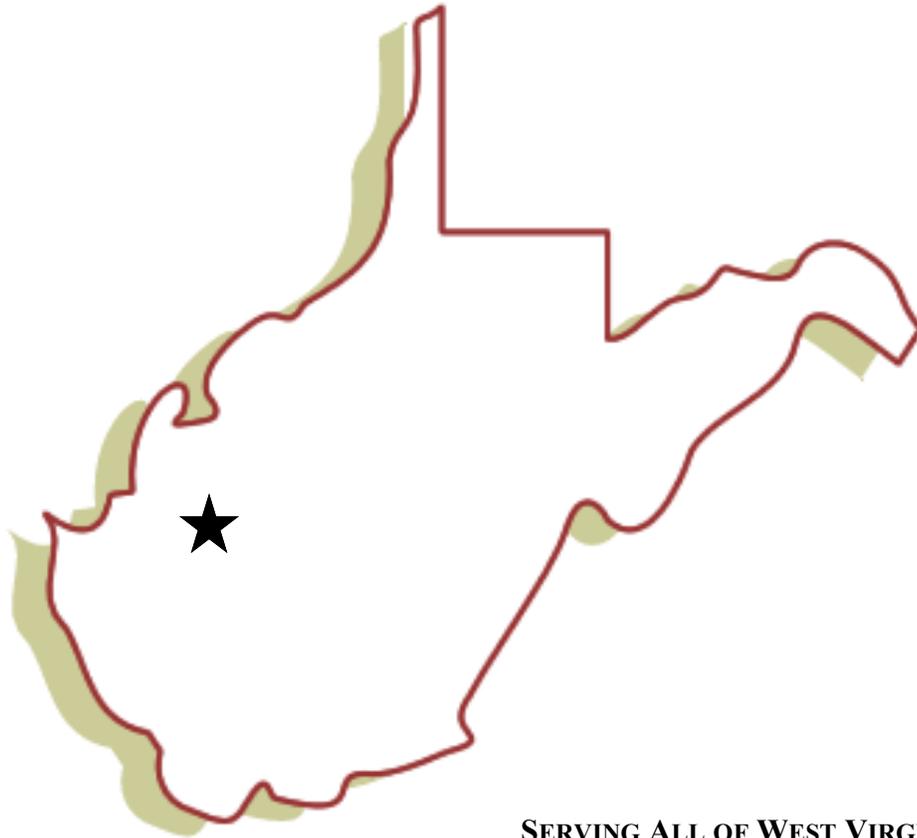




West Virginia Human Rights Commission

Annual Report
FY 2012



SERVING ALL OF WEST VIRGINIA



Earl Ray Tomblin
Governor

State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HUMAN RIGHTS COMMISSION
1321 Plaza East, Room 108A
Charleston, WV 25301-1400
Telephone: (304) 558-2616 Fax: (304) 558-0085
TTY: (304) 558-2976 Toll Free: 1-888-676-5546

Rocco S. Fucillo
Cabinet Secretary

Phyllis H. Carter
Acting
Executive Director

December 1, 2012

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:

I am pleased to present to you and members of the West Virginia Legislature, the Commission's Annual Report for Fiscal Year July 1, 2011 thru June 30, 2012. This has been a productive year for us. The Commission steadfastly continues its mission to eradicate discrimination and to continue to improve its services to the citizens of West Virginia, pursuant to the West Virginia Human Rights act, as amended.

With the Commission's state budget of **\$1,398,873**, the following represents many of the goals that were accomplished: The Commission continued to investigate and litigate cases of discrimination; provided ongoing training to the Commissioners and staff by the U. S. Equal Opportunity Commission and the office of the West Virginia Attorney General, Civil Rights Division; provided extensive and innovative training sessions to educate the business community regarding discrimination laws in housing, public accommodation and employment; conducted considerable research in all areas of the Commission's process to discern areas for improvement and the formation of plans of action to be undertaken, including consultation with the West Virginia Department of Personnel in regard to those plans of action; expanded our Community Outreach program to include additional advocacy groups; continued to set up dialogues of understanding between the Commission and all West Virginia citizens to promote awareness of the goals and objectives of the Commission; continued to maximize the use of Alternative Dispute Resolution when applicable; and the Commission launched a new website.

Thank you for the opportunity to be of service to the people of this great State.

Respectfully submitted,
Phyllis H. Carter
Acting Executive Director

TABLE OF CONTENTS

Page Number

Acting Executive Director’s Letter to Governor Tomblin and Members of the Legislature

Mission Statement.....	01
Declaration of Policy.....	02
Declaration of Policy (cont.)	03
Highlights of the West Virginia Human Rights Act.....	04
The Commissioners.....	05
Role of the Commissioners.....	06
Acting Executive Director Phyllis H. Carter.....	07
Acting Executive Director’s Vision.....	08
Human Rights Commission Organizational Chart.....	09
Staff of the Commission	
Office of Judges.....	10
Executive Division.....	10
Investigative and Compliance Enforcement Staff.....	11
Housing Investigation and Intake.....	12
Community Partnerships, Relations and Selected Outreach.....	13
Appalachian Power.....	14
Beckley Branch of the WV Chapter of NAACP.....	14
Charleston Black Ministerial Alliance, Inc.....	15
Charleston Job Corp.	15
Charleston YWCA.....	15
Church Women United of Charleston, WV.....	15
Community Coalition for Social Justice of Morgantown.....	15
U.S. EEOC, WV Human Rights Commission and WV State University.....	16
U. S. Equal Employment Opportunity Commission and Discrimination Suit <u>Davis v. McCormick and Schmidt Seafood Restaurant</u>	17
U.S. Department of Housing and Urban Development.....	17
WV Advocates, Inc. and WV Americans with Disabilities Act Coalition.....	17
WV Fair Housing Action Network, WV Housing Development Fund, WV Association of Realtors (WRA), WV Human Rights Commission.....	18
WV Federation of the Blind and Visually Impaired	18
WV Federation of the Deaf and Hearing Impaired.....	19
WV Human Rights Commission Community Workshop.....	19

TABLE OF CONTENTS

	<u>Page Number</u>
WV Human Rights Commission, the WV Martin Luther, Jr. Holiday Commission and WV Human Rights Commission, area faith based initiatives and the Charleston Black Minterial Alliance and community groups Celebrates Black History Month.....	20
WV Human Rights Commission, WV Office of the Governor, WV Legislature, WV Division of Real Estate, WV Dept. of Administration, General Services Div., WV Office of Attorney General, WV Dept. of Transportation, WV Library Commission, WV Federation of the Blind and Visually Impaired, WV Federation of Deaf and Hearing Impaired, Kanawha County Circuit Court of WV, and US Equal Employment Opportunity Commission	21
WV Office of Governor, Division of Culture and History and WV Human Rights Commission Advancing Civil Rights Through Advocacy 9th Annual Civil Rights Day.....	22
2012 Honorees.....	23
2012 Honorees Cont.....	24
WV State University.....	25
WV Women’s Commission.....	25
 The Complaint Process	
Intake.....	26
Investigation.....	26
Administrative Hearing.....	27
 Alternate Dispute Resolution Programs	
Pre-Determination Conciliation Program.....	28
Mediation Program.....	29
 Facts and Figures.....	30
Freedom of Information Act.....	31
 Office of Judges Selected Case Summaries	
Opinion and Order Affirming The WV Human Rights Commission on Charleston Academy of Beauty Culture, Inc., Judy Hall, owner and Cherie Bishop, instructor, in their individual capacities v. Tyleemah Edwards and Harry Walter Robinson Civil Action Nos. 09-AA-168 and 09-AA-169 (August 8, 2011).....	32
A Final Decision of the Chief Administrative Law Judge and Final Order of the WV Human Rights Commission in the matter of Ilona Brown v. Elite Coal Services, LLC, Docket Number ES-248-09.....	34
 Conclusion.....	38
Conclusion Cont.....	39

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, religion, color, national origin, ancestry, sex, age (40 or above), blindness or disability and familial status

The Commission will administer and ensure adherence to the West Virginia Human Rights Act, as amended 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



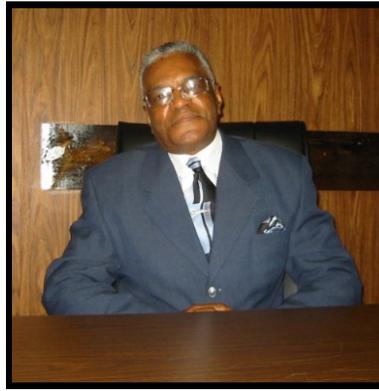
Dr. Darrell Cummings, Chair
Ohio County



Timothy Hairston
Vice Chair
Monongalia County



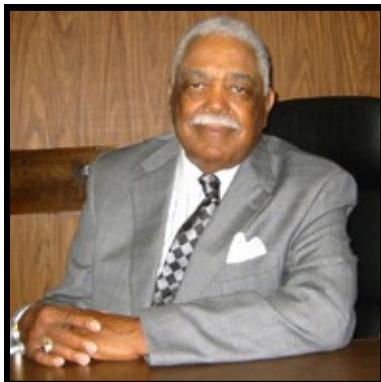
Karl Gattlieb
Kanawha County



Wesley Dobbs
Marion County



John McFerrin
Raleigh 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.

(Note: Please see W. Va. Code § 5-11-8 for complete listing of the Commissioners' powers and functions.)



PHYLLIS H. CARTER



ACTING EXECUTIVE DIRECTOR

MY VISION

Acting 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.

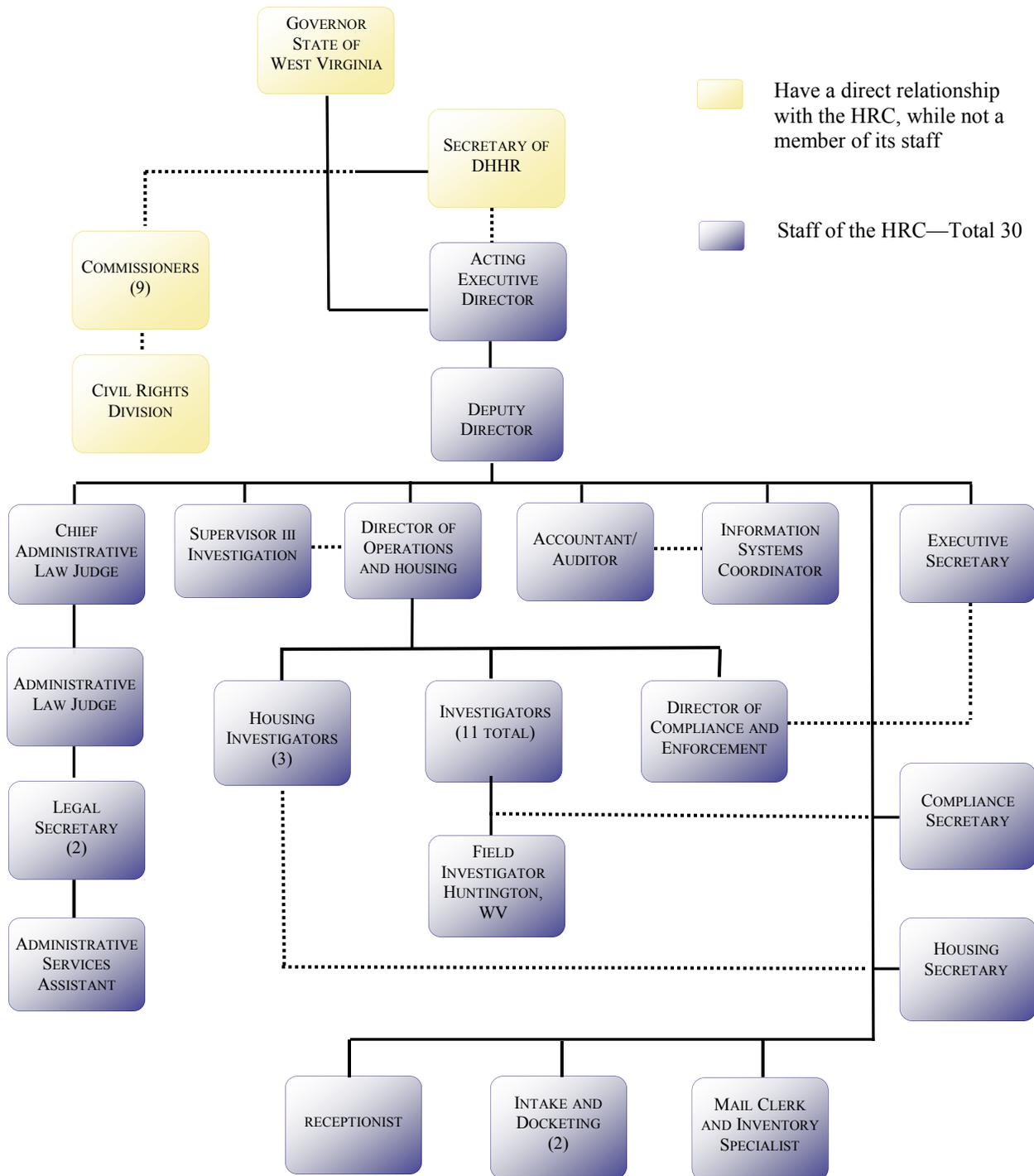
First, I am committed to hiring more experienced investigators who can conduct more efficient and effective investigations. My goal is to process cases in a timely manner without jeopardizing the quality of our investigations.

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



Robert B. Wilson
Acting Chief Administrative
Law Judge



Lisa Gist
Administrative Services Assistant



Joyce Knotts
Legal Secretary

EXECUTIVE DIVISION



Marykaye Jacquet
Deputy Director



William Bailey
Mail Clerk/Inventory Specialist



Leola Bateman
Compliance Secretary



Chad Beam
Intake & Docketing



Sue Means
Information Systems Coordinator

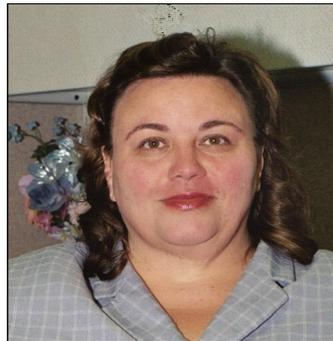


Rhoda Perez
Receptionist

EXECUTIVE DIVISION CONT.



Edward A. Teter
Accountant/Auditor II

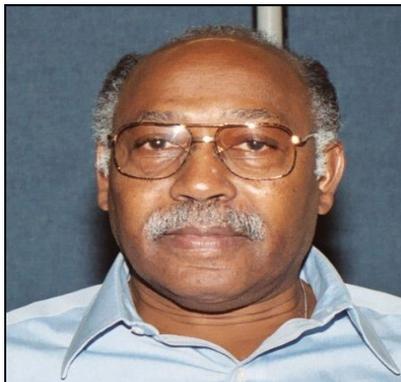


Monia Turley
Executive Secretary



Cassandra Woods
Intake & Docketing

INVESTIGATIVE DIVISION



James L. Johnson
Supervisor III



Yodora P. Booth
Director of Operations and Housing

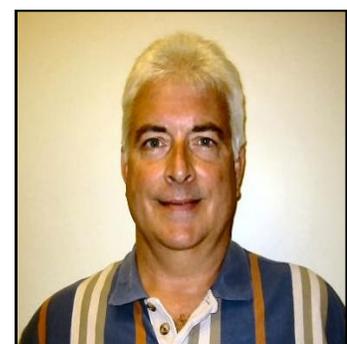
EMPLOYMENT AND PUBLIC ACCOMMODATIONS UNIT



Sally Brown
Investigator



Arthur Duiguid
Investigator



David R. Fix
Director of Compliance &
Enforcement

EMPLOYMENT AND PUBLIC ACCOMMODATIONS CONT.



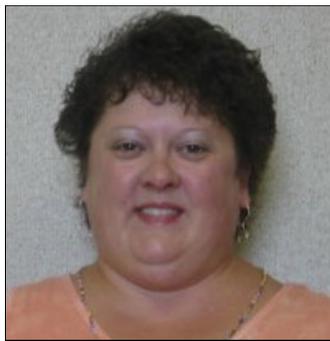
Paul Hamilton
Field Investigator
Huntington, WV



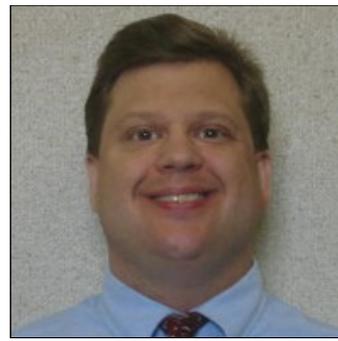
Rebecca Lester
Investigator



Richard Mangus
Investigator

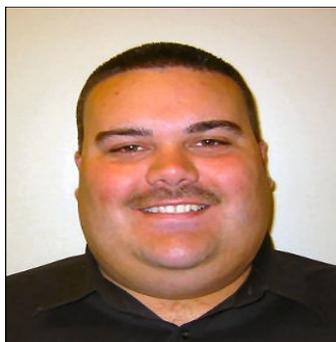


Tausha Rucker
Investigator

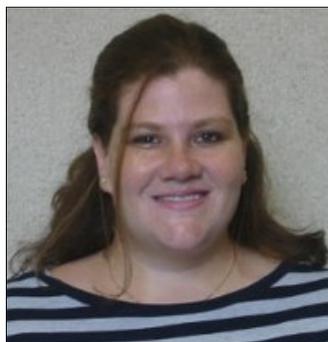


James Slack
Investigator

HOUSING UNIT



Joshua Brown
Housing Investigator



Esther Hupp
Housing Investigator



Marshall Moss
Housing Specialist

COMMUNITY PARTNERSHIPS, RELATIONS AND OUTREACH

The following section represents a list of 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. While not all inclusive, what follows are highlights of selected outreach relationships.

- ◆ Appalachian Power Co.
- ◆ Beckley Branch of the WV Chapter of NAACP
- ◆ Charleston Black Ministerial Alliance
- ◆ Charleston Job Corps
- ◆ Charleston YWCA
- ◆ Church Women United of Charleston, West Virginia
- ◆ Huntington Housing Authority
- ◆ Northern West Virginia Center for Independent Living
- ◆ Ohio Civil Rights Commission
- ◆ Southern Appalachian Labor School
- ◆ U.S. Equal Employment Opportunity Commission, WV Human Rights Commission and WV State University EEOC Forum
- ◆ U.S. Equal Employment Opportunity Commission and Discrimination Suit
- ◆ U.S. Housing and Urban Development
- ◆ WV Advocates, Inc. and WV Americans with Disabilities Act Coalition
- ◆ WV Fair Housing Action Network, WV Housing Development Fund, WV Association of Realtors (WRA), WV Human Rights Commission
- ◆ WV Federation of the Blind and Visually Impaired
- ◆ WV Federation for Deaf and Hearing Impaired
- ◆ WV Human Rights Commission Community Workshop
- ◆ WV Human Rights Commission Children's Outreach
- ◆ WV Human Rights Commission, WV Martin Luther King, Jr., Holiday Commission, and WV Human Rights Commission Celebrated Black History Month with area Faith-Based Initiatives along with the Charleston Black Ministerial Alliance and surrounding community groups.

COMMUNITY PARTNERSHIPS, RELATIONS AND OUTREACH (CONT.)

- ◆ WV Human Rights Commission's **50th Year Celebration** in collaboration with the WV Office of the Governor, WV Legislature, WV Division of Real Estate, WV Dept. of Administration General Services Division, WV State University, WV Office of the Attorney General, WV Dept. of Transportation, WV Federation of the Blind and Visually Impaired, WV Federation of Deaf and Hearing Impaired, WV Library Commission, Kanawha County Circuit Court of WV, and U.S. Equal Employment Opportunity Commission
- ◆ WV Human Rights Commission Spanish Community Outreach
- ◆ WV Interfaith Council
- ◆ WV Office of the Governor, WV Division of Culture and History and WV Human Rights Commission for the Governor's Civil Rights Day 2012
- ◆ WV State Association of Public Housing
- ◆ WV State Bar Association
- ◆ WV State University Upward Bound Program
- ◆ WV State University College of Professional Studies
- ◆ WV State University National Center for Human Relations
- ◆ WV State University Research and Development
- ◆ WV Women's Commission

Selected Outreach Highlights

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.

Beckley Branch of the WV Chapter of NAACP **Beckley West Virginia**

The West Virginia Human Rights Commission and the Beckley branch of the NAACP have renewed its efforts through the recent 67th NAACP West Virginia Convention to continue to make a positive difference in the lives of the citizens of West Virginia and to provide services which promote intolerance to discrimination of persons regardless of race, religion, national origin, creed, color; etc. The NAACP has been the leading advocate for social justice and equality for people of color since 1909.

Charleston Black Ministerial Alliance, Inc.
Charleston, West Virginia

The Charleston Black Ministerial Alliance Inc., is a covenanted, interdenominational, interracial union of ministers throughout Charleston, who are committed to exercising leadership, service to human needs, embracing families and implementing programs for the improvement of the citizens of West Virginia, its communities and its surroundings.

The Alliance, along with the WVHRC, has co-sponsored and supported the undergirding of Faith Based Initiatives over the past four (4) years.

Charleston Job Corp.
Charleston, West Virginia

The West Virginia Human Rights Commission and its partnership with the Charleston Job Corp. is ongoing. Students are given an opportunity to learn customer service skills, professional communication skills and are exposed to the responsibilities of all aspects of actual employment. In addition, the students learn the basic tenants of the Human Rights Act and the Commission's role in relationship to the Community.

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.

Church Women United of Charleston, West Virginia
Charleston, West Virginia

The WV Human Rights Commission's Faith Based Initiative that began in 2008, is in partnership with local churches, clergy and most recent, the Charleston, WV Chapter of Church Women United. The partnership continues to sponsor awareness events to local church groups in an effort to promote the services offered by the Human Rights Commission; especially with regard to Unconscious Bias, Diversity Issues, Intolerance in Discrimination and awareness of Protected Class as determined by the West Virginia Human Rights Act.

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.

**U.S. Equal Employment Opportunity Commission, WV Human Rights Commission and WV State University
Institute, West Virginia**

OFFICE OF THE GOVERNOR
Communications Office – Gov. Earl Ray Tomblin

For Immediate Release

July 18, 2011

West Virginia Human Rights Commission, 304-558-2616

**PUBLIC FORUM ON EMPLOYMENT DISCRIMINATION
AND EEO SEMINAR FOR EMPLOYERS BEGIN MAY 1**
Employers, agencies and the public gather to learn rights and requirements

CHARLESTON -- The United States Equal Employment Opportunity Commission (EEOC), in partnership with the West Virginia Human Rights Commission (WVHRC), and West Virginia State University, are conducting an Employment Discrimination Seminar on Monday, July 18, 2011, at Institute, West Virginia.

Additionally, the EEOC and the WVHRC are conducting an Employment Discrimination Seminar for employers and defense attorneys July 18, 2011, also at West Virginia State University, WVSU's Erickson Alumni Center. Topics include EEOC initiatives for 2012; the latest developments in disability law; how to build an effective anti-harassment policy; and information about the WVHRC and EEOC mediation programs.

The Seminar is free and open to the public. Due to limited seating, please RSVP by calling (304) 558-2616, ext. 76222.

The EEOC is responsible for enforcing the federal laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (40 and older), disability, and retaliation. Further information about the EEOC is available on its Web site at www.eeoc.gov.

The WVHRC is responsible for enforcing the state laws prohibiting employment discrimination based on race, color, religion, sex, national origin, age (40 and older), disability, and retaliation.

Further information about the WVHRC is available on its web site at www.hrc.wv.gov.

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. The U. S. Equal Opportunities Commission (EEOC), in partnership with the West Virginia Human Rights Commission (WVHRC), continues to share updated information through various seminars and workshops that assist the business community and advocate groups to achieve their diversity and EEO compliance goals.

The EEOC brought a Disability Discrimination Suit against McCormick & Schmick’s Seafood Restaurant in National Harbor, Maryland, who violated federal law when it harassed, demoted and fired Mr. Vernon Davis. Mr. Davis, a deaf Prep Cook was demoted, harassed, retaliated against, and fired because of his deafness and as retaliation for his complaints about the mistreatment. According to the suit, Mr. Davis has been profoundly deaf since he was a young boy and he had performed satisfactorily since his hire as a prep cook in May 2008. Beginning in 2009 up until his termination, Davis was mocked, had boxes kicked at him and was called “vermin” instead of Vernon.

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 HUD. The agencies host joint training sessions and community events to promote fair housing across West Virginia.

WV Advocates, Inc. and WV Americans with Disabilities Act Coalition
Bridgeport, West Virginia

On July 15, 2011, investigative staff and Commissioners of the West Virginia Human Rights Commission attended a one-day training seminar at the Bridgeport Conference Center, Bridgeport, West Virginia. This seminar, “The Revised ADA Regulations Implementing Title II and Title III,” was co-sponsored by the WV Advocates, Inc. and the WV Americans with Disabilities Act Coalition and was made available to Title II Coordinators, advocacy organizations, and other persons interested in or working with the Americans with Disabilities Act (ADA).

The WV Advocates, Inc., a “federally-mandated protection and advocacy system for people with disabilities in WV,” is a private, non-profit agency whose services are confidential and free of charge; and the WV ADA Coalition is part of a federally-funded project by the DBTAC: Mid-Atlantic ADA Center to provide technical assistance, training, and materials on the ADA.

The trainer, Sally Conway, the Deputy Chief of the Disability Rights Section/Civil Rights Division of the U.S. Department of Justice, provided the trainees with a good overview of the revised regulations (effective on March 15, 2012) as it relates to state and local governments, places of public accommodations and service animals.

Ms. Conway's presentation of the subject matter and responses to attendees' questions enhanced our overall knowledge of the ADA regulations and how it impacts the Commission's work in protecting the rights of persons with disabilities.

Ms. Conway has also provided the Commission with copies of the DOJ's "Guidance on the 2010 ADA Standards for Accessible Design" for distribution to our staff, commissioners, and other interested persons.

WV Fair Housing Action Network
WV Housing Development Fund, WV Association of Realtors (WRA)
Charleston, West Virginia

Celebrating April as Fair Housing Month

April 2012 marks the 44th anniversary of the 1968 landmark Fair Housing Act. Each year REALTORS® recognize the significance of this event and reconfirm the commitment to upholding fair housing law as well as the commitment of offering equal professional service to all in their search for real property.

The West Virginia Human Rights Commission sponsored this **FREE** event to all Realtors, Housing Providers, Rental Property Managers, Housing Authority Staff as well as the general public.

The Panelists were: Deacon James Johnson, Michael Jansen, Ray Joseph, Brian King, Attorney Kitty Dooley, Deputy Attorney General Paul Sheridan, Tony Harmon, Claire Chantel, Ken Mosley, and Housing Staff of the Commission

WV Federation of the Blind and Visually Impaired
Charleston, 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. Deputy Director Marykaye Jacquet met with Mr. Ed McDonald to discuss upcoming issues with the Federation of the Blind and attended a meeting.

WV Federation of Deaf and Hearing Impaired **Charleston, West Virginia**

On Tuesday, August 30, 2011, the staff of the WVHRC participated in a workshop on “Working with the Deaf and Hearing Impaired” - presented by the West Virginia Commission for the Deaf and Hard of Hearing (WVCDHH).

The Commission is to advocate for, develop and coordinate public policies, regulations, and programs to assure full and equal opportunities for persons who are deaf and hard of hearing in West Virginia.

Mrs. Marissa Johnson and Mr. Roy Forman stressed the agency’s goals to increase the organization’s visibility and strength, serve as an information clearinghouse, support development and use of certified sign language interpreters, provide training to a variety of audiences and last; to advocate for improved systems and services to the deaf and hard of hearing community.

WV Human Rights Commission **Community Workshop** **Charleston, West Virginia**

The Human Rights Commission in partnership with various community support groups, participates in ongoing training and workshops for our staff.

On Thursday, September 15, 2011, the staff and Commissioners participated in a “Change of focus” workshop based on the book “Who Moved My Cheese,” by Dr. Spencer Johnson. All staff members and the Commissioners were presented with a copy of the book prior to the workshop.

The workshop was presented by Ms. Malva Carey, a retired school teacher, with 31 years teaching experience at St. Albans, High School. Ms. Carey’s presentation reflected in her passionate emphasis on achieving successful change.

She maintained, “We must acknowledge that there is a need for the change that is to take place” and, “**Don’t ruin a new situation with the same old method.**”

Ms. Carey reminded the staff and Commissioners, that even though there may be some who reject the overall plan to change; through patience, persistence and perseverance, the outcome will prove a SUCCESS: **Strive, Un-relentlessly, Care Compassionately;** put forth maximum **Effort and Starting Small.**

WEST VIRGINIA MARTIN LUTHER KING, JR. HOLIDAY COMMISSION

Each year the West Virginia Human Rights Commission, in partnership with the WV Martin Luther King, Jr. Holiday Commission, participates in the observance ceremonies of the late Rev. Dr. Martin Luther King, Jr.

These ceremonies are held in remembrance of Dr. King's efforts towards the advancement of Civil Rights.

The ongoing partnership serves to underscore the goals and objectives of the WV Human Rights Commission in promoting equality and awareness of the rights of all citizens of this great state.

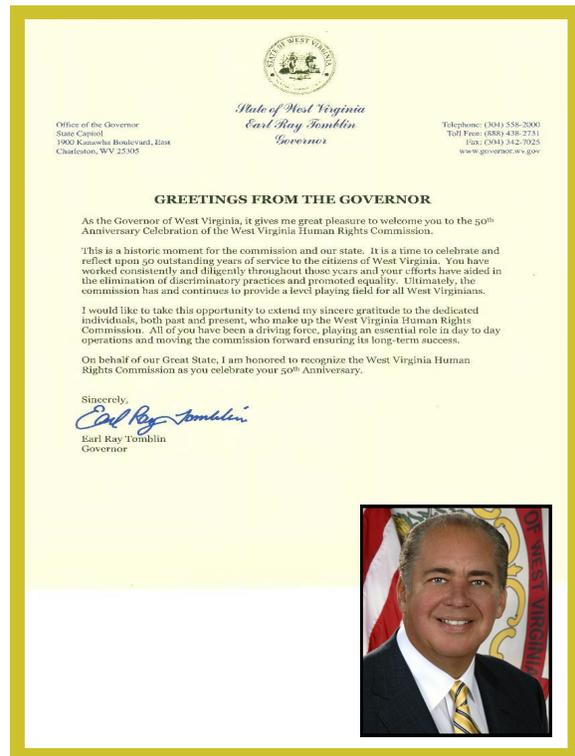
WEST VIRGINIA HUMAN RIGHTS COMMISSION CELEBRATES BLACK HISTORY MONTH

“Honoring the Memory of the Late Rev. Dr. Martin Luther King, Jr.”

During the month of February's commemoration of Black History Month, The West Virginia Human Rights Commission, area Faith-Based Initiatives, along with the Charleston Black Ministerial Alliance, and surrounding community groups, celebrated the birthday, life, and legacy of the late Rev. Dr. Martin Luther King, Jr.

Throughout the year, The West Virginia Human Rights Commission continues to have a presence in various celebrations, commemorations, and events within the community to emphasize the importance of human rights.

**WV Human Rights Commission, WV Office of the Governor, WV
 Legislature, WV Division of Real Estate, WV Dept. of Administration
 General Services Division, WV State University, WV Office of the Attorney
 General, WV Dept. of Transportation, WV Library Commission, WV
 Federation of the Blind and Visually Impaired, WV Federation of Deaf and
 Hearing Impaired, Kanawha County Circuit Court of WV and U.S. Equal
 Employment Opportunity Commission (*not all inclusive*)
 Charleston, West Virginia**



The WV Human Rights Commission (created March 6, 1961 and effective July 1, 1961) in a collaborative effort with the Legislature, Governor’s Office and several state agencies, came together to assist the Commission in celebrating 50 years of the Commission’s administering the West Virginia Human Rights Act, as amended.

This celebration was held at it’s place of origin in the Upper Rotunda of the State Capitol Building in Charleston, West Virginia on December 13, 2011. Several distinguished guest speakers and visitors attended this momentous occasion to offer accolades and honor those 50 years of service to the citizens of West Virginia and to renew the Commission’s mission to continue to eradicate discrimination in West Virginia.

**West Virginia Office of the Governor, Division of Culture and History and
the West Virginia Human Rights Commission**
Charleston, West Virginia

Advancing Civil Rights Through Ad- vocacy



9th Annual West Virginia Civil Rights Day

**Tuesday, February 28, 2012, 11:00 AM
Norman L. Fagan West Virginia State Theater
The WV Division of Cultural and History
State Capitol Complex
1900 Kanawha Blvd. E.
Charleston, WV 25305**

2012 HONOREES



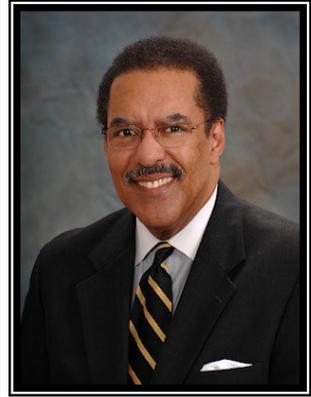
Robert S. Baker



**The Honorable
Bonnie Brown**



**Marion Capehart
Posthumously**



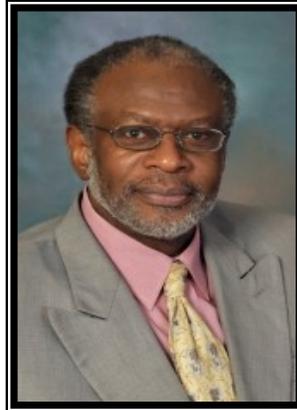
Dr. Hazo Carter



**Earl Eugene "Gene"
Corum
Posthumously**



**Rev. Dr.
Darrell W. Cummings**



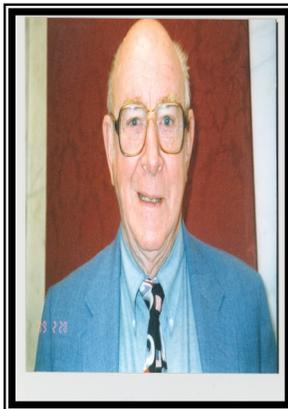
Elmer H. Day, Jr.



**Lt. Col
Kenneth L. Hale**



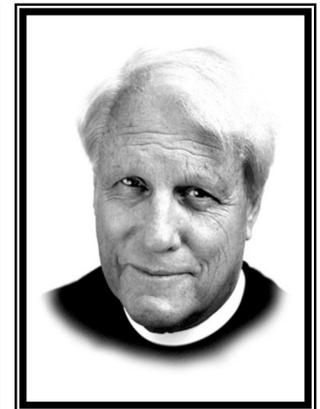
**James Lonnie Haygood
Posthumously**



**Richard J. "Dick"
Henderson**

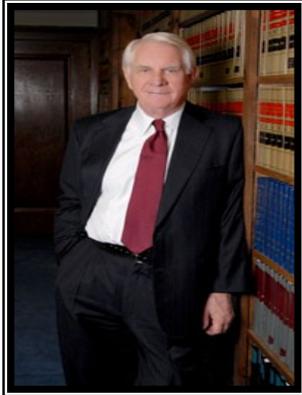


Allan N. Karlin, Esq.



Rev. Jim Lewis

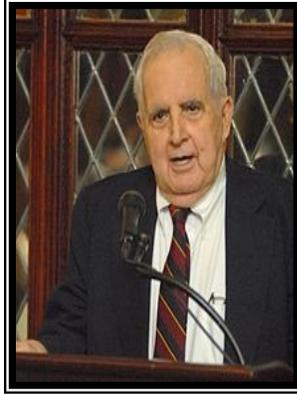
2012 HONOREES



**The Honorable
Darrell V. McGraw, Jr.**



Jane Moran, Esq.



Charles G. Peters, Jr.



Paul R. Sheridan, Esq.



Jean E. Simpson



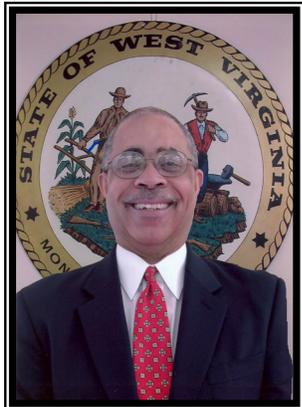
Randall Reid-Smith



**Richard F. "Dick"
Smith**



**Carolyn Elizabeth
Smoot
Posthumously**



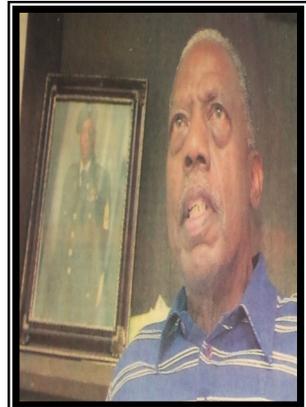
Dallas S. Staples



Dwight J. Staples, Esq.



**Gail Henderson
Staples, Esq.**



Milford Zeigler

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 special workshops such as the Upward Bound and special public events such as the 50th Year Celebration of the Commission.

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.

Ms. Jacquet, as the Acting 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 complaint) 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/person 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

ALTERNATE DISPUTE RESOLUTION PROGRAMS

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, the following information provides details on the two main Alternate 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.

Conciliations and Mediations may be monetary in nature or may also include non-payment conditions such as: 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.

Conciliation is conducted during the investigative process. The investigation does not stop because conciliation occurs. Investigation will only stop if a settlement is reached by the parties. 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 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, Joyce Knotts, Mediation Coordinator, at (304) 558-2616 or toll-free at 1-888-676-5546.

Pre-Determination Conciliation Outcome FY 2011-2012

Cases settled	2
Amount of monies generated from Conciliation*	\$ 6,537.60

Mediation Outcome FY 2011-2012

Cases settled	29
Amount of monies generated from Mediation*	\$ 827,535.31

*** 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.**

CASE ACTIVITY DURING FISCAL YEAR JULY 1, 2011 TO JUNE 30, 2012

The Agency mailed **1,327** Background Information Forms to West Virginia citizens to file a discrimination complaint.

The were a total of **409** cases docketed, broken down as follows:

- 32** public accommodation cases
- 40** housing cases
- 337** employment

The were a total of **292** cases closed, broken down as follows:

- 27** public accommodation
- 50** housing cases
- 215** employment cases

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 49 requests and collected \$451.00 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 2011-2012. For a more complete listing of Final Orders and Decisions, please refer to the West Virginia Human Rights Commission's website at <http://www.hrc.wv.gov>

SELECTED FINAL ORDERS AND
DECISIONS OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
AND DECISIONS OF
THE KANAWHA COUNTY CIRCUIT COURT
AND WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE FISCAL YEAR 2011-2012

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

OPINION AND ORDER AFFIRMING THE FINAL ADMINISTRATIVE
ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
CHARLESTON ACADEMY OF BEAUTY CULTURE, INC., JUDY HALL,
owner, and CHERIE BISHOP, instructor, in their individual capacities,
Petitioners,

v.

TYLEEMAH EDWARDS, Respondent AS DECIDED BY THE WEST
VIRGINIA HUMAN RIGHTS COMMISSION and HARRY WALTER
ROBINSON Respondent AS DECIDED BY THE WEST VIRGINIA HUMAN
RIGHTS COMMISSION

Civil Action Nos. 09-AA-168 and 09-AA-169 (August 8, 2011)

AND

**MEMORANDUM DECISION OF THE STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**CHARLESTON ACADEMY OF BEAUTY CULTURE, INC., JUDY HALL,
owner, and CHERIE BISHOP, instructor, in their individual capacities, Petitioners
below, Petitioners v. WEST VIRGINIA HUMAN RIGHTS COMMISSION and
HARRY WALTER ROBINSON and TYLEEMAH EDWARDS, Respondents
below, Respondents
(No. 11-1286 filed May 25, 2012)**

The State of West Virginia Supreme Court of Appeals issued a Memorandum Decision May 25, 2012, in which it found no error and incorporated, adopted and attached thereto the Circuit Court's "Opinion and Order Affirming the Final Administrative Order of the West Virginia Human Rights Commission", dated August 8, 2011; affirming the earlier decisions of the Chief Administrative Law Judge and the West Virginia Human Rights Commission in a 4-1 vote in which Chief Justice Menis E. Ketchum dissented. No written dissent was issued by the Chief Justice to explain the reasons for his dissent.

The Supreme Court found no substantial questions of law and no prejudicial error. The Court noted that Mr. Robinson (now deceased) and Ms. Edwards are former African-American students of the beauty school. They filed complaints with the Commission asserting various claims against petitioners related to racial discrimination and racial harassment, while Ms. Edwards also claimed retaliation for having filed a complaint of race discrimination with the West Virginia Board of Barbers and Cosmetologists. The Court also noted that the Commission had found that the beauty school was a place of public accommodation with regard to both its customers who receive services in the area of cosmetology and for the students enrolled in its educational programs.

The Circuit Court of Kanawha County affirmed the consolidated Final Order of the West Virginia Human Rights Commission adopting the Final Decision of the Chief Administrative Law Judge in its 28 page Opinion and Order Affirming the Final Administrative Order of the West Virginia Human Rights Commission, in which it addressed the Petitioners' asserted twenty one assignments of error. The Circuit Judge made conclusions of law which included that at all times relevant to the investigation and adjudication of the underlying administrative matters, the West Virginia Human Rights Commission was fully authorized to undertake its statutory obligation of eliminating discrimination in West Virginia by docketing, investigating and adjudicating

complaints of unlawful discrimination. The Commission's Final Decision and Final Order are valid exercises of the Commission's statutory authority and are neither criminal nor illegal. The Human Rights Act's directive that Commission's counsel present the cases on behalf of complainants at public hearings does not create an inherent conflict of interest as Commission's ALJs are independent. The Circuit Court incorporated the findings of fact and conclusions of law of the West Virginia Human Rights Commission in its decision.

A FINAL DECISION OF THE CHIEF ADMINISTRATIVE LAW JUDGE
AND
A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
IN THE MATTER
OF
ILONA BROWN v. ELITE COAL SERVICES, LLC
DOCKET NO. ES-248-09

The West Virginia Human Rights Commission adopted the Final Decision of the Acting Chief Administrative Law Judge. The Acting Chief Administrative Law Judge held that Respondent, Elite Coal Services, LLC, was not liable for the gender discrimination against the Complainant, Ms. Ilona Brown, because it was not aware that its client had discriminated against Ms. Brown on the basis of her gender in failing to allow her to complete her training as a rock truck driver and because its reasons for failing to refer her for employment to other clients were not the result of her gender but rather because of the lack of demand for red hat surface miners who could not drive a rock truck and subsequent layoffs on an industry wide basis which further diminished employment opportunities. The Acting Chief Administrative Law Judge did not find that the failure of Respondent's President to inform Complainant that its client had concerns about her driving a rock truck was sufficient to constitute aiding or participation in the discriminatory actions of its client.

Complainant received her 40 hour surface mining card in August 2008 (red hat certification) and began applying for surface coal mining jobs at various mine sites near where she worked full time as a security guard at a coal mine. Ms. Brown was called in for an interview at the Edwight Mine (Alex Energy, Inc.) with its president. A person with the Human Resources arm of Massey later called her to tell her that she should report to Respondent, Elite Coal Services, LLC as she was going to be hired as a rock truck driver trainee at the Edwight Mine.

The practice of Alex Energy Inc. was to initially hire workers through a staffing company, the Respondent, Elite Coal Services, LLC. Respondent would conduct initial training, screen the employees for miner certification, conduct drug testing and background checks; which, if satisfactory, would result in the employees becoming employees of Elite Coal Services, LLC upon placement at the client mine. Although Complainant and other contract workers are paid by Elite Coal Services, LLC, provided benefits by Respondent, and have all taxes and withholding administered by Respondent; the actual supervision of the contract employees is exclusively within the control of the client, in this case Alex Energy Inc., d/b/a Edwight Mining. Work hours are scheduled by Edwight Mining and reported on a daily basis to Elite Coal Services, LLC which bills Edwight based upon the hours its contractors are reported to have worked each day. The Complainant, worked as a contract employee, under the direction of Edwight Mining's employees and agents. Elite Coal Services, LLC does not independently supervise its employees in their day to day duties while employed at the mine.

Ms. Brown successfully underwent the one day screening and training with Elite Coal Services, LLC. She subsequently completed the one day Massey training and a start date of October 1, 2008, agreed upon with Massey Services Human Resources personnel. When Ms. Brown reported to the Edwight Mine on October 1, 2008, there was a brief orientation and thereafter she was assigned to perform inventory. Ms. Brown was again assigned to work inventory the following day. She inquired about when she would begin training driving the rock truck, the assignment for which she had been hired. At the end of the second day she was instructed to report to the "hog shed" at the base of the mountain where rock truck drivers assemble at the start of each shift.

Ms. Brown was assigned to train with trainer, Mr. Martinez, her third day at Edwight. She observed from the "buddy seat" for the first two days and began driving beginning with the third day in the rock truck. Ms. Brown drove first one hour and then progressively more each day thereafter. Ms. Brown testified that she was getting the feel for driving and doing well except for some difficulty backing up to the loader, which required the use of the mirrors. She had done it a number of times, however, sometimes Mr. Martinez would grab the wheel to back it up when she was driving because other drivers would be lined up behind in a hurry to load.

The lead rock truck driver/trainer, stopped and had had Ms. Brown ride with him, during which time he asked her how her training was going. Ms. Brown informed him that it was going well but that she needed more practice backing up to the loader. Without consulting Mr. Martinez or personally observing Ms. Brown operating the rock truck, the head rock truck trainer told Edwight management and Massey Services Human Resources people that Ms. Brown couldn't drive a rock truck, didn't want to

drive a rock truck and was a danger to others. The Mine Superintendent spoke to the President of Edwight and had the lead rock truck driver/head rock truck trainer discuss the matter with the President regarding his concerns.

After the shift ended, Ms. Brown was instructed to report to the President's office, and a short discussion ensued. The president of Edwight asked how the rock truck training was coming along. Ms. Brown related she was doing well and that she needed additional practice backing up to the loader. She asked if she could come in on a slow day between shifts and practice backing up to the loader while she could have sufficient time to learn without holding up the other drivers. The president agreed. He then asked Ms. Brown if she would work inventory the next two days because they needed the help. Ms. Brown agreed. Ms. Brown worked the next day in inventory, the next morning and then spent the afternoon cleaning around the office. When she departed that evening she was told at the guard shack at the entrance of the mine to turn in her ID because that was going to be her last day.

Elite Coal Services, LLC had left a message on her answering machine at home that Ms. Brown's services were no longer required. When Ms. Brown spoke with the Human Resources director for Elite Coal Services, LLP, she was told all we know is that your services are no longer required; that the client doesn't explain why. Ms. Brown was told she was in good standing and would be considered for other positions if any came up. Ms. Brown was never called in for any positions.

It was the practice of the client to simply state that services of a contractor were no longer required and they would be terminated from employment by Elite Coal Services, LLC. Elite Coal Services, LLC did not require any further explanation from its client. Nevertheless, at some later point, Elite Coal Services, LLC's president was told that Ms. Brown could not back a rock truck onto a football field, by one of Massey's Human Resources personnel. Ms. Brown was never told about any concerns about her abilities to operate the rock truck.

Elite Coal Services, LLC employs client referred contractors selected by the clients and sometimes recommends contractors to the clients to fill needs of the clients which Elite Coal Services, LLC is aware need to be filled. Red hat surface miners are almost exclusively hired in to start out as rock truck drivers because that is the easiest equipment to learn to operate. Since the president of Elite Coal Services, LLC assumed that Ms. Brown was not suited to operate a rock truck based upon what he was told by his client, he testified that he did not consider her for referral to other operations as a rock truck driver. Shortly after Ms. Brown was terminated, there was a severe industry wide downturn due to reduced worldwide demand for coal.

The Acting Chief Administrative Law Judge reasoned that determinations of whether employment agencies are liable for employment discrimination must be made on a case by case basis looking to whether the employment agency participated in the discrimination or failed to act upon complaints of discrimination, rejecting the assertion that the clients acted as agents of the employment agency under these facts. Elite Coal Services, LLC did not know that Ms. Brown had been subjected to discrimination because Ms. Brown made no complaint of gender based discrimination to them. Ms. Brown had no way to know that she might have been subjected to gender based discrimination because no one informed her that she was terminated for any other reason than lack of work. She had no way of knowing that she was not being allowed to complete her training until after filing her complaint with the Human Rights Commission when she began to suspect discrimination when others continued to be hired following her termination. Although this resulted in unfairness to Ms. Brown, the Acting Chief Administrative Law Judge found that there was no action on the part of the Respondent, Elite Coal Services, LLC that indicated it had intended to discriminate against Ms. Brown on the basis of her gender or to aid or further such discrimination by its client.

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.hrc.wv.gov for the Final Decision Directory.

CONCLUSION

Currently the Commission receives approximately \$1,398,873 in its state budget and \$443,117 as a result of its agreements with EEOC and HUD.

The Commission's goals for **Fiscal Year 2013** include the following:

- ◆ Provide a continued, ongoing variety of training to the Commissioners and all staff, i.e., changes in the workplace, creative writing, policy and procedure expectations as required by the Dept. of Health and Human Services, etc.
- ◆ In a collaborative effort with the EEOC and the Civil Rights Division of the Attorney General's office, continue to conduct additional training for investigative staff and Commissioners including City Commissions.
- ◆ Reorganize the Commission to better serve the citizens of West Virginia.
- ◆ Provide more extensive and innovative training sessions to educate businesses regarding discrimination law in housing, public accommodation and employment.
- ◆ Continue the Commission's mission to eradicate discrimination and continue to improve its services to the citizens of West Virginia by expanding Community Outreach to include additional Advocacy Groups.
- ◆ Expand 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.
- ◆ Continue to hire experienced investigators who will conduct more efficient and effective investigations.
- ◆ Set up dialogue of understanding between the Commission and all West Virginians to promote awareness of the goals and objectives of the Commission.

Fiscal Year 2012 Conclusion cont.

- ◆ **Maximize the use of Alternative Dispute Resolution Programs, which includes State Bar Mediation Training.**
- ◆ **Research and implement a new case tracking system that will differentiate additional statistical categories in response to our constituents.**
- ◆ **Continue and organize an upgraded Civil Rights Day for February 2013.**
- ◆ **Plan and implement the annual Fair Housing Summit/Seminar of 2013.**
- ◆ **Collaborate with the Herbert Henderson Office of Minority Affairs of the Governor's Office**

This concludes the Annual Report for Fiscal Year 2012.



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.

**West Virginia Human Rights Commission
1321 Plaza East, Room 108A
Charleston, WV 25301-1400
(304) 558-2616
Toll Free: 1-888-676-5546
Fax: (304) 558-0085
TTY: (304) 558-2976**

**Located on the Web at:
www.hrc.wv.gov**