalachian Power through invitations to seminars and workshops like this year's EEOC Employer Seminar.

Charleston Job Corps Center **Charleston, West Virginia**

Event Hosting

The Charleston Job Corps Center hosts several Commission events, including the Annual Civil Rights Day. The students of the Charleston Job Corps Center provide event catering and guest service support, for which they receive educational credit and practice interacting with business owners, government representatives and the media.

Internship Program

The Commission extends to the Charleston Job Corps Center's student interns an opportunity to work at the Commission as part of their work-base requirement. The internships last several weeks allowing students to gain valuable experience in a "real world" office environment and learn about their civil rights under the WV Human Rights Act and WV Fair Housing Act. Commission staff train, coach and mentor students who are later evaluated on their performance, work product, timeliness and character by the Center staff. The nature of the work ranges from filing, word processing, answering phones, copying, attending staff meetings, greeting and assisting the public and providing basic support and interaction with the staff. Once an internship term has expired, the Commission continues to provide work-related support through references and recommendations.

The Future of the Job Corps/Commission Relationship

The Job Corps Center and Commission are constantly working to improve the community and provide outreach training to the youth of the state. With this in mind, the two agencies are working on an outreach program to inform working youth about their rights in accordance with the Human Rights Act. More and more young West Virginians, ages 14 to 20, are working part-time and full-time jobs. The proposed outreach program would visit other Job Corps Centers, local schools and surrounding communities to teach these young workers about discrimination and their right to file a complaint with the Commission if they feel their rights have been violated. The program might also include discussion on fair housing issues that may plague our youth, addressing and answering employment questions, and responding to any questions about significant purchases the students may need to make in the future (ex: loans, grants, mortgages, etc.). The program also hopes to teach the youth to value and share this education with their friends, neighbors and relatives.

Equal Employment Opportunity Commission
Philadelphia, Pennsylvania District

The West Virginia Human Rights Commission has a working relationship with the Equal Employment Opportunity Commission (EEOC). Employment cases filed with the West Virginia Human Rights Commission are dually filed with the EEOC. The agencies host joint training sessions and community events.

WEST VIRGINIA STATE UNIVERSITY
Institute, West Virginia

In partnership with the College of Professional Studies, Dr. Robert L. Harrison, Dean... the West Virginia Human Rights Commission has implemented an ongoing “Clergy Training Day —Faith Based Initiative,” targeted at bringing area church leaders and area community leaders together to learn, brainstorm, dialogue and implement strategies to combat many of the critical, social issues that affect parishioners and individuals within the community, with regards to discrimination, domestic violence, and other issues that are of merit to the citizens throughout the state of West Virginia.

Martin Luther King, Jr. West Virginia Holiday Commission
Institute, West Virginia

Located at West Virginia State University, the Martin Luther King, Jr. West Virginia Holiday Commission (MLK HC) sponsors events that celebrate the legacy of the Reverend Dr. Martin Luther King, Jr., including the Annual Civil Rights Day Luncheon.

The National Federation of the Blind
Clarksburg, West Virginia

The National Federation of the Blind is an organization dedicated to improving the lives of individuals who are blind through advocacy, education, research, technology, and programs encouraging independence and self-confidence. Investigator Tausha Rucker serves as the Commission’s liaison to the West Virginia Chapter of the National Federation of the Blind. Ms. Rucker attends chapter meetings and offers the Commission’s assistance, when appropriate.

The Upward Bound Program at West Virginia State University Institute, West Virginia

Funded by the U.S. Department of Education, the Upward Bound Program provides fundamental support to students in preparation for college entrance. Specifically geared toward first generation college bound students (where neither parent has a college degree) and/or low-income students, this year-round program conducts tutoring sessions in schools, Saturday Challenge Sessions and a six week summer residential program. The Commission fully supports West Virginia colleges and universities participating in this program and has attended and been involved in several training events. West Virginia State University and the Commission co-sponsored a Youth Employment Workshop for Upward Bound students.

West Virginia State University Institute, West Virginia

West Virginia State University (WVSU) is a historically black university, which has evolved into a fully accessible, racially diverse, and multi-generational institution. WVSU hosts many of the Commission's events on its campus including the Annual Civil Rights Day Luncheon, special workshops such as the Youth Employment Workshop, and special public events such as the public Convocation and Reception with former POW Shoshanna Johnson.

The West Virginia Women's Commission Charleston, West Virginia

Pursuant to W.Va. Code §29-20-1, the West Virginia Human Rights Commission continues to support the West Virginia Women's Commission through its liaison, Investigator Sally Brown. Ivin B. Lee, Executive Director is an ex officio member of the Women's Commission. Ms. Brown, as the Executive Director's designee attends the Women's Commission meetings, specialized functions and events and appears at community outreach functions sponsored by the Women's Commission.



THE COMPLAINT PROCESS

The following is an overview of the complaint and investigative process.

I. Intake

Persons wishing to file a complaint or obtain more information regarding their rights may contact the Commission by telephone, US mail, or by visiting the Commission's office. Those wishing to file a complaint are provided with a background information form which will provide the Commission with all the necessary information to begin an investigation into the complaint. The complaint is evaluated to ensure it meets the minimal jurisdictional requirements, in that the harm complained of has occurred within the last 365 days, the complainant (person making the complain) is a member of a protected class, and the complaint is about an employment, public accommodation, or housing issue.

In employment and public accommodation complaints, protected classes include race, sex, age (40 and above), disability, blindness, religion, ancestry, national origin, and/or reprisal, as set forth in the West Virginia Human Rights Act. In housing complaints familial status is added to the aforementioned list, as set forth in the West Virginia Fair Housing Act. When a case meets the minimal jurisdictional requirements, it is docketed.

A docketed complaint is typed into a formal, legal complaint which is signed by the complainant and notarized by a notary public before being served upon the company/agency/persons the complainant alleged caused the harm. This company/agency/person is referred to as the respondent. The respondent is given an opportunity to respond to the allegations set forth in the formal complaint before the case is assigned to an investigator.

II. Investigation

Investigators analyze the information provided by the complainant and respondent and can request more information, as needed, to determine whether there is probable cause to believe that the respondent has engaged in unlawful discrimination under either the West Virginia Human Rights Act or the West Virginia Fair Housing Act. Throughout the investigative process, the parties may request a pre-determination conciliation to attempt to settle the dispute before a determination is made in the case. Once a determination is made by the investigative team, either party may request a review of the case, in writing, to the Executive Director.

When a determination of no-probable cause is made the complaint is dismissed and the case is closed. The complainant receives a right to sue letter and may file the action directly in Circuit Court.

When a determination of probable cause is made, the case must be set for a public hearing before one of the Commission's administrative law judges.

III. Administrative Hearing

Prior to the hearing date, an administrative law judge orders the parties to participate in the Commission's mediation process. If a settlement is not reached, the administrative law judge conducts a public hearing and determines whether there is a violation of the West Virginia Human Rights Act or the West Virginia Fair Housing Act. The administrative law judge's final decision can be appealed to the Commission, the Circuit Court, and the West Virginia Supreme Court of Appeals.

* pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-4.15



DISPUTE RESOLUTION PROGRAMS



The following information provides details on the two main Dispute Resolution Programs. These programs provide a valuable outlet for both the complainant and respondent to attempt to come to a settlement in order to avoid costly and time-consuming litigation. The Commission is proud to be a leader in utilizing this tool in order to present the parties an opportunity to resolve differences effectively and efficiently.

Settlements concluded from either program may be monetary in nature or could include a neutral work reference, a pay raise, the promise of a future job, an accommodation for a disability, anti-discrimination training, development of an anti-harassment/anti-discrimination policy in the work place, change in work shift, or simply an apology from the respondent.

Pre-Determination Conciliation Program

The Pre-Determination Conciliation Program offered by the West Virginia Human Rights Commission serves as an efficient and time-saving method to resolve complaints early in the investigatory process. The program involves two trained conciliators who are employed by the West Virginia Human Rights Commission. The conciliator acts as a facilitator to help the participants arrive at a negotiated settlement in a fair and confidential setting. This program is a free service offered by the Commission.

After a charge is filed, any party may request conciliation at any time, prior to the Commission's issuance of a determination. The Commission, after reviewing the charge and information obtained during the investigation, may determine that the involved parties could benefit from the Pre-Determination Conciliation Program. The Commission would then inquire to determine if the parties would be interested in conciliation.

If a conciliation has been conducted and the charge is not resolved, the case is returned to the investigative unit for the completion of the investigation. Upon completion of the investigation, the Commission will issue a determination of either no probable cause or probable cause.

If the parties are interested in participating in Pre-Determination Conciliation, they are directed to contact Jackie Heath, Director of Compliance and Enforcement, or Monia Turley, Administrative Secretary, at (304) 558-2616 or toll-free at 1-888-676-5546.

Mediation Program

The Mediation Program offered by the West Virginia Human Rights Commission serves as an efficient and time-saving method to resolve complaints that are in litigation. A trained mediator, who is an attorney, acts as a facilitator to help the participants arrive at a negotiated settlement in a fair and confidential setting. The parties may request mediation or the administrative law judge may order it.

If the matter is not settled at mediation, the parties proceed to the previously set public hearing before an administrative law judge. If the parties reach a settlement and execute a written agreement, this agreement may be enforced in the same manner as any other written contract in a court of law.

Request for information concerning the Mediation Program may be directed to the Office of Administrative Law Judges, Rebecca Lester, Mediation Coordinator, at (304) 558-2616 or toll-free at 1-888-676-5546.

* pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-4-.15.

FACTS AND FIGURES

Table 1: Requests for Information on Filing a Complaint FY 2009
By Method of Contact, Per Month

	Telephone	Walk-In	Mail	Total
July	123	0	0	123
August	107	7	0	114
September	99	4	1	104
October	122	13	1	136
November	97	4	0	101
December	93	4	0	97
January	94	5	0	99
February	89	0	0	89
March	112	0	0	112
April	133	6	0	136
May	84	2	2	88
June	137	4	0	120
Totals	1290	49	4	1343

Table 2: Complaints Docketed FY 2009
By Type of Complaint, Per Month

	Public Accommodation	Housing	Employment	Total
July	13	4	68	85
August	4	4	31	39
September	6	5	17	28
October	3	3	30	36
November	4	4	32	40
December	2	3	26	31
January	4	2	21	27
February	2	5	22	29
March	1	4	31	36
April	4	5	33	42
May	9	8	29	46
June	0	4	38	42
Totals	52	51	378	481

Table 3: Complaints Closed FY 2009
By Type of Complaint, Per Month

	Public Accommodation	Housing	Employment	Total
July	3	0	46	49
August	14	2	45	61
September	5	6	42	53
October	8	0	34	42
November	0	6	31	37
December	7	2	31	40
January	10	4	41	55
February	8	3	35	46
March	8	5	39	52
April	6	4	34	44
May	3	2	38	43
June	1	9	32	42
Totals	73	43	448	564

Table 4: Pre-Determination Conciliation Outcomes FY 2009

Cases referred to conciliation	48
Cases settled or closed as a result of conciliation	16
Cases returned to investigation	32
Cases transferred to the Office of Judges	0
Amount of monies generated from settlements*	\$ 70,914.88

Table 5: Mediation Outcomes FY 2009

Cases set for Public Hearing	34
Cases settled	29
Amount of monies generated from settlements*	\$ 214,000.00

Grand Total of Monies Collected Generated Through Settlements Resulting From Conciliation and Mediation*
\$ 284,914.88

The Commission's settlement rate has increased to 80% - a significant increase within the last five years encompassing both dispute resolution programs.

* Total represents amount awarded to Complainants. This money is not collected by the West Virginia Human Rights Commission and, therefore, is not represented as part of its budget. Conciliations and settlements may also include non-payment conditions.

FREEDOM OF INFORMATION ACT

Pursuant to WV Code §29B-1-1, the West Virginia Human Rights Commission is subject to Freedom of Information Act (FOIA) requests. The Commission processes FOIA requests through our FOIA Coordinator, Monia Turley.

These requests are generated by attorneys, other state and government agencies, the media and the general public. The documentation requested is for copies of investigatory and public hearing files and other public information regarding the West Virginia Human Rights Commission's procedures.

Other than those documents expressly deemed public by the West Virginia Human Rights Commission's procedural regulations, § 77-2-15.a of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission, the Commission's policy provides that investigatory files are considered non-public, as they are documents and information which may also be used in a law enforcement action. W.Va. Code § 29B-1-4(4). Some documents which are exempt may be discoverable at a later stage of the proceedings. Often these files are voluminous and take considerable research to determine what documentation is exempt and/or protected under other areas of the law.

The Commission charges \$1.00 per page copied for closed files and \$.50 cents per page copied for open files. These fees incorporate file retrieval to and from Archives, research, copying, correspondence and contact with attorneys.

The Commission processed **41** requests and collected **\$1,047.00** as result of FOIA requests. These funds were deposited into the state's general fund.



OFFICE OF JUDGES SELECTED CASE SUMMARIES



The following are selected final decisions of the West Virginia Human Rights Commission and decisions of the West Virginia Supreme Court of Appeals for the Fiscal Year 2007-2008. For a more complete listing of Final Orders and Decisions, please refer to the West Virginia Human Rights Commission's website at <http://www.wvf.state.wv.us/wvhrc>

**SELECTED FINAL ORDERS AND DECISIONS
OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
AND DECISIONS OF THE CIRCUIT COURT OF KANAWHA COUNTY AND
THE WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE FISCAL YEAR 2008 - 2009**

**A FINAL DECISION OF THE CHIEF ADMINISTRATIVE LAW JUDGE
AND
A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
IN THE MATTER
OF
RONALD L. SKIDMORE, JR. v. CITY OF MORGANTOWN
DOCKET NO. ED-275-02**

The Commission adopted the Final Decision of the Chief Administrative Law Judge as its own without modification. The Chief Administrative Law Judge held that the Respondent's termination of Complainant because of Complainant's hemophilia condition, was justified under the bona fide occupational qualification exception to W.Va. Code §5-11-9, as set forth in W.Va. C.S.R. 77-1-4.10. The Chief Administrative Law Judge also found that although Complainant's condition met the definition of a physical impairment as a physiologic condition affecting the hemic system, it did not substantially limit a major life activity and did not therefore meet the definition of a disability under the West Virginia Human Rights Act.

Complainant has hemophilia A, caused by a deficiency in clotting factor VIII in the blood. The condition did not prevent Complainant from participating in high school sports, such as baseball and basketball. After an injury, Complainant must infuse himself, directly into a vein, with factor VIII concentrate, a process known as "replacement therapy." Sometimes he must give himself several infusions after an injury to stop bleeding. He never kept factor VIII at work while employed by the City of Morgantown as a professional firefighter.

Factor VIII is very expensive, costing around \$5,000.00 per dose; and, Complainant keeps factor VIII in his refrigerator at home. Complainant conceded that his hemophilia might present an enhanced danger to him had he suffered any injuries reflected in the injury reports entered into evidence at the Public Hearing for other firefighters. These included injuries sustained in falls, which could have caused Complainant to suffer bleeds such as when he fell exiting a trampoline at a carnival; or, such as the injury from flying glass sustained by a firefighter serving as a driver, similar to an injury Complainant sustained after falling through a plate glass window once, causing Complainant a severe bleed requiring a transfusion.

Mr. Skidmore began working for the City of Morgantown Fire Department as a professional firefighter on October 19, 1998; after Dr. Brady of the Institute of Occupational and Environmental Health at WVU certified him as eligible for employment as a professional firefighter. Although Complainant checked the box for Blood Diseases on the medical questionnaire, he told Dr. Brady he worked as a volunteer firefighter without incident had experienced no trouble during major surgeries and had played contact sports without any difficulty. He did not recall telling Dr. Brady that he required replacement therapy or experienced bleeds as a result of his hemophilia. Nor did Dr. Brady ask for or have Complainant's medical records.

Mr. Skidmore received a number of commendations for his performance as an entry level firefighter and earned a promotion to firefighter first class pending completion of his pre-promotion medical examination. Complainant was examined by Dr. Martin with the Institute of Occupational and Environmental Health at WVU, on December 4, 2000, who by letter of that date advised the City of Morgantown Fire Department that Mr. Skidmore provided a history of hemophilia A that has required frequent replacement therapy and transfusions in the past and that he had several relatively minor bleeds related to trauma. The Complainant did not pass the pre-promotion medical examination because under the National Firefighters Professional Association [NFPA] Standard 1582, Complainant had a Category A hemophilia condition which automatically disqualified him from "performing as a member in a training or emergency operational environment by presenting a significant risk to safety and health of the person or others." The City terminated Complainant pursuant to W.Va. Code §8-22-16, which codified NFPA 1001, now NFPA 1582, into law.

A FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE
PRO TEMPORE
IN THE MATTER
OF
SAMUEL G. SMITH v. MONTGOMERY GENERAL HOSPITAL
DOCKET NO. ER-91-05

AND
SAMUEL G. SMITH v. UNITED STEEL WORKERS OF AMERICA
LOCAL #12652
DOCKET NO. ER-209-05

The Administrative Law Judge *Pro Tempore* held that the Complainant's claims of race discrimination were not pre-empted under the Federal Labor Management Relations Act of 1947, 29 U.S.C. § 141, also referred to as the National Labor Relations Act or NLRA and could proceed before the West Virginia Human Rights Commission. The Administrative Law Judge *Pro Tempore* held that the Complainant failed to meet his burden of proof to show that the Hospital or Local Union acted with any racial animus toward him.

The case arose based upon the applications of multiple members of the Respondent, United Steel Workers Of America, Local #12625, for a permanent position of Grounds Keeper/Maintenance Mechanic I, with the Respondent, Montgomery General Hospital. The Complainant, Samuel G. Smith, is an African-American who was initially awarded the position based upon his qualifications. Ultimately, the Hospital decided to remove the Complainant from the permanent position and award it to a white male member of the Local Union.

The Complainant was first placed in a temporary grounds keeper position by the Hospital in July, 1998. On March 3, 2003, the Hospital made the decision to award Complainant the position under Article X, Section 6 (d) of the 2001-2004 Collective Bargaining Agreement, because in the "judgment of the Hospital, one of the applicants is better qualified." The Collective Bargaining Agreement provided that if two or more applicants for a single vacancy have the ability, qualifications and physical fitness to do the job, it is to be filled by the employee with the greatest seniority; but, if in the judgment of the Hospital, one of the applicants is better qualified than the other, the vacancy may be filled by the better qualified employee, although the Hospital is not to unreasonably exercise its judgment.

The Local Union immediately objected under the Collective Bargaining Agreement and claimed the position was to be filled based upon seniority. Another white male was given a trial period in the permanent position, which he successfully completed. The Hospital nevertheless advised him and the Local Union that it was retaining the Complainant in the permanent position. The other member filed a grievance with the support of the Local Union, which was pursued through each step of the process then turned over to the International Union to conduct an arbitration hearing. While the matter was pending, the International and the Hospital bargained for a new Collective Bargaining Agreement, and during that process agreed to resolve the outstanding grievances. On July 14, 2004, the President and CEO of the Hospital wrote to the International Union's representative to advise that the white Local Union member would be awarded the permanent position with back pay.

The Administrative Law Judge *Pro Tempore* held that the Respondent Hospital changed its mind primarily because the Local Union and International Union persisted with and fully supported the grievance filed by the white employee arguing for filling of the permanent position on the basis of seniority, not qualifications and because the Hospital ultimately received legal advice from Labor Counsel that it was required to fill the permanent position based upon seniority, under the Collective Bargaining Agreement. Therefore, there was no evidence to support the Complainant's position that the decision to award the position to the white employee with the greatest seniority had anything to do with Complainant's race.

Furthermore, the Respondent Local Union was within its rights to uphold the seniority provisions of the Collective Bargaining Agreement and support the grievance of the employee with the greatest seniority. Based upon the undisputed evidence, the antagonistic relationship between the Local Union and the Hospital made it impossible to infer any collusion to prevent Complainant from retaining the permanent position on the basis of his qualifications. The use of the "N" word by a Local Union official, on more than one occasion, was not sufficient to meet the Complainant's burden of proof that race played a part in the Local Union's decision when the negotiations involved in setting the qualifications for the permanent position and the subsequent grievance proceedings involved multiple Local Union officials and took place without that individual's involvement in many instances.

A FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE
AND
A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
IN THE MATTER
OF
MARY E. PARSONS v. POCAHONTAS COAL COMPANY, LLC
DOCKET NO. ES-209-07

The Administrative Law Judge held that the Respondent Pocahontas Coal Company LLC's agents and employees at its job fair had discriminated against Complainant and other female applicants for coal miner positions at its underground coal mines in the application process when they used demeaning behavior through comments and tone which indicated they engaged in gender stereotyping and failed to consider those women's qualification for positions with their company in the hiring process. The Complainant and Human Rights Commission were awarded an injunction against future gender discrimination in the hiring process; while the Complainant was entitled to award of incidental damages for humiliation, embarrassment, emotional distress and loss of personal dignity, suffered as a result of the unlawful discriminatory actions of Respondent in the hiring process, and attorney's fees and costs. The Administrative Law Judge also held that the Respondent had proven that it would not have hired the Complainant even in the absence of the discriminatory motive, due to the Complainant's long absence from the coal mining industry and lack of other specialized skills or recent retraining in the occupation.

At the time of the Public Hearing the Complainant was a fifty-three year old female. Ms. Parsons is a certified underground coal miner whose West Virginia Office of Miner's Health, Safety & Training certificate was issued on October 21, 1978 and does not expire, being valid thereafter. Complainant worked for Westmoreland Coal from April 10, 1978 through November 14, 1978 with an official lay-off date of December 31, 1978. The Complainant's resume indicated that she had a mining mechanics certification from Fayette County Vo-Tech in 1977.

Complainant responded to a want ad for experienced miners that Pocahontas Coal ran and went to their job fair at the Raleigh County Armory on December 6th and 7th, 2005. When she turned in her application the man who took it said to her, "So Mary you want to be a miner trainee?" using a baby voice and saying her name slowly. Complainant stated she was a black hat miner and was applying for a job as an underground miner.

The individual looked at her application and observed she had been out of mining for some while but did not ask about her skills or abilities in relation to any of the needs Pocahontas Coal was looking to address as it did with other male applicants. Complainant's experiences were similar to another female applicant who also attended the job fair and was subjected to such remarks as, "Are you waiting on your husband", "We're not hiring secretaries"; and, after explaining that she was a red hat there to fill out an application, asked what she would do with her hair and told she was too dainty for the mines. No one asked her about her qualifications or explained benefits, hours and other job related things to her, as they were with other male applicants. Although both women followed up with telephone contacts with those given as contacts for the hiring for Pocahontas, and told they would be interviewed and considered when the Respondent was ready to hire, neither were interviewed or ever asked concerning their qualification or specialized skills for the type of work that Respondent needed done.

Pocahontas Coal Company LLC was formed in November 2005 with the acquisition of Josephine Number 2 and Josephine Number 3 underground coal mines from prior owners. Josephine Number 2 was operating at the time of acquisition and Respondent retained all of the employees of the former owners. Josephine Number 3 was to be rehabilitated and Respondent was looking to hire 30 to 40 experienced underground coal miners with the ability to operate multiple pieces of equipment; those with advanced certifications, such as foremen, electricians, shot fire and belt examiners; and, those with transferable skills for the rehabilitation efforts. Those skills would include cutting and welding for metal fabrication work, electrical knowledge and the ability to read blueprints. The Complainant had no experience operating equipment from her employment with Westmoreland Coal in 1978, did not have any of the special certifications, and did not have any skills with electric, welding or the like, as she had spent the last twenty five years in unrelated work most recently in the health care field.

The Respondent demonstrated that those it hired with less experience, i.e. red hat miners, had either worked recently in the mines and/or had other skills which made them desirable for working underground or above ground at the underground mines. The other woman who was subjected to the same discriminatory treatment during the application process did possess recent underground training, and had years of experience in the manufacturing sector, involving the use of heavy equipment and had welding experience. These were the same attributes Respondent claimed it was seeking, yet had summarily failed to consider by not ascertaining qualifications of the women who applied for miner jobs.

A DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS
IN THE MATTER
OF
SUE J. ERPS and WILLIAM G. ERPS, d/b/a IMPROVEMENTS UNLIMITED,
Appellants v. WEST VIRGINIA HUMAN RIGHTS COMMISSION
and VICTOR T. PEOPLES, Appellees
no. 34262

Submitted March 10, 2009

Decided June 22, 2009

The West Virginia Supreme Court reversed the Human Rights Commissions Final Order, declaring that a co-worker's raced based threats of violence cannot form the basis of retaliatory pretext by the employer where its supervisor fired the Complainant for refusing to return to work with the coworker until the supervisor addressed the racially motivated death threats. The Chief Administrative Law Judge held that Respondent had wrongfully discharged the Complainant as a day laborer when it failed to take swift and decisive action to correct racial slurs and threat of violent bodily harm by a co-worker and fired Complainant for refusing to work until the Respondent's on site supervisor addressed the situation. Respondents then engaged in reprisal when the Complainant filed a complaint with the West Virginia Human Rights Commission.

On June 16, 2004, Complainant was placing rebar in holes drilled by a co-worker. When Complainant told the co-worker to drill the holes deeper, the co-worker angrily said to Complainant, "You say another word I'll cut your f***ing head off with this shovel, n****r." Complainant and the co-worker were upset and angry when they approached the supervisor. The supervisor separated the two men and told them to go back to work. When Complainant insisted that the supervisor address the situation, the supervisor told him to return to work with the coworker who testified he intended to kill the Complainant. When the Complainant refused to return to work until the supervisor addressed the situation with his coworker regarding the racial taunt and death threat, the supervisor told him, "You're fired, get off the premises."

Complainant then had to walk ten miles home from the job site where had been driven by the supervisor that morning. The Administrative Law Judge found that the threat of imminent violent bodily harm coupled with the use of the racial slur was so severe as to require action that is swift, decisive, meaningful and reasonably calculated to end the harassment. Respondent's supervisor's response to the situation fell woefully short of this standard.

Thus, the co-worker's creation of a hostile work environment resulted in liability on the part of Respondent because he did not take prompt remedial action to end the discrimination and instead chose to fire the Complainant. After the Complainant filed his complaint, the owner of the business and his employees followed Complainant on a number of occasions, chased him across the bridge to the other side of town on another occasion, and had an African American employee approach Complainant with money to drop the complaint. The Owner would drive by Complainant and give him weird looks. These acts of intimidation occurred after Complainant had complained of discrimination, and the Respondents were aware of the complaint and the actions occurred in such proximity in time to the complaint that Respondents' actions were linked to Complainant's protected activity of complaining of the discrimination. Any form of threat or reprisal is prohibited under the Human Rights Act.

The Administrative Law Judge awarded lost wages from the date of termination until the time Complainant became unable to perform the laborer's job. The Administrative Law Judge awarded \$5,000.00 for humiliation, embarrassment and loss of dignity suffered by Complainant as a result of Respondents' discriminatory actions and reimbursement of West Virginia Human Rights Commission hearing transcript costs of \$1,669.60 and the Attorney General's travel expenses of \$4,184.46 associated with the prosecution of the claim. A cease and desist order was issued and Respondents were required to adopt a harassment reporting procedure, a harassment policy, to distribute these policies to all employees and future hires, and that all management and supervisory personnel undergo one hour of anti-harassment training.

The West Virginia Supreme Court held that Mr. Peoples failed, as a matter of law, to satisfy the first element of a hostile work environment claim by failing to put forth evidence from which a reasonable fact-finder could conclude that the subject conduct was unwelcome. The Supreme Court reasoned that "the Commission found that Mr. Bragg's comment which formed the basis of the hostile work environment finding was predicated by Mr. Peoples' own taunts to Mr. Bragg calling him such racially-charged names as "honky" and "white trash". Indeed, it is difficult to ignore Mr. Peoples' own behavior in this incident. Not only did Mr. Peoples make fun of Mr. Bragg's speech impediment, it was Mr. Peoples who in fact first sparked the working environment with his racially-based taunting of Mr. Bragg. Mr. Bragg thereafter responded with one sentence, containing both a racial slur and a threat of physical violence, stating "you say another word I'll cut your f***ing head off with this shovel, n*****." While we do not condone Mr. Bragg's comments, we cannot ignore the significant role which Mr. Peoples had in creating the very situation of which he later complained - something Mr. Peoples appears to ignore and something which the Commission appears to have minimized."

The West Virginia Supreme Court further held that, “It is undisputed that the incident at issue herein was an isolated event at a construction site in Virginia between two co-workers who had no prior reported history of conflict with one another. The crew leader, Mr. Yontz, upon learning of the situation, separated the men and ordered them back to work in accordance with his prior training in conflict management. While the Chief Administrative Law Judge and, ultimately, the Commission found that Mr. Yontz “terminated” Mr. Peoples immediately after Mr. Peoples refused to return to work until the racial slur and threat of physical violence were addressed and that a retaliatory motive could be inferred, such a finding can only be deemed to be clearly wrong under the facts presented herein. The evidence simply does not support a factual finding that either Mr. Yontz or Mr. Erps terminated Mr. Peoples in retaliation for the protected activity of raising the issue of racial harassment. Mr. Yontz’s decision to terminate Mr. Peoples was based upon Mr. Peoples’ refusal to return to work. Indeed, Mr. Peoples himself admitted that, upon being informed of the incident, Mr. Erps told him that Mr. Erps would handle the matter when he returned to the office and that it should not have happened. Mr. Erps also informed Mr. Peoples that he was not terminated and that he should return to work the following morning. Mr. Peoples, however, failed to return to work and returned to the office only long enough to collect his pay. Mr. Peoples’ failure to present evidence that the reason given by Improvements Unlimited for his initial termination, *i.e.*, his refusal to return to work, was pretextual, precludes his claim for retaliatory discharge as a matter of law. Accordingly, we reverse the Commission’s Order to the extent it holds the appellants liable for retaliatory discharge.”

The West Virginia Supreme Court held that the Chief Administrative Law Judge found Improvements Unlimited subjected Mr. Peoples to retaliation for filing a complaint with the Commission through a series of actions such as following him, staring at him, and offering him money to dissuade him from pursuing his complaint. Because the findings on this issue were made upon credibility determinations in light of competing testimony, they are to be afforded deference. Accordingly, the West Virginia Supreme Court affirmed the finding that Mr. Peoples was intimidated and retaliated against for filing his complaint with the Commission. Mr. Peoples was not awarded monetary damages for this alleged retaliation and intimidation. Moreover, Mr. Peoples neither appealed this aspect of the Order below, nor did he take exception to it before the West Virginia Supreme Court. The West Virginia Supreme Court ruled, “The directives contained within the April 6, 2007, Order regarding the adoption, implementation and enforcement of an anti-harassment policy are sufficient remedies under the circumstances presented herein.

The Commission may not, hereafter, award monetary damages for this claim because monetary damages were not previously awarded for this specific retaliation claim in the appealed Orders and no exception to this lack of monetary damages being awarded on this issue was taken by Mr. Peoples.”

Final Decisions Available Online

The Judges’ Final Decisions are available on the Commission’s website. This feature provides an easy way to quickly refer to decisions by date, Complainant’s name, and/or Respondent’s name.

Visit www.wvf.state.wv.us/wvhrc for the Final Decision Directory.

SUMMARY AND CONCLUSION

The Commission's budget appropriated for this fiscal year in state funds was \$1, 215,841.00. Cases are dually filed with the Equal Employment Opportunity Commission (EEOC). The Commission met its federal contract with the EEOC.

The Commission looks forward to continuing its mission to eradicate discrimination and to continue to improve its services to the citizens of West Virginia. The Commission's goals for the Fiscal Year 2008-2009 include the following:

- ◆ **Providing continued, ongoing training to the Commissioners.**
- ◆ **Continuing the Civil Rights Day Luncheon and Awards Ceremony on February 28, 2009.**
- ◆ **Providing more extensive and innovative training sessions to educate businesses regarding discrimination law in housing, public accommodations and employment.**
- ◆ **Creating and conducting a Youth Education Program.**
- ◆ **Expanding the Outreach program by implementing a "My Rights" Coloring Book as an early childhood education introduction to Human Rights and the Human Rights Commission services and procedures.**
- ◆ **Continuing to hire experienced investigators who will conduct more efficient and effective investigations.**
- ◆ **Setting up dialogues of understanding between the Commission and all West Virginians to promote awareness of the goals and objectives of the Commission.**
- ◆ **Maximizing the use of Alternative Dispute Resolution.**

This concludes the Annual Report for Fiscal Year 2008-2009.



The staff of the West Virginia Human Rights Commission is dedicated to promoting public awareness of the goals and objectives of the Commission, enforcing the laws set forth by the West Virginia Human Rights Act, and eliminating all forms of discrimination. If you feel you have been a victim of illegal discrimination as described in the West Virginia Human Rights Act, please contact us for information on filing a complaint by using one of the methods below.

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