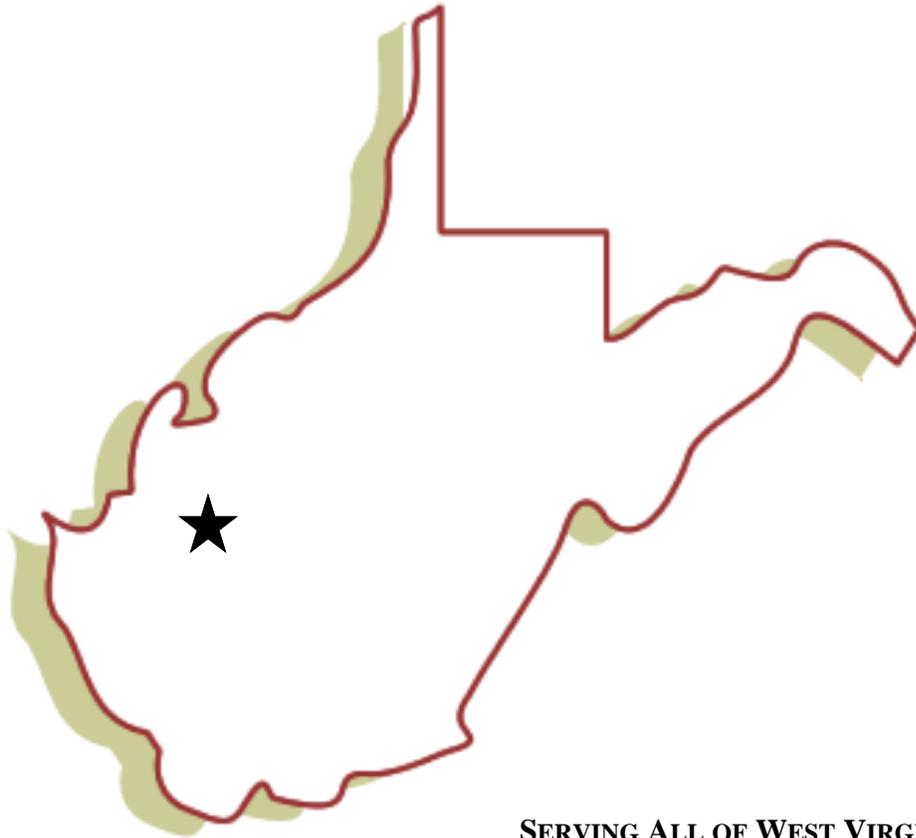




West Virginia Human Rights Commission

Annual Report
FY 2009-2010



SERVING ALL OF WEST VIRGINIA



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

Earl Ray Tomblin
Governor

1321 Plaza East, Room 108A
Charleston, WV 25301-1400
Telephone: (304) 558-2616 Fax: (304) 558-0085
TDD: (304) 558-2976 Toll Free: 1-888-676-5546

Dr. Michael Lewis
Cabinet Secretary

December 1, 2010

The Honorable Earl Ray Tomblin
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 Tomblin and Members:

It is with pleasure that I present to you the 2009-2010 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 our previous Governor and now State Senator 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.

Respectfully submitted,

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



Dr. Helen Bond
Berkeley County



Dr. Darrell Cummings
Chair
Ohio County



Karl Gattlieb
Kanawha County



Wesley Dobbs
Marion County



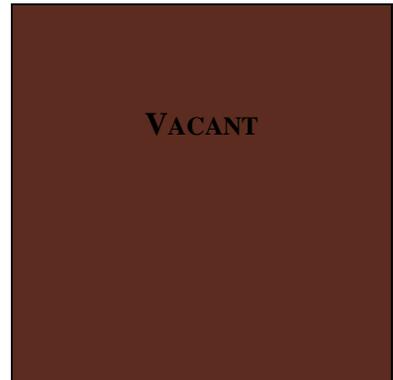
Timothy Hairston
Vice Chair
Monongalia County



William L. Williams
Logan County



Lisa Younis
Jefferson County



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.

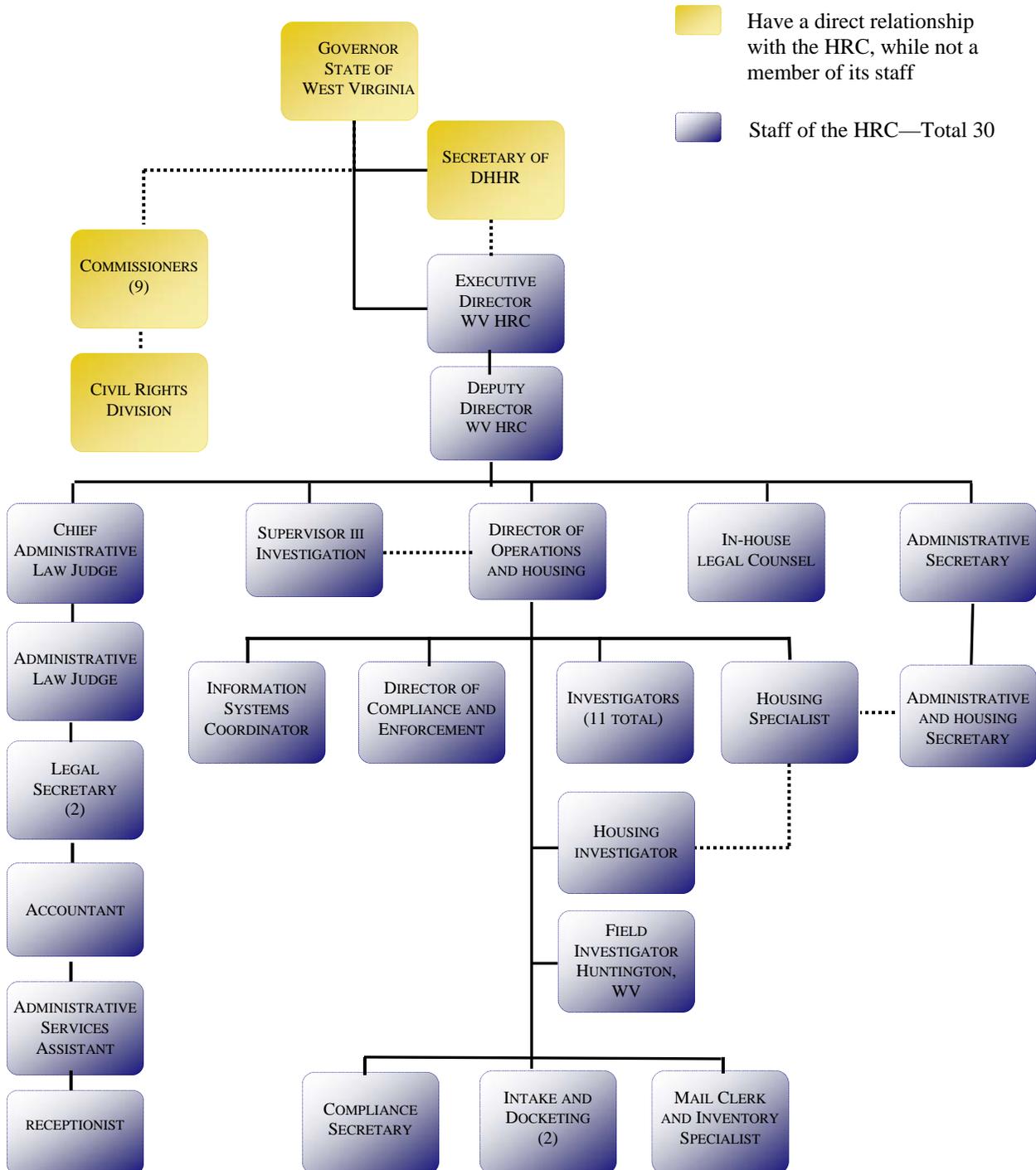
First, I am committed to hiring more experienced investigators who can conduct more efficient and effective investigations. My goal is to process cases in a timely manner without jeopardizing the quality of our investigations.

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

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



Alice Riffie
Accountant/Auditor II



Lisa Gist
Administrative Services
Assistant



Holly Devins
Receptionist

EXECUTIVE DIVISION



Marykaye Jacquet
Deputy Director

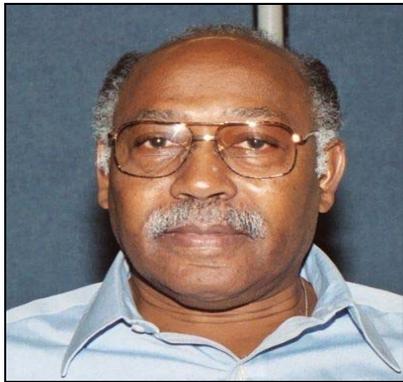


Monia Turley
Executive Secretary



Brian W. Wells
In-House Legal Counsel

INVESTIGATIVE DIVISION



James L. Johnson
Supervisor III



Yodora P. Booth
Director of Operations and Housing



Paul W. Cook
Information Systems
Coordinator



Jackie Heath
Director of Compliance &
Enforcement



Paul Hamilton
Field Investigator
Huntington, WV



Sally Brown
Investigator



Arthur Duiguid
Investigator



David Fix
Investigator



Richard Mangus
Investigator



Tausha Rucker
Investigator



James Slack
Investigator



Carolyn Smith
Investigator

HOUSING INVESTIGATION AND INTAKE



Marshall Moss
Housing Specialist



Joshua Brown
Housing Investigator



Esther Hupp
Administrative and
Housing



William Bailey
Mail Clerk/Inventory
Specialist



Leola Bateman
Compliance Secretary



Wilda McGill
Intake and Docketing



Glenda Sue Means
Intake and Docketing

COMMUNITY RELATIONS AND OUTREACH

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.

- ◆ **The Equal Employment Opportunity Commission**
- ◆ **The U.S. Housing and Urban Development**
- ◆ **State of West Virginia Office of the Governor**
- ◆ **Arnett & Foster, PLLC**
- ◆
- ◆ **West Virginia State University**
- ◆ **Appalachian Power**
- ◆ **Charleston YWCA**
- ◆ **Community Coalition for Social Justice of Morgantown**
- ◆ **West Virginia State University College of Professional Studies**
- ◆ **West Virginia Women's Commission**

U.S. 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.

U.S. Department of Housing and Urban Development
Washington, DC

The West Virginia Human Rights Commission has a working relationship with the U.S. Housing and Urban Development (HUD). Housing cases filed with the West Virginia Human Rights Commission are dually filed with the HUD. The agencies host joint training sessions and community events to promote fair housing across West Virginia.

Arnett & Foster, PLLC
Charleston, West Virginia

The West Virginia Human Rights Commission has partnered with the accounting firm of Arnett & Foster, PLLC, who totally sponsored the Eighth Annual Governor's Civil Rights Day Event on February 25, 2010. Their sponsorship enabled the West Virginia Human Rights Commission to honor 15 carefully chosen individuals from various communities across the state who championed the cause of equality during the Civil Rights Movement and beyond in West Virginia.

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 West Virginia Human Rights 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.

Appalachian Power
Charleston, West Virginia

Through its partnership, Appalachian Power supports the many outreach activities conducted by the West Virginia Human Rights Commission and provides valuable resources to events such as "A Fun Day At The Park," which brings unity to the community and helps to foster wholesome constructive alternative activities targeted toward the youth through the year. The Commission, in turn provides valuable training opportunities to the management and staff of Appalachian Power through invitations to seminars and workshops.

Charleston YWCA
Charleston, West Virginia

The West Virginia Human Rights Commission partnered with the Young Women's Christian Association (YWCA) who sponsored the Annual "Stand Against Racism" event to eliminate racism in West Virginia. This event included local area businesses and communities in the Charleston, West Virginia area.

Community Coalition for Social Justice of Morgantown
Morgantown, West Virginia

The Community Coalition for Social Justice of Morgantown, created in 1998, is a conglomerate of many agencies and businesses coming together for social issues and causes such as fair housing in the Morgantown, West Virginia area. Those organizations include: local area churches; ADAPT; the Northern West Virginia Center for Independent Living; the Center for Excellence in Disabilities; area environmental groups and the City of Morgantown Human Rights Commission. The Coalition partnered with the State of West Virginia Human Rights Commission in presenting a Fair Housing Seminar— “Time to Act.”

West Virginia State University College of Professional Studies
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.

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, Deputy Director Marykaye Jacquet. Ivin B. Lee, Executive Director is an ex officio member of the Women’s Commission. Ms. Jacquet, 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.

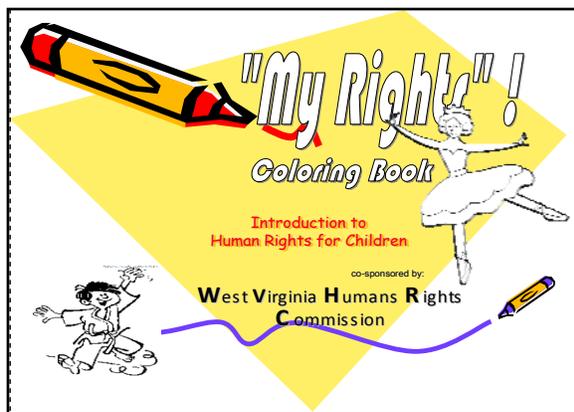
COMMUNITY OUTREACH

Commission staff conducted several community outreach activities; training sessions, informational seminars and lectures to community organizations, private corporations, businesses, public agencies and educational institutions throughout the state during the fiscal year, July 2009 thru July 2010.

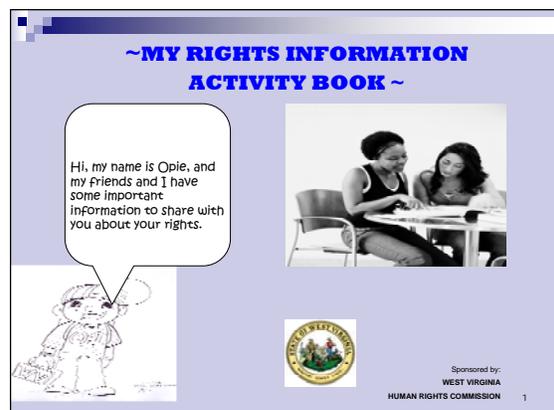
What follows are examples of the Commission's community outreach.

CHILDREN'S RIGHTS AND AWARENESS 2008-2010

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 My Rights Activity Book is now available in a more intermediate version for preteens. 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



Beginner/Elementary Version



Intermediate/Preteen Version

**WEST VIRGINIA HUMAN RIGHTS COMMISSION
HIGHLIGHTING BLACK HISTORY**

~ February 2010 ~

**HOME GROWN CIVIL RIGHTS HISTORY -
Vernon Johns - Father of Civil Rights Movement**

There was a time when Vernon Johns was better known than Martin Luther King, Jr. When King became the pastor of Montgomery, Alabama's Dexter Avenue Baptist Church, he identified himself as Vernon Johns' successor. Subsequent events made it inevitable that Johns would ever thereafter be known as Martin Luther King's predecessor.

After launching a pamphlet series, *Negro Pulpit Opinion*, Johns left Lynchburg early in 1927 to succeed Mordecai Johnson as pastor of **First Baptist Church in Charleston, West Virginia**. He moved to New York City and pursued his heart's darling from the piedmont to the mountains of North Carolina. In 1937 Johns was called again as the pastor of First Baptist Church in Charleston, West Virginia. A former college president, the published pastor of an important African-American congregation, and son-in-law of a college president, Vernon Johns seemed bound to a secure a position in the African American elite. Yet, he was rooted in the hard economic realities of Prince Edward County and grew contemptuous of the social pretense of the black bourgeoisie.

As pastor of Charleston's First Baptist Church, he supplemented his income as a fishmonger. "I don't apologize for it," he later told students at Howard University, "because for every time I got one call about religion, I got forty calls about fish."

**West Virginia Civil Rights Day
Luncheon and Awards Ceremony
February 25, 2010**



**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 25, 2010*, as:

Civil Rights Day

in the Mountain State and encourage all citizens to join me in this observance.

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 Thirteenth day of January, in the year of our Lord, Two Thousand Ten and in the One Hundred Forty-seventh year of the State.




Joe Manchin III
Governor

By the Governor:

Natalie E. Tennant
Secretary of State

2010 Honorees

On February 25, 2010, 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 8th Annual Civil Rights Day Luncheon, hosted by the West Virginia State University Student Union. Governor Joe Manchin presented special medallions and plaques to the honorees pictured below. Special thanks to Arnett & Foster for their generous sponsorship of this year's event.



Mary Frances Brammer



**Reverend Beatrice Ruth Burgess
Posthumously**



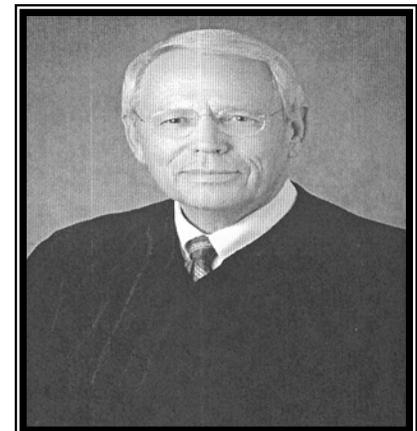
**Helen Sutton Dobson
Posthumously**



**Patrolman
Robert Edward Easley, Sr.
Posthumously**



**Lieutenant
Sidney Edward Frye**



**The Honorable
Joseph Robert Goodwin**

2010 Honorees



James A. Haught



Councilman James C. Hunt



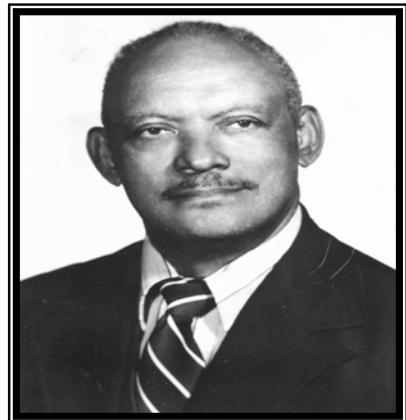
Jada C. Hunter



**Odith P. Jakes
Posthumously**



**Dr. Margaret Anne Cyrus Mills
Posthumously**



**Brown Hugo Payne, Esquire
Posthumously**



Dr. Minu Sabet



**First Sergeant
James C. Spriggs, Jr.
Posthumously**



Catherine Dooley Taylor

Remembering The Block

It has gone by several names, chief among these are The Block and The Triangle District, but the general sentiment of an area of Charleston around Washington Street and Shrewsbury Street remains the same. At a time when many American cities were segregated either by law, or by common acceptance and economic status, the African American community clung to a section of town that was all their own.^[1] Many African American businessmen and professionals, as well as middle class families, built homes and businesses in the few blocks surrounding Garnet High School.^[5] It came to be known, informally, as The Block, and housed a thriving African American community that would raise the business leaders of yesterday and today.



Student body, Garnet School, Charleston, circa 1914-15
Photo from WV State Archives, James Randall Collection

At the turn of the century, a Black high school was organized under the leadership of C.W. Boyd, named Garnett High School, named after Henry Highland Garnett, a Maryland slave that escaped with his parents and settled in New York City, educated himself and later became a leader in the abolitionist movement. In 1908, the student population had grown, and a separate building was constructed on Jacob Street next to the grade school building. Growth caused new construction again 20 years later, and the new building was set to be built on a corner plot on Shrewsbury and Lewis Streets. In 1928, construction began on the new three story Garnet High School. Constructed by the architectural firm of Warne, Tucker, Spilling and Hutchinson, the building was finished and dedicated December 2-4, 1929.^[2] The school was one of three schools in the Kanawha Valley meant to educate the African American children in Charleston before *Brown v. Board of Education of Topeka* (1954) segregated public school systems.

As the high school was built without a campus and opened directly onto the street, an attachment formed for the Shrewsbury Street area, and local African Americans began to set up shop. The area around Washington and Shrewsbury Street became home to movie theatres, hotels, restaurants, beauty and barber shops, and several other businesses throughout the decades that followed.^[5] As the area grew, a community formed and The Block was born. Students would walk to the M&S Mart after school while waiting for the buses to pick them up (buses which had to first deliver the white students home from school before they could service the black students) and grab a hot dog.^[1]

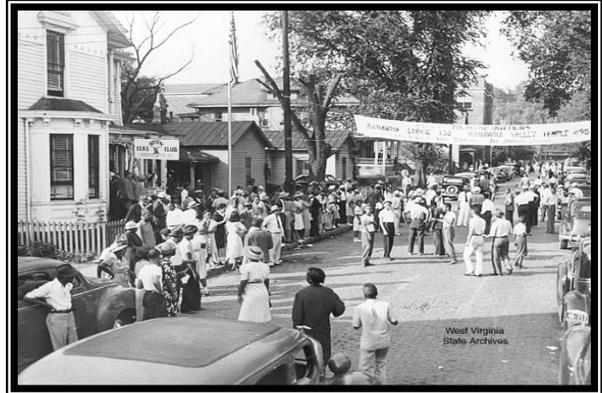


Garnet School, Charleston, at lunchtime, circa 1938
-39
Photo from WV State Archives, James Randall Collection

2010 Civil Rights Day Cent.

Seeing the growing demand for building space, Attorney Anderson H. Brown (A.H. Brown) opened several more shops along Washington and Shrewsbury Streets to house doctors, dentists, lawyers, banks, insurance companies, real estate offices, repair shops, print shops, tailoring shops, beer joints and local hang-outs.^[3] The community gathered around one another and, on several occasions, would close down the streets to host large events or block parties for celebrations.

In 1967, Mr. Brown aided the Charleston Police Department in setting up a local Youth Center in a vacant building on Shrewsbury Street. Robert E. Easley, Sr. and Sidney Edward Frye helped to organize "The Canteen," a center intended to keep the youth of the area off the streets and out of trouble. The position for Easley and Frye was unpaid, and several volunteers in the Valley helped to nurture the young minds of a generation within the walls of the center. From participation in drum corps, drill corps, dances, basketball games, and ping-pong matches, to receiving tutoring and guidance from local community leaders and teachers, The Canteen provided a safe haven for members of the African American community that were centered around The Block. Teachers from West Virginia State College (now University) volunteered tutoring services free of charge.



The 1933 Benevolent Protective Order of the Elks of the World convention in Charleston included many activities at "The Block."

Photo from WV State Archives, Archie Robertson Collection



Patrolman Robert Easley (Left) shows Mayor Dodson and others an abstract drawing on the wall of The Canteen

Photo from the *Our Black Past* by James Randall and Anna Gilmer

The building that once housed The Canteen is no more, replaced by a parking lot between the First Baptist Annex building and a hotel on the corner of Washington Street. What remains is very little, a fact that has sent a surge in the African American community to designate it as a historic area to preserve what is left.^[4]

Story by Esther Hupp. For Sources, see page 27.

2010 Civil Rights Day

Photos courtesy of Quewanncoi Casanova Stephens, Sr.



(1)



(2)



(3)



(4)



(5)



(6)



(7)

2010 Civil Rights Day

Photos courtesy of Quewanncoi Casanova Stephens, Sr.



(8)



(9)



(10)



(11)



(12)



(13)



(14)



(15)

Pictured by number: (1) Posting of the Colors, WVSU ROTC; (2) Proclamation by Governor Joe Manchin, III with WVSU, President Hazo Carter & WVHRC, Executive Director, Ivin B. Lee (3) Honoree Robert Easley, Jr. accepting for Father Patrolman Robert Easley Sr. (deceased) (4) Honoree Spriggs, accepting for Trooper James Spriggs (deceased) (5) Sponsors Arnett & Foster w/Gov. Manchin (6) Ann Barth, representative, Senator Byrd's office, (7) WV State Troopers Patterson & Bolland, honor wife of deceased Trooper James Spriggs, (8) Honoree Minu Sabet & family (9) Honoree, The Honorable Judge Joseph R. Goodwin, w/ Gov. Manchin; (10) Honoree Jada Hunter w/ family member & WVHRC, ALJ, Phyllis Carter; (11) Honoree James Haught; (12) Honorees: Councilman James Hunt, Jada Hunter & (Pastor Wayne Crozier, accepting for Odith Jakes); (13) Attendees: WVSP, Charleston Police Dept.; Retired CPD Casey James; (14) WVSU Band Ensemble (15) Ann Barth w/attendee.

Human Rights and Awareness April 29, 2010



The West Virginia Human Rights Commission participated in the Annual “Stand Against Racism” Event sponsored by the local YWCA. Each year, the YWCAs in America and around the world engage in advocating for racial justice. The collective thrust is to promote power toward the eliminating of racism, wherever it exists and by any means necessary. The event was attended by both private and public citizens, which included the staff of WVHRC, members from the local group Church Women United, representation from West Virginia State University’s Land Grant Office, and a family member of one of our staff.



Celebrating Fair Housing Month April 2010

On April 19, 2010, the West Virginia Human Rights Commission in partnership with the Community Coalition for Social Justice of Morgantown, sponsored a Fair Housing Seminar at the Ramada Conference Center in Morgantown - “Time To Act.” The topics included Unconscious Bias, presented by Chief Administrative Law Judge, Phyllis Carter of WVHRC, Disability Provision of Fair Housing, presented by Michael Jansen, Director of Fair Housing and Equal Opportunity Office in HUD’s Pittsburgh Field Office.

Regina Mayolo, also spoke regarding Design and Construction Issues in WV and Attorney Tony Reilley presented Landlord Tenant Law and How it Pertains to Residential Housing.



Michael Jansen, discussing Disability Provisions of the Fair Housing Act



Ms. Lee, with Commissioner Hairston & Barb Howe of the Community Coalition for Social Justice.



Participants at the 2010 Fair Housing Seminar, “Time To Act” ~ Morgantown, WV- April 19, 2010

Both Mayolo and Reilley presented information and answered questions from the group regarding Student Housing Issues. Mayolo is a Technical Assistance Specialist with the WV Assistive Technology System (WVATS), Mr. Reilley is an attorney for the Morgantown Office of Legal Aide of West Virginia. The seminar was approved for 9.0 CLE credit hours, based on a 50 - minute hour ; of which 2.4 credit hours is applied for Ethics/ management and abuse elimination for the 60 plus participants who qualified for those credits.

“WEST VIRGINIA HUMAN RIGHTS PARTICIPATES IN FUN DAY AT THE PARK”!

On Saturday, July 24, 2010, The West Virginia Human Rights Commission, along with West Virginia State University’s Research and Development Corp., and others, co-sponsored a Fun Day in the Park. The event was aimed at the area children who frequent the park all year. The Human Rights Commission’s staff facilitated a “Bike-Give-a-Way” where 100 bicycles, donated by local merchants, were awarded by a number draw to children at the park. The Commission donated 100 bicycle helmets for the event.



The West Virginia Human Rights Commission’s staff was joined by members of AEP and WVSU who were on hand to ensure adequate coverage for the large numbers of children who participated in the event. The bicycles were given in several different sizes and age groups, i.e., beginner with training wheels, pre-teen and teenage group size. The highlight of the day was being able to present a young 16-year old teen with her very first bike ever. The teary look in her eyes was a true testament to the success of this event.

Mr. Carl Lee, the program coordinator for West Virginia State University, mentioned wanting to see the “Day in the Park” become a two-day event; citing how the event brings unity into the community and fosters relationships between the various community groups who work with youth groups in providing wholesome constructive alternative activities for the youth all year.



**TAMARACK WORKSHOP –
Harassment & Public Accommodations!
Beckley, WV**

Wednesday, July 28, 2010, Jamie Alley, Senior Assistant Attorney General, Civil Rights Division and Marykaye Jacquet, Deputy Director for the WVHRC conducted a workshop at the Tamarack in Beckley, West Virginia for their management staff and Human Resources personnel. The workshop targeted the problems, procedures and responsibilities of Sexual Harassment in the Workplace and Places of Public Accommodations. The two hour presentation was held in conjunction with the facilities' requirement for workplace compliance in areas of prevention of discrimination and tolerance.



REACHING THE PUBLIC MORE EFFECTIVELY AND EFFICIENTLY!

The West Virginia Human Rights Commission, now offer both the Housing Discrimination and Human Rights Act Discrimination Posters in Spanish as well as the English version. The posters are made available upon request through the Commission's office at 1321 Plaza East, Room 108-A, Charleston, WV 25301 or by calling 304-558-2616 or our toll free line at 1-888-676-5546.



VIVIENDA JUSTA

¡SUS DERECHOS BÁSICOS – AHORA MISMO!

Si usted siente que ha sido discriminado en contra en el alquiler, venta o financiación de hipoteca de vivienda debido a:

Raza	Religión	Origen Nacional
Color	Ascendencia	Ceguera
Discapacidad	Sexo	Situación
	Familia (Niños)	

**Llame, Escriba o Visite a la
Comisión de Derechos Humanos de Virginia Occidental**

1321 Plaza Este, Cuarto 108 A
TDD: 304-558-2976 Charleston, WV 25301-1400
Llamada sin cargo – 888-676-5546
Tel. (304) 558-2616 wvhrc@wvdhhr.org
Fax: (304) 558-0085 Sitio Web: www.wvf.state.wv.us/wvhrc

Discrimination

AVISO

- **EL ACTO DE DERECHOS HUMANOS DE VIRGINIA OCCIDENTAL**
 - Prohibe Discriminación en Empleo
 - y
 - Sitios de Alojamientos Públicos
 - Basado en
 - RAZA, RELIGIÓN, COLOR, ORIGEN NACIONAL, ASCENDENCIA, SEXO, EDAD (40 O MÁS), CEGUERA, O IMPEDIMENTO
 - y
 - Discriminación en Vivienda
 - Basado en
 - RAZA, RELIGIÓN, COLOR, ORIGEN NACIONAL, ASCENDENCIA, SEXO, CEGUERA, IMPEDIMENTO O ESTADO FAMILIAR
- Para Información Adicional o para presentar una queja, llame, escriba o visite:
 - Comisión de Derechos Humanos de Virginia Occidental
- DIRECCIÓN POSTAL TELÉFONO UBICACIÓN DE OFICINA

○ Capitolio Estatal	(304) 558-2616	1321 Este de Plaza, Cuarto 108 A
○ Charleston, WV 25305	Fax (304) 558-0085	Charleston, WV 25301-1400
○	○	TDD (304) 558-2976

Housing

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 David Fix, Director of Compliance and Enforcement, or Monia Turley, Executive 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 2010
By Method of Contact, Per Month

	Telephone	Walk-In	Mail	Total
July (2009)	114	4	0	118
August	99	3	1	103
September	112	2	1	115
October	125	0	0	125
November	90	0	0	90
December	104	0	0	104
January (2010)	110	2	0	112
February	84	1	0	85
March	106	3	2	111
April	79	4	2	85
May	90	4	0	94
June (2010)	73	2	0	75
Totals	1186	25	6	1217

Table 2: Complaints Docketed FY 2010
By Type of Complaint, Per Month

	Public Accommodation	Housing	Employment	Total
July	3	5	21	29
August	3	3	37	43
September	2	6	20	28
October	3	5	26	34
November	3	4	30	37
December	2	5	39	46
January	0	5	34	39
February	1	2	29	32
March	6	3	33	42
April	1	4	26	31
May	1	5	24	32
June	3	11	41	55
Totals	28	58	362	448

Table 3: Complaints Closed FY 2010
By Type of Complaint, Per Month

	Public Accommodation	Housing	Employment	Total
July	6	1	25	32
August	1	5	33	39
September	5	6	33	44
October	2	1	24	27
November	3	3	22	28
December	6	6	50	62
January	1	4	24	29
February	1	3	30	34
March	2	9	32	43
April	2	4	39	45
May	3	2	22	27
June	4	2	37	43
Totals	36	46	371	453

Table 4: Pre-Determination Conciliation Outcomes FY 2010

Cases referred to conciliation	38
Cases settled or closed as a result of conciliation	9
Cases continued in investigation	29
Amount of monies generated from settlements*	\$44,387.23

Table 5: Mediation Outcomes FY 2010

Cases settled	21
Amount of monies generated from settlements*	\$ 582,250.00

The Commission's settlement rate has increased which represents a significant increase within the last five years.

* 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 39 requests and collected \$2,328.50 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 2009-2010. 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 2009—2010

A FINAL DECISION OF THE CHIEF ADMINISTRATIVE LAW JUDGE
AND
A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
IN THE MATTER
OF
JENNIFER BARNETTE v. SANITARY BOARD OF THE
CITY OF CHARLESTON, WEST VIRGINIA
DOCKET NO. ES-241-07

The Commission adopted the Final Decision of the Chief Administrative Law Judge as its own without modification, after neither party filed an appeal of the decision with the Commission. The Chief Administrative Law Judge held that the Respondent's hire of a male instead of the Complainant was the result of a preference for the successful candidate's qualifications and experience and not due to the gender of the Complainant. The Chief Administrative Law Judge concluded that the Complainant had not proven a prima facie case of gender discrimination under the West Virginia Human Rights Act and had not proven by a preponderance of the evidence that gender played any role in the decision of the Sanitary Board of the City of Charleston to hire Eric Meadows for the position of Geographic Information Systems Manager instead of Jennifer Barnette.

Respondent advertised to fill a position of Geographic Information Systems Manager, reporting to the Manager of the Engineering Department with duties including: Operation and maintenance of CSB GIS System, coordination of data collection with CSB survey and camera crews, maintains all CSB collection system mapping and coordinates CSB aerial mapping. Requirements were considerable knowledge and hands on experience with computer software; ESR, MICROSOFT ACCESS, AUTOCAD, MSWORD, MSEXCEL. It also stated, must have a BS Degree in Geography with emphasis in Analytical Cartography; or a BS degree in GIS or BS degree in a related technical field with documented experience in GIS. Complainant applied for the position of Geographic Information Systems Manager with Respondent on August 29, 2006. Complainant, Mr. Meadows and Jeremy Hopson interviewed for the position on September 6, 2006.

Mr. Meadow's was hired as GIS Manger on September 8, 2006 at a salary of \$45,000 per year. Mr. Meadows held an Associates degree in Forestry and an Associates degree in Computer Programming, at the time of hire, and obtained a B.A in Business Management after he was hired by Respondent. During the interview he indicated to the interviewers specifically how he had collected data and created GIS mapping for Clarksburg, WV Public Service District, Mountain Lake Waste Water Dept. and Pea Ridge, WV Public Service District. Mr. Meadows started from data collection through creation of the data models for field collections, supervising the crews for collection of data for inventory and final model for long term control plan. Mr. Meadows showed his creation of custom geo-data base for Bridgeport, WV Waste Water Dept. which mapped sewer flows to assist City Planners in making decisions about repairs and maintenance of the sewers. Mr. Meadows utilized his lap top computer to demonstrate these during his interview. Complainant held a B.A in History and an M.A. in Geography with an emphasis in GIS. She graduated from Marshall with her Masters in 2004 and was hired by the Putnam County Commission in October 2004 two months prior to completing her Master's degree. She was promoted to Senior Planner for the Putnam County Commission in December 2006.

Respondent conceded that Complainant was a qualified applicant for the position. Respondent's witnesses testified credibly that experience in this case was significantly more of a factor than education alone in determining that Mr. Meadows was superiorly qualified for the specific needs of the Respondent for the GIS Manager position. The witnesses testified that Complainant was their choice as the second most qualified for the position of the interviewees.

In December 2006 Respondent contacted Complainant to ask if she were still interested in the position after Mr. Meadows resigned to take another position. Complainant did not indicate she wanted the position even though it had been offered to her because she had filed her Human Rights complaint and did not know what affect upon the status of the claim acceptance would have. Complainant never returned calls to Mr. Happalla, who had indicated that he needed a response by January 5, 2007.

The Chief Administrative Law Judge concluded under these facts that Complainant was a member of a protected class, that she was qualified for the position she sought and that she was rejected for the position despite her qualifications. However, the Respondent did not continue to accept applications of similarly qualified persons after Complainant was not offered the position as required under the fourth prong of the prima facia burden in a failure to hire case as set forth in O. J. White Transfer, 181 W. Va. 519, 383 S. E. 2d at 323 (1989). Furthermore, the Respondent had demonstrated that it had offered the position to Mr. Meadows because he had experience in designing sewer systems. His designs met the Clean Water Act and his hands on experience with GIS systems of those cities, supervisory responsibility, familiarity with aerial photography, custom applications of water flow information were all aspects of Mr. Meadows qualifications that set him apart from Ms. Barnette. The Chief Administrative Law Judge ruled that the Respondent had proven by a preponderance of the evidence that it had a legitimate non-discriminatory reason why it did not offer the position to the Complainant in September 2006.

A DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS
IN THE MATTER
OF
STATE of WEST VIRGINIA ex rel MARSHALL COUNTY COMMISSION and
MARSHALL COUNTY COMMUNICATION 911, Petitioner v. PHYLLIS H.
CARTER, Administrative Law Judge, THE WEST VIRGINIA HUMAN RIGHTS
COMMISSION and JOHN R. BRIGGS, Respondents
225 W. Va. 68, 689 S. E. 2d 796 (2010)
AND
A FINAL CLOSING ORDER OF THE WEST VIRGINIA
HUMAN RIGHTS COMMISSION
IN THE MATTER
OF
JOHN R. BRIGGS v. MARSHALL COUNTY COMMISSION and MARSHALL
COUNTY COMMUNICATION 911
DOCKET NO. EDB-466-08

The West Virginia Supreme Court of Appeals, in a published opinion, held that the West Virginia Human Rights Commission's Administrative Law Judge could order the county to produce the audio recording of executive session meeting on hiring a blind applicant as a 911 system operator, for in camera inspection, and, that no executive session privilege existed in regard to the discovery order. The petitioners, defendants below, sought an extraordinary writ to prevent enforcement of the Order of the Order of Chief administrative Law Judge, Phyllis H. Carter, in a claim brought by John R. Briggs under the State Human Rights Act. The order required petitioners to produce for in camera inspection by the administrative law judge, an audio recording of an executive session meeting in which petitioners discussed hiring an applicant to fill one of two vacancies in the Marshall County Communication 911 Department. The Court held that when a party to a case brought under the West Virginia Human Rights Act asserts that a communication sought to be discovered is privileged, the administrative law judge

should conduct an in camera inspection of the requested materials to determine whether the communication is privileged. The provision of the Open Governmental Proceedings Act that recognizes a specific and limited right of governing bodies to meet in an executive session which is closed to the public is not intended to prevent the legitimate discovery in a civil action of matters discussed in an executive session which are not otherwise privileged.

A Final Closing Order was entered by the Chief Administrative Law Judge for the West Virginia Human Rights Commission when the Respondent County Commission, Complainant and Human Rights Commission agreed to a settlement and release of claims after the Supreme Court issued its opinion. The County Commission agreed to pay a cash settlement to the Complainant as general and incidental damages for embarrassment, humiliation, inconvenience, and emotional injuries. Complainant in turn did not demand reinstatement to the two positions which had already been filled but specifically did not renounce the right to apply for future vacancies with Respondent. The Respondent County Commission did not admit liability but did agree to acknowledge its duties not to discriminate as an employer in violation of the West Virginia Human Rights Act and not to engage in unlawful reprisal against the Complainant for bringing the complaint. They further agreed to employ a third party to conduct a half-day training of all management employees and/or other employees who participate in the hiring process, to include the applicant screening, selection, and interview process which would focus on the anti-discrimination provisions of the West Virginia Human Rights Act and implementing regulations, with an emphasis on disability discrimination, reasonable accommodation and the interactive process for achieving reasonable accommodation.

A DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS
IN THE MATTER
OF
PAR ELECTRICAL CONTRATORS, INC. Plaintiff below, Appellant
v. RICHARD WAYNE BEVELLE and THE WEST VIRGINIA HUMAN
RIGHTS COMMISSION, Defendants below, Appellees
no. 35302

Submitted April 14, 2010

Decided June 3, 2010

The West Virginia Supreme Court affirmed the decision of the Circuit Court of Kanawha County's decision which upheld the Human Rights Commission's Final Order, affirming the Final Decision of the Administrative Law Judge. The Supreme Court found that the Respondent had permitted a racially hostile work environment to exist and that the employer had failed to take swift and decisive action to eliminate that environment. The Court considered the record developed before the Commission and found the Commission's decision was supported by substantial evidence.

The Administrative Law Judge awarded lost wages of \$31,168.79, from the date of constructive discharge until the time Respondent completed the project. 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 reasonable costs and attorney's fees in the amount of \$14,729.77 associated with the prosecution of the claim. A cease and desist order was issued.

Complainant had been working at a helicopter landing site and was subjected to a conversation between his supervisor, Mr. Sines and another foreman, Mr. Tabor. Mr. Tabor told Complainant, "If I was your boss, I would fire you for not joining the KKK." Complainant walked away after indicating he didn't appreciate the comments. Nevertheless, the "N" word was used several times thereafter as the conversation continued between Mr. Sines and Mr. Tabor loud enough to be overheard by Complainant. Shortly thereafter, Mr. Sines approached Complainant to explain he had misunderstood what Mr. Tabor meant by the "N" word elaborating extensively including such comments as, "Well I don't classify you as a "N" because you work for a living." When Complainant reported the incident to Respondent's safety manager he was intercepted by Mr. Sines as he prepared to go to his helicopter worksite in the truck and told that he was being reassigned. Complainant was reassigned to work at the base of newly assembled towers 150-200 feet tall to transfer supplies by pulley to the workers atop the towers and to pick up items that fell, including heavy tools and bolts.

Complainant testified that he feared he might “accidentally” be hurt by items dropped by fellow workers that had worked with Mr. Tabor in the past on other projects, lived near him and knew Mr. Tabor far better than Complainant. During the course of a safety meeting attended by 1000 workers, Complainant was the only African-American in the group employed by Respondent when it told its employees and sub contractors that racial comments would not be tolerated. Complainant believed that as the only African-American he saw at the job site, that Respondent’s employees would know that he had made a complaint to management. Shortly thereafter, Complainant quit his job with Respondent.

The West Virginia Supreme Court held that where the racially based comments were repeated and deliberate, and made without provocation or invitation by Complainant, the incident was sufficient to create a hostile work environment. The Court cited with approval Syllabus Point 3 of Fairmont Specialty Services v. West Virginia Human Rights Comm’n, 206 W. Va. 86, 522 S. E. 2d 180 (1999):The aggravated nature of discriminatory conduct, together with its frequency and severity, are factors to be considered in assessing the efficacy of the employer’s response to such conduct. Instances of aggravated discriminatory conduct in the workplace, where words or actions on their face clearly denigrate another human being on the basis of race, ancestry, gender, or other unlawful classification, and which are clearly unacceptable in civilized society, are unlawful under the West Virginia Human Rights Act . . . and in violation of the public policy of this State. When such instances of aggravated discriminatory conduct occur, the employer must take swift and decisive action to eliminate such conduct from the workplace.

The Court concluded that the lack of evidence that Mr. Tabor or Mr. Sines were disciplined in any way and the fact that the only action taken by Respondent was to transfer Complainant to a much more dangerous worksite, demonstrated Respondent had failed to take such swift and decisive action to eliminate such conduct from the workplace.

A DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS
IN THE MATTER
OF
CHARLESTON TOWN CENTER COMPANY, LP, Appellants
v.
WEST VIRGINIA HUMAN RIGHTS COMMISSION
and Steven and Cynthia BUMPUS, on behalf of Steven M. BUMPUS, a Minor, and
Augusta ROBINSON, on behalf of Kevin STREETS, a Minor, Appellees
224 W.Va. 747, 688 S.E.2^d 915 (2009)

The West Virginia Supreme Court overturned the Final Orders of the West Virginia Human Rights Commission adopting the Final Decisions of the Administrative Law Judge which had found that the Respondent had discriminated against the Complainants because of their race; finding the Administrative Law Judge's and Commission's rulings to be clearly wrong in view of the reliable, probative, and substantial evidence on the whole record. The Supreme Court held that the Charleston Town Center had successfully rebutted the Complainant's prima facie showing of racial discrimination by presenting evidence that the Complainant's behavior had violated the Town Center's Code of Conduct. Specifically, the Town Center had presented evidence that they were asked to leave the Food Court because they were being loud and were not paying customers; that they were asked to leave the Mall because they were being loud and the Mall was closing; and finally, that they were told to leave the sidewalk outside of Chili's because they were identified as being in a large group of individuals who were being disruptive.

Mr. Bumpus and Mr. Streets were arrested for trespassing after refusing the order of a police officer to leave the sidewalk in front of Chili's. The police had been asked to evict the two by the mall security guards. The two teenagers refused to leave in an act of civil disobedience because they had not been part of the group that was being disruptive, and which had already dispersed. They had previously been instructed by their parents not to go across the street to the transit mall where unsavory characters congregate. At the time this occurred they had arranged to be picked up by one of the parents at the location where they were.

The Administrative Law Judge and Commission had determined that Town Center had engaged in racial discrimination against the Complainants. The Administrative Law Judge had ordered the Town Center to cease and desist from engaging in unlawful discriminatory practices; to pay costs of prosecution; incidental damages for humiliation, embarrassment, emotional distress and loss of personal dignity of \$5,000 to each

Complainant; and to implement training of contracted mall security personnel to refrain from racial profiling and to include sensitivity training regarding people in protected classes under the West Virginia Human Rights Act. The Administrative Law Judge found that there was no violation of the Code of Conduct to explain why the Complainants had been watched and followed immediately upon entering the mall. The Supreme Court approved the practice of observing entrants to a business holding that it cannot sustain an unlawful discrimination claim because, “nowhere . . . do we find [they] . . . were actually denied, refused, or withheld any services or amenities as required . . .” citing K-Mart Corp. v. Human Rights Com’n, 181 W.Va. 473, 383S.E.2d 277 (1989). The Administrative Law Judge had concluded that the incorrect identification of the Complainant’s with the larger group of African-American teenagers when they were asked to leave the side walk outside of Chili’s restaurant was the result of racial animus. The Supreme Court found the fact that the security guards presumed that the Complainants were members of the group due to their race and that they were among the group is not unreasonable under the circumstances. The Supreme Court found testimony of one police officer that of the calls he had responded to evict persons from the mall, “probably about close to a hundred percent . . . have been minorities or blacks”, and that of another police officer that when he is called to evict they are commonly African-American, failed to permit a meaningful comparison of Mall security’s treatment of African-American versus its treatment of persons of other races.

This case was significant due to its basis on racial profiling by a place of public accommodation. Amici curiae briefs were filed by the ACLU, West Virginia Employment Lawyers’ Association, Lawyers’ Committee for Civil Rights Under Law, Mountain State Bar Association, and West Virginia State Conference of the NAACP. Nevertheless, the decision was filed as Per Curiam decision rather than as a signed opinion by one of the Justices.

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 2010-2011 include the following:

- ◆ **Providing continued, ongoing training to the Commissioners.**
- ◆ **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 completing the series of "My Rights" Coloring Books 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 2009-2010.



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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Charleston, WV 25301-1400
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Toll Free: 1-888-676-5546
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**Located on the Web at:
www.wvf.state.wv.us/wvhrc**