

ANNUAL REPORT
FISCAL YEAR 2000-2001

West Virginia Human Rights Commission
1321 Plaza East, 108 A
Charleston, West Virginia 25301-1400

IVIN B. LEE
EXECUTIVE DIRECTOR

WEST VIRGINIA HUMAN RIGHTS COMMISSION

ANNUAL REPORT

FY 2000-01

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STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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

Bob Wise
Governor

Ivin B. Lee
Executive Director

January 1, 2002

To: The Honorable Robert Wise
Governor, State of West Virginia

The West Virginia Legislature

Dear Governor Wise and Legislature:

I am pleased to present to you the 2000-2001 annual report of the West Virginia Human Rights Commission. This has been a good year for the Commission.

The mandate of the Commission is to administer and enforce the human rights laws of the state by assuring equal protection to all individuals in the areas of employment, housing and public accommodations. We have worked diligently towards the goal of safeguarding these fundamental rights afforded every individual in West Virginia.

We pledge our commitment to serve as a resource to you. Should you have any questions or would like to discuss any part of our report feel free to contact me.

Respectfully submitted,

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

Ivin B. Lee
Executive Director



Lew G. Tyree
Commissioner
Elected Chair
7-1-00



Elizabeth Brown
Commissioner
Appointed 1-10-00



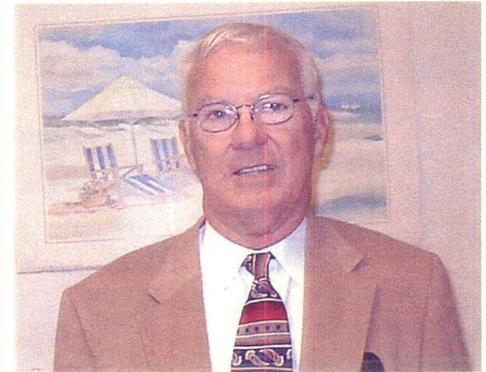
Kenneth Gilbert
Commissioner
Appointed 7-19-00



Robert M. Morris
Chairperson



Marion J. Capehart
Commissioner



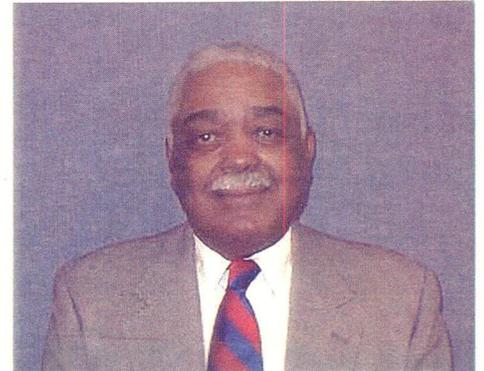
William A. Peddicord
Commissioner



Charlene Marshall
Commissioner



Betty A. Hamilton
Commissioner
Elected Vice Chairperson
7-1-00



William L. Williams
Vice Chairperson

Ivin B. Lee
Executive Director



Norman Lindell
Deputy Director





Deborah Robinson
Account
Technician II



Edna Martin
Administrative
Services Manager I



Bette Wihelm
Administrative
Secretary



Paul Cook
IS Coordinator



William Mahan
Supervisor III



Don Raynes
Supervisor III



Richard Ashwell
Investigator II



Linda Bowers
Investigator II



Yodora Booth
Investigator II



Sally Brown
Investigator I



David Gillespie
Investigator II



Paul Hamilton
Investigator II



Jackie Heath
Investigator II



J.L. Johnson
Investigator II



Thomas Lee
Investigator I



Carolyn Smith
Investigator I



Tausha Stigall
Investigator II



Kenneth Bailey
Mail Runner



Leona Chupick
Office Assistant III



Joyce Knotts
Secretary I



Penny McGill
Office
Assistant II



Lisa Parks-Gist
Office
Assistant III



Monia Turley
Secretary II



Kaye Vealey
Office
Assistant II

ADMINISTRATIVE

LAW

JUDGES



Gail Ferguson



Phyllis H. Carter



Robert B. Wilson

**WEST VIRGINIA
HUMAN RIGHTS COMMISSION**

**CENTRAL OFFICE
BUCKHANNON AND HUNTINGTON STAFF**

1321 Plaza East - Room 108 A
Charleston, WV 25301-1400
304-558-2616

(Fax) 304-558-0085
(TDD) 304-558-2976
888-676-5546

Hate Crimes Task Force e-mail = hatecrimes@wvhrc.state.wv.us
WVHRC e-mail = wvhrc@state.wv.us (* For employee e-mail,
ADD: @wvhrc.state.wv.us to e-mail name)

Website: www.state.wv.us/wvhrc

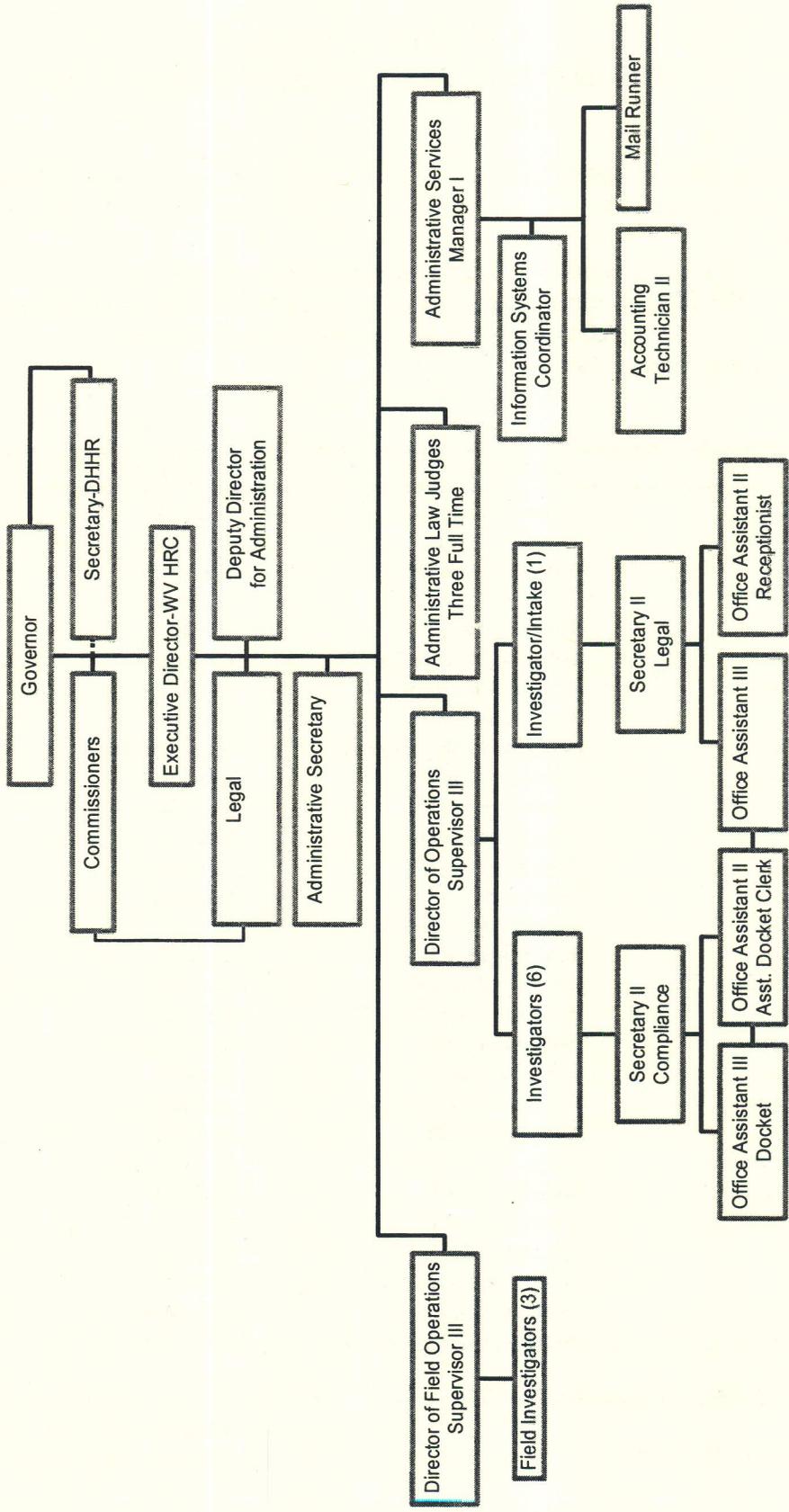
| NAME | POSITION | E-MAIL* | EXTENSION |
|------------------------|---------------------------|-----------------|------------|
| Ashwell, Richard | Investigator II | ashwellr | 211 |
| Bailey, Kenneth | Mail Runner | baileywk | 226 |
| Booth, Yodora | Investigator II | booth | 217 |
| Bowers, Linda*** | Investigator II | bowersll | 9-557-5823 |
| Brown, Sally | Investigator I | brown | 222 |
| Carter, Phyllis P. | Admin. Law Judge II | carterp | 231 |
| Chupick, Leona | Office Assistant III | chup | 221 |
| Cook, Paul | IS Coordinator | cookpw | 205 |
| Ferguson, Gail | Admin. Law Judge II | fergusongm | 202 |
| Gillespie, David | Investigator II | gillesp | 225 |
| Hamilton, Paul*** | Investigator II | hamilton | 9-557-5798 |
| Heath, Jackie | Investigator II | heathjl | 208 |
| Johnson, J. L. | Investigator II | johnsonjl | 210 |
| Knotts, Joyce | Secretary I | knottsje | 216 |
| <i>Lee, Ivin B.</i> | <i>Executive Director</i> | <i>leeib</i> | <i>230</i> |
| Lee, Thomas | Investigator I | leeta | 213 |
| <i>Lindell, Norman</i> | <i>Deputy Director</i> | <i>lindelln</i> | <i>206</i> |
| Martin, Edna | Admin. Svcs. Mgr.I | martinel | 204 |
| Mahan, William D. | Supervisor III | mahanwd | 209 |
| McGill, Penny | Office Assistant II | mcgill | 223 |
| Parks-Gist, Lisa | Office Assistant III | parksgistcr | 201 |
| Raynes, Don | Supervisor III | raynesdr | 214 |
| Robinson, Deborah | Acct. Technician II | robinsondk | 215 |
| Smith, Carolyn K. | Investigator I | smithck | 212 |
| Stigall, Tausha** | Investigator II | stig | 9-557-4282 |
| Turley, Monia | Secretary II | turleym | 218 |
| Vealey, Kaye | Office Assistant II | vealeykp | 200 |
| Wilhelm, Bette | Admin. Secretary | wilhelmbf | 203 |
| Wilson, Robert | Admin. Law Judge II | wilsonrb | 224 |

** (Fax 304-473-4207) (Phone 9-557-4282)
Box 460
Buckhannon, WV 26201

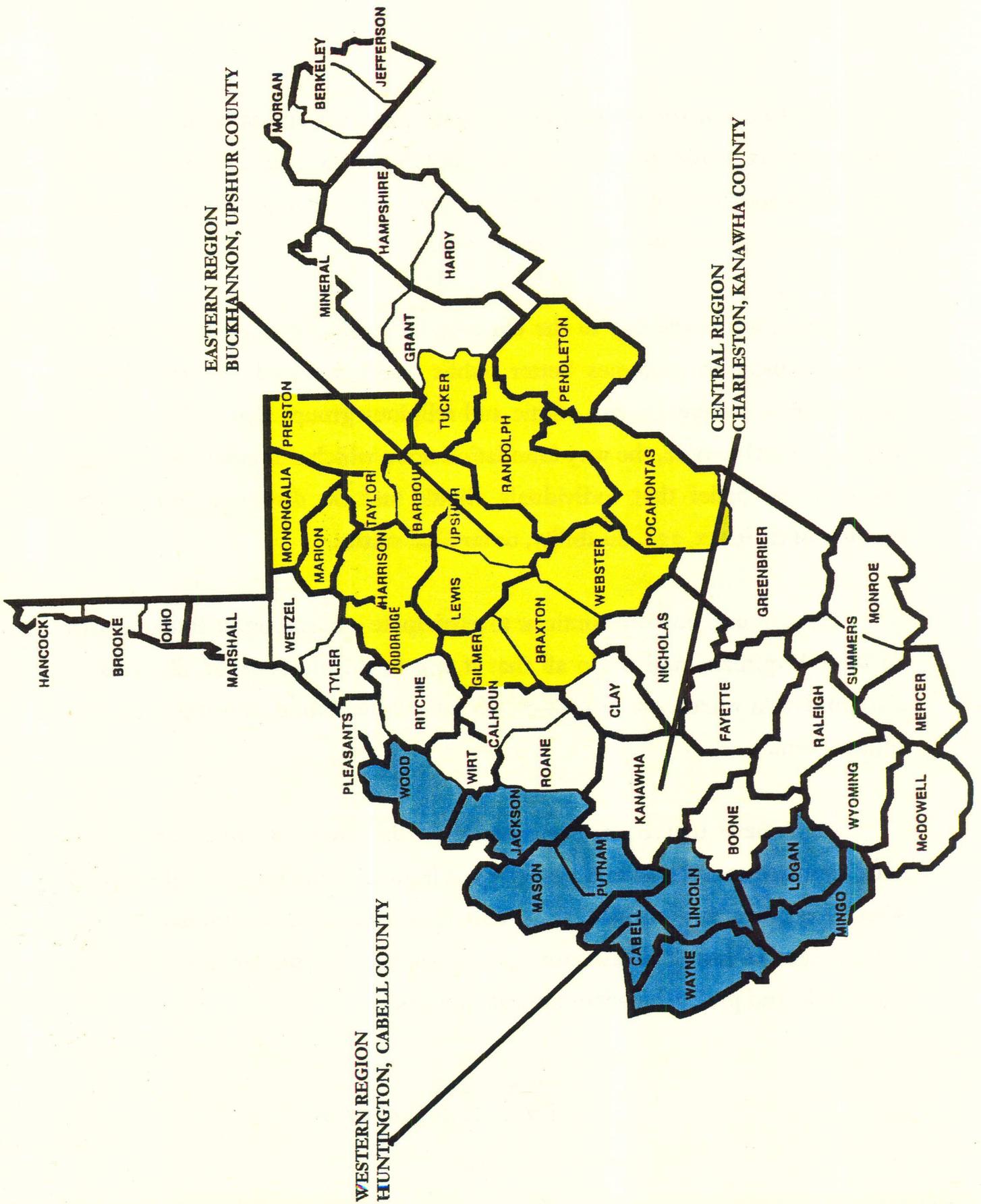
*** (Fax-9-528-5813)/Conf. Rm. (9-557-5822)
801 Madison Avenue, Suite 233
Huntington, WV 25704

(Rev. 11-13-01)

West Virginia Human Rights Commission Organization Chart



WEST VIRGINIA HUMAN RIGHTS COMMISSION REGIONS



My Vision

The Commission's staff will continue to process and to bring cases to a timely closure while ensuring quality investigations and the protection of procedural and substantive due process rights. In so doing, I believe that the people of this great state will be well served.

Education is the key to the elimination of all forms of discrimination because education promotes better public awareness and tolerance of the many diverse cultures, racial, ethnic and religious groups that make up West Virginia. Furthermore, the very foundation upon which this state was founded supports the belief that individuals should not be discriminated against because of their sex, age, disability, or familial status.

The Commission will continue to participate in meaningful dialogue with all West Virginians and to do all that it can to rid our state of all forms of discrimination whether it is through education, mediation, investigation, and adjudication.

We believe that equal opportunity in the areas of employment and housing accommodations and property is a human right and civil right that all West Virginians are entitled to. The Commission is committed to the enforcement of laws that guarantee those rights. We pledge our diligence, hard work, and professionalism towards this end.

IVIN B. LEE
EXECUTIVE DIRECTOR

EXECUTIVE DIRECTOR'S TWO-YEAR REPORT

Upon my appointment to the position of Executive Director of the West Virginia Human Rights Commission in June 1999, I immediately reviewed the daily operations of the Commission to determine how the agency could become even more efficient. During my interview, I was informed that one of the major concerns about the agency was its lack of credibility within the community.

The staff seemed unsure as to their individual jobs and who actually supervised them. In order to resolve those concerns, a reorganization was implemented and I am pleased to report the results have been more timely and efficient handling of complaints and investigations. The agency receives many positive comments and compliments regarding this reorganization. What follows are some of the problematic areas which have been addressed to date and the corrective actions taken.

It is paramount that the Commission investigate cases, and close them, in a timely fashion. There is a new team concept in place that has improved the efficiency of case investigations, along with a "triage". Three additional investigators have been hired and two clerical positions were added to the Charleston office to assist with intake and secretarial responsibilities for the legal unit. All complaints statewide were previously handled out of the Charleston office. The agency now has two satellite offices, one in Buckhannon and one in Huntington. Buckhannon has one investigator. Huntington has two investigators.

The Accounting Technician acted also in the capacity of a mail runner and chauffeur, therefore working out of the job classification. The agency now has a mail runner who handles the mail and makes certain that agency vehicles are operational.

It was discovered that the entire staff used only one state car. It was difficult to function outside of the office. I am pleased to report that the Commission now has three cars at its disposal. During the next funding cycle a request will be made for two additional cars, one of which will be located at the satellite office in Buckhannon. The investigator in that satellite office is responsible for 16 counties.

The agency's office technology was woefully out of date. This past fiscal year the Legislature allotted \$63,000 for computers and software in order that the equipment could be upgraded.

The former contract administrative law judge was not issuing decisions in a timely fashion. As a result, a decision was made to terminate the contract and employ another full time judge. The Commission now has three full time judges. Recently the agency contracted with the Attorney General's Office to install Premise and WestLaw on the judges' computers for research capabilities. This is the first time the judges have had online research capability available to them.

The Commission formed partnerships with the Charleston Job Corps and the Hope Project resulting in the availability of student interns who perform basic clerical tasks, including answering the telephones. This is part of the interns' curriculum and there is no charge for their services.

Payscale was not equivalent to other state employees in similar positions. All employees have now received at a least five percent salary increases. This year, the Legislature will be asked to fund the Commission's budget to the extent that all employees will earn salaries which are equivalent to other state employees in like positions.

The mediation and pre-determination conciliation projects have been revived and are very successful. (graphs are included in this annual report.) The Legislature was so pleased with the success of the mediation project that it has given the agency \$20,000 to take mediation statewide. This has recently been implemented.

The Commission has updated all its publications. In cooperation with the National Federation for the Blind, all agency publications are now available and have been distributed in braille. As a result of the partnership with Goodwill Industries, staff regularly meets with persons who are physically or mentally challenged to discuss issues and answer questions about the Commission's services. The agency has received an award from Goodwill Industries for these activities.

For the past two years the annual report has been distributed to the Governor and Legislature in a timely manner. Also, I am pleased to report that the professional staff has been actively engaged in cross training since my arrival.

In addition to the reorganization of staff responsibilities, we have began an active public relations campaign. One of the first things done was to develop a new mission statement which stresses education and outreach. Secondly, a series of luncheons with various agencies and community groups was organized in order to learn about their concerns and to educate them about the Commission. Many organizations accepted our invitations, specifically, persons from the gay and lesbian coalition, minority groups, Jewish community, the B`hai Faith, and law enforcement communities.

Further, the agency has conducted four community forums during which the Commission provided opportunities for persons to meet with employers to discuss employment and other resources which are available to them. The first community forum was held on February 20, 2000 at New Covenant Baptist Church in Charleston, West Virginia. Approximately 127 persons attended. The Commission was then asked to have another public forum at that location. This church is situated in a high-crime, low-income, and high-unemployment section of Charleston. Two additional forums were held--May 21, 2000 and again on March 25, 2001. Many employers attended each session. The attendance at each of the sessions was approximately 117 persons. All in all, the Commission reached about 361 persons.

Recently a community forum was held at Calvary Baptist Church in Huntington, West Virginia on June 10, 2001. There were 35 persons in attendance. The response to these forums has been positive. The agency will continue to plan and conduct additional community forums this fiscal year.

The Commission has been actively involved in community education. For example, on July 10, 2001, the agency sponsored a one-day workshop about and for Native American Indians at West Virginia State College. There were 50 persons in attendance.

During the months of February and March 2001, the staff participated in several diversity panel discussions in the public junior and senior high schools in cooperation with All Aid International in Kanawha and Logan counties.

On June 24 and 25, 2001, the Commission in cooperation with the National Center for Human Relations of West Virginia State College, sponsored a statewide teleconference and program of recognition that reached approximately 500 persons. The teleconference was available on the internet and to a worldwide audience.

Staff members have been invited to speak before the West Virginia State Bar and to be presenters at the International Association of Official Human Rights Agencies where they presented a lecture on the Commission's team building, case tracking and "triage" process.

Currently the staff and I serve on the following boards and committees:

- ◆ The Community Council of the Charleston Job Corps
- ◆ West Virginia Women's Commission
- ◆ Minority Youth in Juvenile Justice Committee of the Charleston Public Safety Council
- ◆ Mental and Physical Disability Committee of Goodwill Industries

During the past two years, I have participated in numerous speaking engagements. Some examples are as follows.

- ◆ Pilot Club Jackson County, September 9, 1999
- ◆ Read-to-Me Program at Tiskewah Elementary School, February 2, 2000
- ◆ Conference of Agency Executives about the West Virginia Human Rights Commission's New Walk, February 16, 2000
- ◆ Career Day, Mound Elementary School, Dunbar, WV, May 26, 2000
- ◆ The Nursing Program at the University of Charleston, September 15, 2000
- ◆ National Honor Society Induction Ceremony, Winfield High School, October 4, 2000
- ◆ The 134th Anniversary Banquet, Simpson Memorial United Church, October 27, 2000
- ◆ State College and University EEOC Conference, 2000
- ◆ The 56th and 57th Annual Convention of the NAACP, 2000 and 2001
- ◆ Black History Month Speaker, National Center for Human Relations, West Virginia State College, February 27, 2001

- ◆ Kanawha Valley Senior Services–Black History Month, February 7, 2001
- ◆ Civil Rights Team Project at the Charleston Civic Center, April 24, 2001
- ◆ 99th Imperial Conclave Banquet, National Imperial Council of Shriners, A.A.O.N.M.S. and National Imperial Daughters of ISIS, May 19, 2001
- ◆ Hugh O'Brien Youth Leadership Program, University of Charleston, May 20, 2001
- ◆ 2001 Annual Public Defenders' Conference, Canaan Valley, June 22-23, 2001 and
- ◆ Charleston Job Corp., Community Relations Council, June 19, 2001

I have attended numerous activities representing the Commission, namely:

- ◆ City of Charleston's Celebration of Dr. Martin Luther King, February 2001
- ◆ Fund for Concord College Dinner
- ◆ OIC 2000 Benefit Dinner
- ◆ 22nd Annual Legislative Prayer Breakfast and
- ◆ Signing between the Booker T. Washington Association, Cabin Creek Quilts and West Virginia State College

It has been a busy and productive two and one-half years during which time the Commission has made steady progress. Feedback from the community supports the finding that the Commission's reputation has improved. Additional funding from the Legislature for mediation, computers and software is an indication that they, too, are pleased with the Commission.

I remain committed to the goal of the Commission and that is to provide the best possible services to the citizens of the Great State of West Virginia.

Ivin B. Lee

HISTORY

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, or blindness , 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 § 5-11A-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.”

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 accommodations 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." The victim is denied basic necessities of life (shelter) and fundamental freedom (the right to live where one chooses).

Specifically, the West Virginia Human Rights Act prohibits discrimination by any employer who employs 12 or more persons 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 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, landlord 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.

THE WEST VIRGINIA
HUMAN RIGHTS COMMISSION

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, religious persuasion, color, national origin, ancestry, sex, age (40 or above), blindness 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.

COMMUNITY OUTREACH

The Executive Director of the West Virginia Human Rights Commission continues to stress the importance of educating the community about the Commission and its commitment to eliminate discrimination in West Virginia.

On June 10, 2001, the Commission held a community forum at Calvary Baptist Church in Huntington, West Virginia. There were 35 persons in attendance. **Commissioner William A. Peddicord** was in attendance.

On June 24 and 25, 2001, the Commission in cooperation with the National Center for Human Relations at West Virginia State College sponsored a statewide teleconference and program recognition that brought an audience of 500 persons to the teleconference site. The teleconference was available simultaneous on the Internet and available to a worldwide audience. The keynote speaker was **Naomi Tutu**, daughter of **South African Archbishop Desmond Tutu** and a program coordinator at the Race Relations Institute at Fisk University in Nashville, Tennessee. Other program participants were **Reverend Emerson Wood**, Executive Director of Mission West Virginia; **Ms. Joan Browning**, civil rights activist and freedom rider; **Dr. Rita Brown**, Chair of the Department of Social Work at West Virginia State College; **Mr. Roger Forman**, civil rights attorney in Charleston; **Mr. James Tolbert**, State President-National Association for the Advancement of Colored People; **Mr. Herbert Henderson**, civil rights attorney in Huntington; and **Ms. Joyce Steinbrecher**, program outreach specialist with the West Virginia Coalition Against Domestic Violence. A number of persons were recognized during a luncheon that celebrated their courage in the face of flagrant acts of discrimination.

A one-day seminar for professionals in the field of human rights issues concerning Native Americans was held on July 10, 2001. Presenters were **Mary Jarrell**, a Native American from Boone County; **Clara Holt**, NAGPRA officer, Eastern Band, Cherokee Nation; **Dolores Santha**, Representative of Seneca/Comanche Nations; **P.K. Casto**, representative of the Cherokee Nation; **Butch Shepard**, representative of the Pawnee/Crow Nation; **Bernard Humble-Penn**, representative of the Cherokee Nation; and **Verna Holstine**, representative of the Cherokee Western Band. There were 50 persons in attendance.

In response to concerns that arose from the September 11, 2001 terrorist attack on the World Trade Center, the Commission held an ethnic luncheon with representatives of the Middle Eastern community and other religious persuasions. This meeting was well received and all who attended expressed positive remarks. **Chairman Lew Tyree** gave the welcome. Special guest, **Marshall Moss**, Executive Director, Charleston Human Rights Commission made remarks.

On October 5, 2001, the Commission in cooperation with **Nathan Wilson** at the West Virginia Council of Churches participated in an interfaith vigil against hate violence. There were 150 persons in attendance.

The Commission provided the first in a series of seminars on civil rights issues for the management employees of **Genesis Elder Care**. There were 50 management personnel in attendance.

Commission staff meets regularly with persons who are physically and/or mentally challenged at **Goodwill Industries** to discuss issues and answer questions about available services.

Commission's Annual Retreat

The West Virginia Human Rights Commission's annual retreat took place in Charleston, West Virginia. The facilitator at this event was **David Harris**, Director of Equity Programs of Marshall University. He reviewed the goals and objectives from the previous year and reported that the majority have been met and exceeded. The Executive Director's "Two Year Report" was presented.

WEST VIRGINIA HUMAN RIGHTS COMMISSION COMPLAINT PROCESS

Step One:

You must act quickly! A person may call, write or visit the office of the West Virginia Human Rights Commission to report an incident of discrimination. The complaint must be filed within 365 days of the most recent incident.

Step Two:

After all facts have been examined, an investigator makes a recommendation as to a finding. The finding will either be that there is not enough evidence to support the allegation(s) of discrimination (no probable cause) or that there is reason to believe that discrimination did occur (probable cause).

Step Three:

Following a probable-cause determination, conciliation is attempted. In this stage, the Commission or the complainant may agree to a settlement with the parties against whom the complaint is filed (the respondent). If a settlement cannot be reached, a public hearing will be held.

Step Four:

An administrative law judge will conduct a public hearing which is similar to a trial. After the judge hears all the evidence, a decision is issued by the judge on behalf of the West Virginia Human Rights Commission.

Step Five:

The judge's decision may be appealed to the West Virginia Human Rights Commission. The appeal is reviewed by the nine commissioners who are appointed by the Governor. The party aggrieved by the commissioners' decision may then seek judicial review in the courts.

AN OVERVIEW OF INVESTIGATION AND COMPLIANCE PERFORMANCE

The following statistical report has been prepared to provide a picture of the investigation and outcome of cases filed before the West Virginia Human Rights Commission. In order to provide a context for these statistics, a summary of the investigation and compliance operation is included.

The central charge of the West Virginia Human Rights Commission is to enforce compliance with the provisions of the West Virginia Human Rights Act. To this end, allegations of discrimination in employment, housing or public accommodations due to membership in any of the nine protected categories are subjected to a three-part process:

Step One: Intake

The intake process evaluates that allegation for jurisdiction under the law and prepares the jurisdictional charges for formal service and investigation. A charge must identify an act of harm to the complainant and state the complainant's reason for believing that illegal discrimination has occurred.

Step Two: Investigative Process

At this stage, the accused party must provide a rationale for defense of nondiscrimination in the alleged case. This explanation is called a *position statement*.

Newly received position statements are brought to a weekly meeting, along with the original complaint. At this meeting, the assigned investigator, the investigator's supervisor, the deputy director, the intake officer and an attorney from the Civil Rights Division of the Attorney General's Office review the charge, position statement and all relevant materials submitted by all parties. Those weekly meetings ensure that issues have been properly identified and allows for early disposition of urgent cases and promotes resolution of cases which require minimal investigation.

At these weekly meetings, the investigator presents the case. The case is reviewed and a consensual plan is developed.

If at this point a rebuttal to the position statement of the aggrieved party has not been received, the investigator must obtain one. It is helpful for the accused party to provide supporting documentation of its position; however, there is no burden to prove innocence during this phase of the complaint process.

To reach a finding of probable cause, evidence must be provided by the aggrieved party or developed by investigation showing the position statement to be a pretext for illegal discrimination. Additionally, in disparate-treatment allegations, the act of harm is motivated by the fact that one of the aggrieved party is a member of the protected categories under the law. Where motive is not present, evidence must establish a

disproportionate, adverse impact upon the protected category of an otherwise neutral policy or procedure.

The investigative staff is trained in investigative techniques, theories of discrimination and associated formulas to determine if such evidence exists. The investigator's role is not to "prove the case" for either the aggrieved party or the accused party. It is to simply identify, obtain and evaluate evidence which will allow the investigator to write a recommendation of whether probable cause exists to believe that a violation of the West Virginia Human Rights Act has occurred.

During this process, administrative closure or predetermination settlement is possible. Administrative closures occur when new facts are brought forward by investigation to show that the complaint is in some way non-jurisdictional, or the aggrieved party chooses to withdraw the complaint or fails to cooperate with the Commission's investigation.

In predetermination settlements, the Deputy Director does not propose or negotiate settlement terms. The Deputy Director facilitates the exchange of offers and responses and prepares a predetermination settlement agreement which protects the interests of each party and the Commission.

If an administrative closure or settlement does not occur, the investigation must continue until a determination of no-probable cause or probable cause can be supported by evidence. If Probable Cause is found, the case begins to move toward a hearing.

However, several intervening events may occur prior to the hearing:

- ✓ First, settlement may yet be reached.
- ✓ At the pre-hearing stage, the cause determination stands, but a settlement agreement between the parties and the Commission may avert a hearing.
- ✓ Mediation may be ordered for cases determined to have a likelihood of successful resolution by this process.
- ✓ If mediation fails, the case continues to a hearing.
- ✓ Finally, the aggrieved party may choose to withdraw the case from the Commission and goes directly to circuit court. This ends the Commission's involvement in the matter.

Step Three: A Hearing is Held.

If a hearing is held, evidence will be presented before an administrative law judge who will render a final decision.

The judge's decision may be appealed to the West Virginia Human Rights Commission. In turn, the Commission's decision may be appealed to the West Virginia Supreme Court of Appeals or to the Kanawha County Circuit Court. The Kanawha County Circuit Court may be utilized only if the Commission has awarded damages in excess of \$5,000 or back pay in excess of \$30,000 or by agreement of the parties. Cases on appeal to the courts remain on the active docket until the court issues a determination.

CASE LOAD MANAGEMENT

The West Virginia Human Rights Commission has continued to reduce the number of pending cases while maintaining high quality investigative processes. In Fiscal Year 2000-01, 390 new charges were filed while 615 were closed. These new filings are set out below by county:

| COUNTY | FY 1998 | FY 1999 | FY 2000 | FY 2001 | COUNTY | FY 1998 | FY 1999 | FY 2000 | FY 2001 |
|------------|---------|---------|---------|---------|--------------|------------|------------|------------|------------|
| Barbour | 0 | 2 | 1 | 0 | Mineral | 2 | 1 | 2 | 5 |
| Berkeley | 11 | 27 | 21 | 19 | Mingo | 3 | 6 | 5 | 5 |
| Boone | 4 | 4 | 1 | 2 | Monongalia | 10 | 16 | 13 | 11 |
| Braxton | 0 | 2 | 4 | 1 | Monroe | 0 | 0 | 0 | 0 |
| Brooke | 11 | 0 | 0 | 0 | Morgan | 1 | 0 | 1 | 1 |
| Cabell | 27 | 24 | 24 | 38 | Nicholas | 5 | 4 | 5 | 1 |
| Calhoun | 0 | 1 | 0 | 0 | Ohio | 4 | 6 | 5 | 11 |
| Clay | 1 | 1 | 0 | 0 | Pendleton | 0 | 0 | 2 | 0 |
| Doddridge | 0 | 0 | 2 | 1 | Pleasants | 0 | 0 | 0 | 1 |
| Fayette | 13 | 8 | 11 | 5 | Pocahontas | 0 | 0 | 3 | 1 |
| Gilmer | 0 | 0 | 1 | 1 | Preston | 2 | 1 | 0 | 2 |
| Grant | 1 | 3 | 1 | 2 | Putnam | 7 | 11 | 11 | 9 |
| Greenbrier | 5 | 5 | 11 | 8 | Raleigh | 22 | 39 | 16 | 21 |
| Hampshire | 0 | 0 | 1 | 0 | Randolph | 4 | 8 | 8 | 8 |
| Hancock | 28 | 8 | 7 | 7 | Ritchie | 1 | 0 | 0 | 1 |
| Hardy | 0 | 5 | 7 | 2 | Roane | 1 | 0 | 0 | 8 |
| Harrison | 7 | 14 | 16 | 18 | Summers | 3 | 1 | 2 | 0 |
| Jackson | 4 | 8 | 1 | 5 | Taylor | 2 | 1 | 2 | 1 |
| Jefferson | 7 | 4 | 12 | 8 | Tucker | 2 | 0 | 0 | 1 |
| Kanawha | 141 | 145 | 152 | 136 | Tyler | 3 | 0 | 1 | 1 |
| Lewis | 1 | 0 | 2 | 2 | Upshur | 0 | 2 | 1 | 0 |
| Lincoln | 1 | 1 | 0 | 0 | Wayne | 6 | 3 | 0 | 3 |
| Logan | 9 | 8 | 7 | 8 | Webster | 0 | 0 | 2 | 0 |
| McDowell | 3 | 3 | 9 | 1 | Wetzel | 3 | 2 | 0 | 1 |
| Marion | 8 | 10 | 11 | 5 | Wirt | 0 | 0 | 0 | 0 |
| Marshall | 2 | 2 | 3 | 2 | Wood | 9 | 17 | 26 | 13 |
| Mason | 0 | 4 | 5 | 4 | Wyoming | 2 | 0 | 4 | 0 |
| Mercer | 10 | 16 | 9 | 10 | TOTAL | 386 | 423 | 427 | 390 |

INVESTIGATIVE DIVISION REPORT

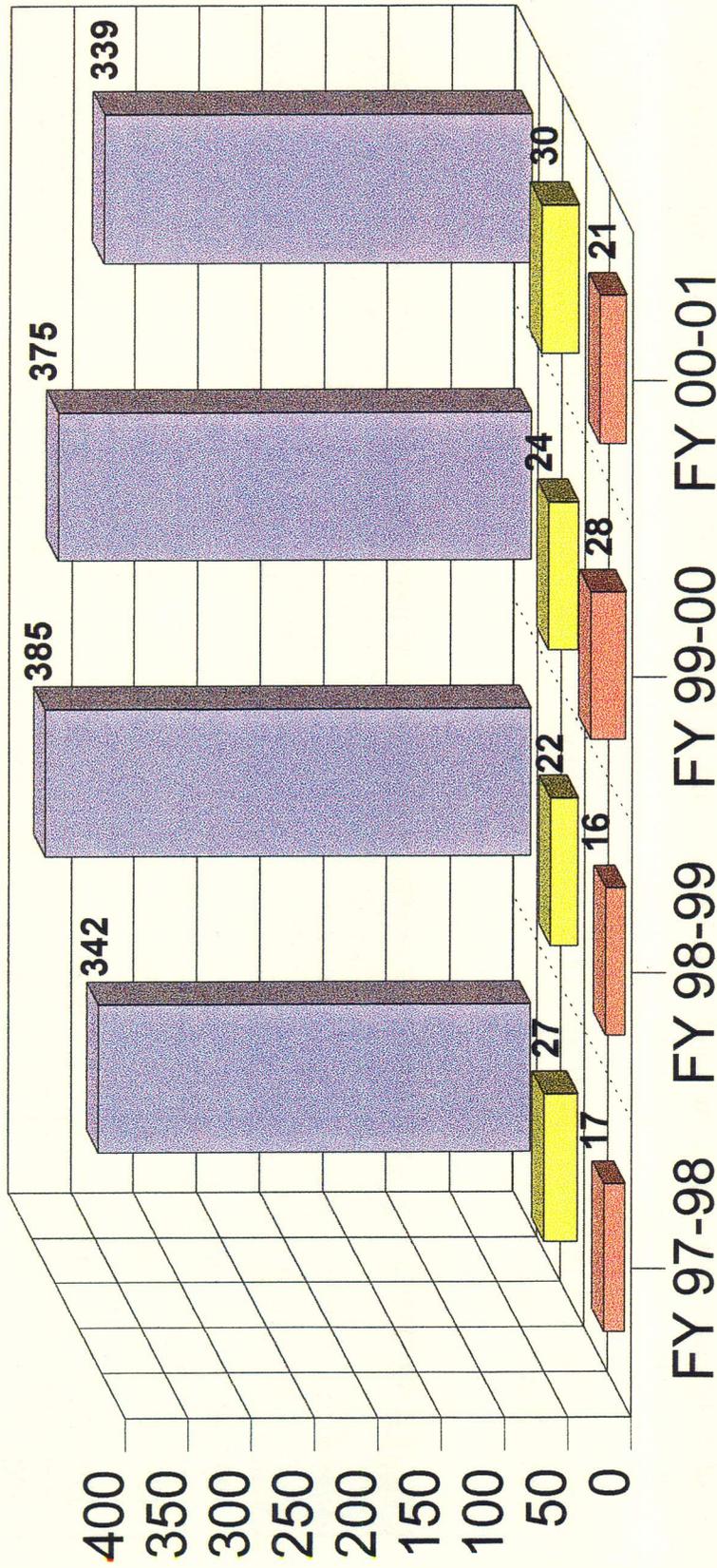
The Investigative Division of the West Virginia Human Commission has a total of ten (10) investigators who are responsible for investigations and case recommendation preparation.

Since 1992, the Human Rights Commission's inventory of cases has steadily decreased from a high of 1048 cases to the present level of 444 cases (end of Fiscal Year 2000-01). This has resulted in more manageable investigator caseloads.

The Commission's performance in case resolution for the Fiscal Years 1997-98, 1998-99, 1999-00 and 2000-01 is summarized as follows:

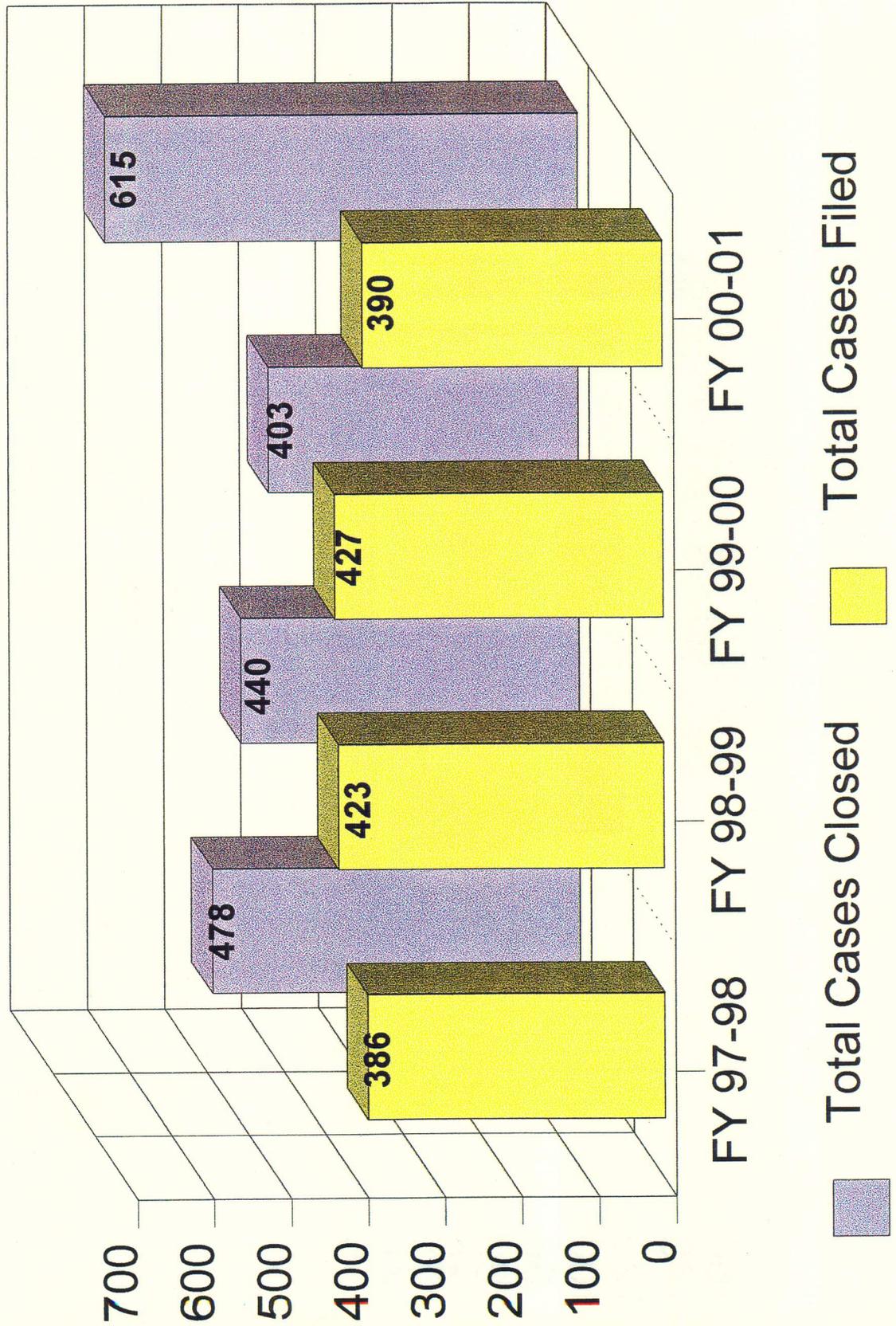
| Fiscal Year | Complaints Closed | No-Probable Cause | Administrative Closures | Probable Cause Determination/Settlement | Monetary Benefits to Complainants |
|-------------|-------------------|-------------------|-------------------------|---|-----------------------------------|
| 1997-98 | 478 | 68% | 19% | 13% | \$1,061,362.12 |
| 1998-99 | 440 | 62% | 19% | 19% | \$ 594,841.87 |
| 1999-00 | 403 | 50% | 30% | 20% | \$1,331,428.57 |
| 2000-01 | 615 | 352 (57%) | 129 (21%) | 134 (22%) | \$1,166,413.40 |

Breakdown of Total Cases Filed

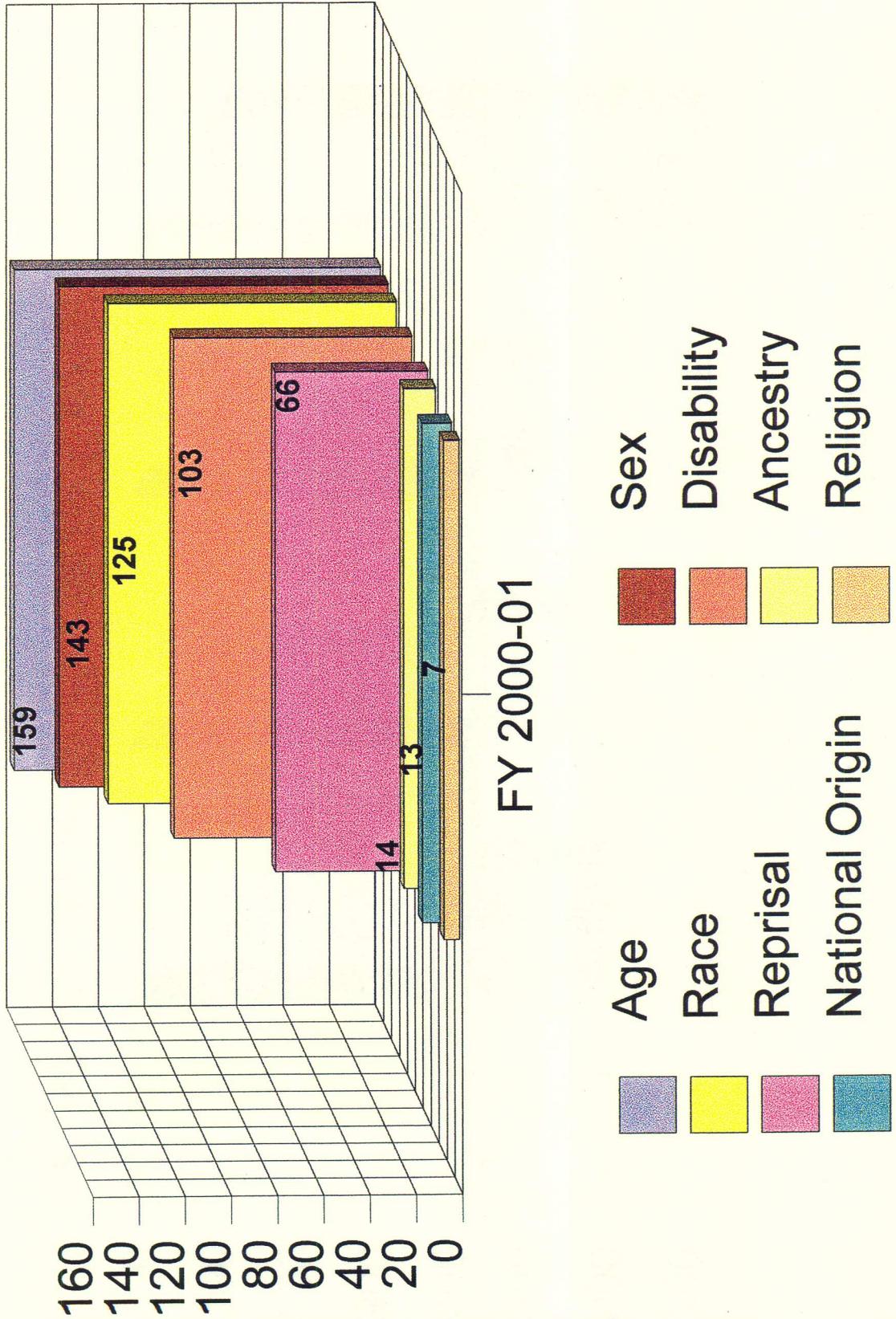


- Employment
- Public Accommodations
- Housing

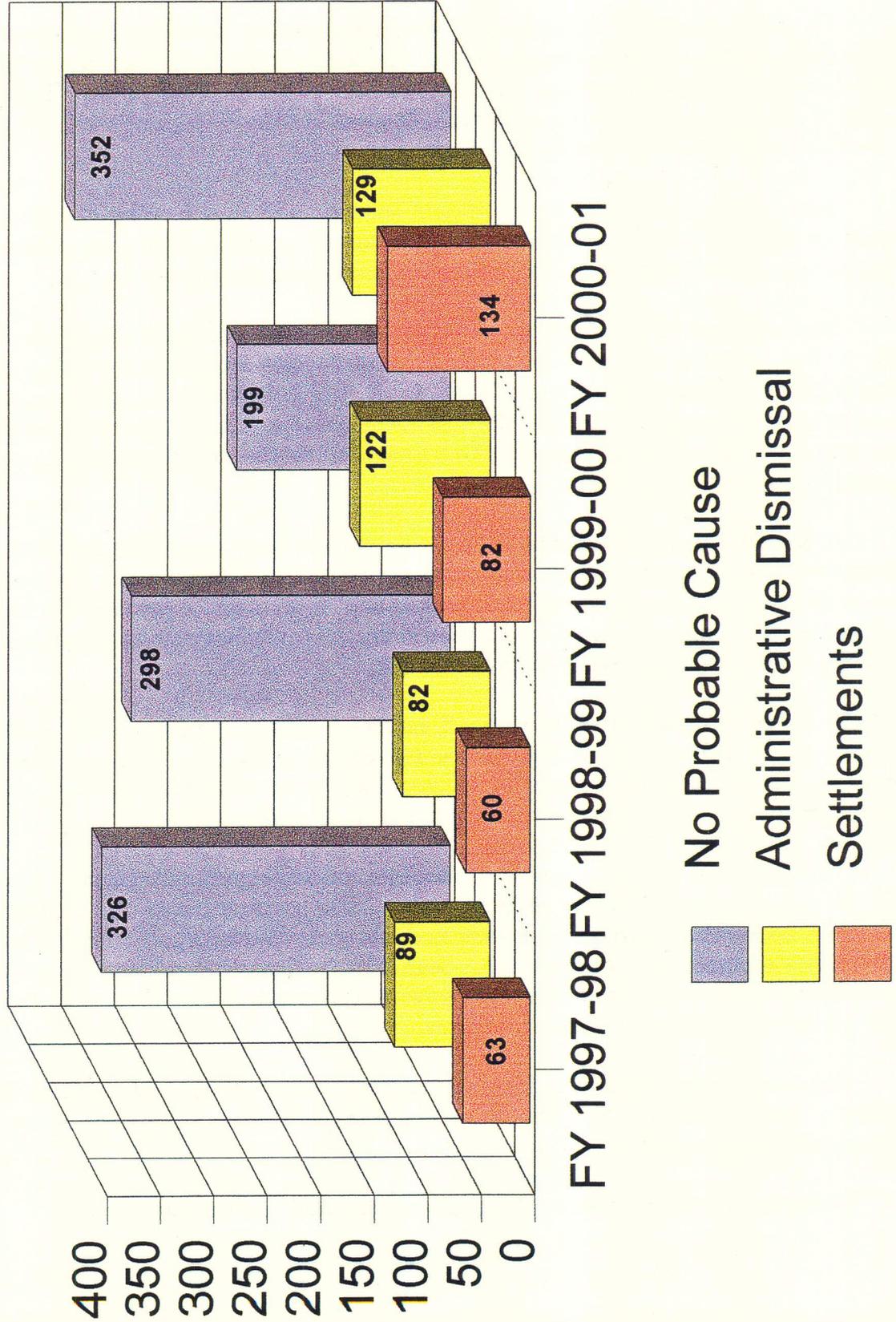
Breakdown of Cases Filed and Closed



Bases for Complaints FY 2000-01

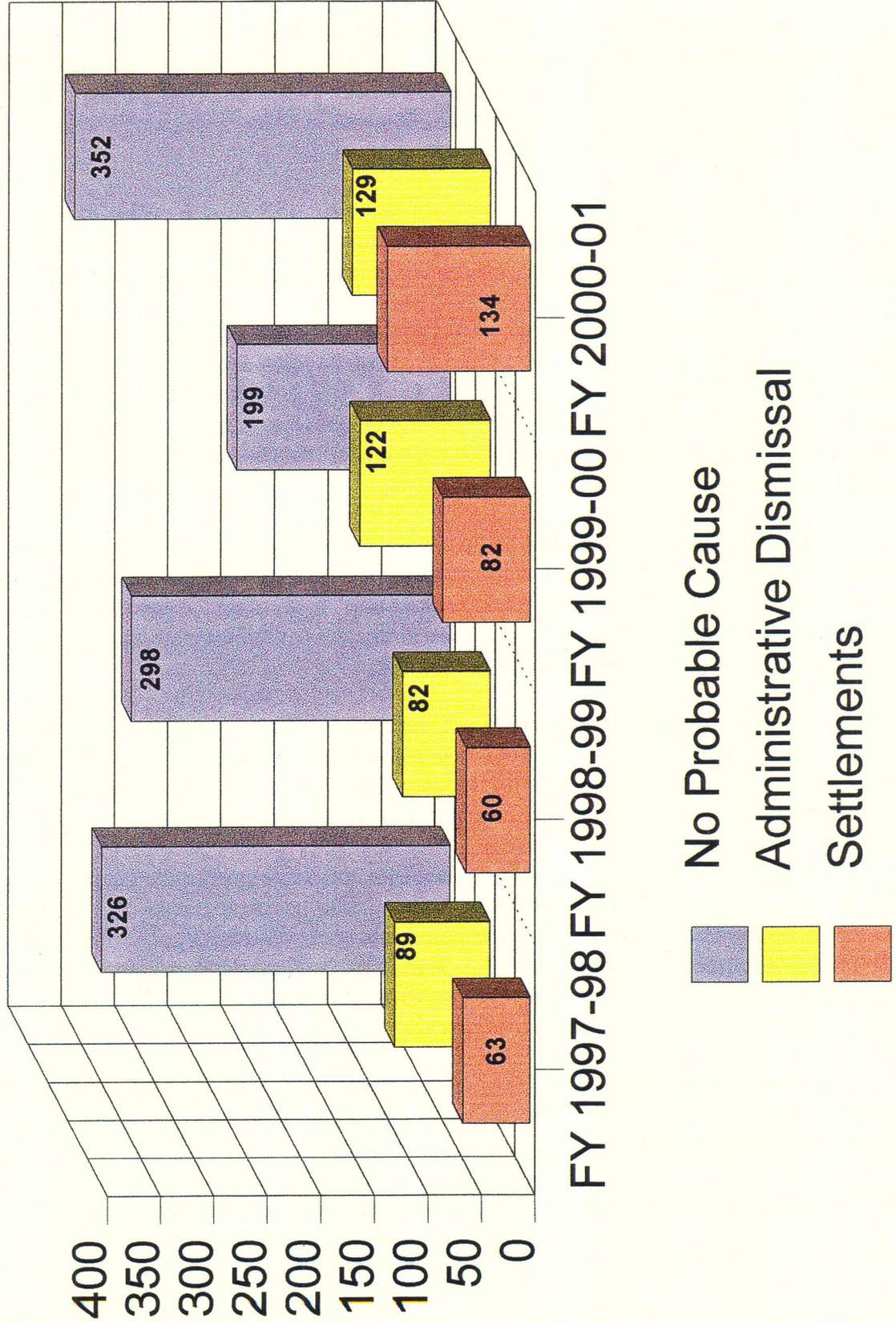


Categories of Cases Closed



FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01

Categories of Cases Closed



FY 1997-98 FY 1998-99 FY 1999-00 FY 2000-01

MEDIATION REPORT OF FISCAL YEAR 2001

Through education, investigation, pre-determination conciliation, mediation, and adjudication, the West Virginia Human Rights Commission continues processing every case in a timely manner without jeopardizing the interest of any of the involved parties. The Agency's mediation project continues to be a highly effective tool in following through with the promises of the Executive Director's Mission Statement.

Mediation has proven to be an efficient and time-and-money saving alternative to the hearing or litigation process and has resulted in a fair and confidential process through which settlement agreements have been made via mutually accepted resolutions of cases.

Mediation may be voluntarily requested by the parties, or ordered by an administrative law judge or Executive Director 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. When a charge is filed and a probable cause determination is found through investigation, an administrative law judge will set the matter for a public hearing. However, if it is found that the case could benefit from mediation, an order is prepared to that effect.

A State Bar trained Mediator, serving on a *pro bono* basis acts as the facilitator for the participants in an attempt to arrive at a negotiated resolution. This is a fair and confidential process which averts time-consuming and unnecessary litigation and is provided fee-free to the participants. If the matter is not settled at mediation, the parties may opt to continue in circuit court or proceed to the previously set public hearing.

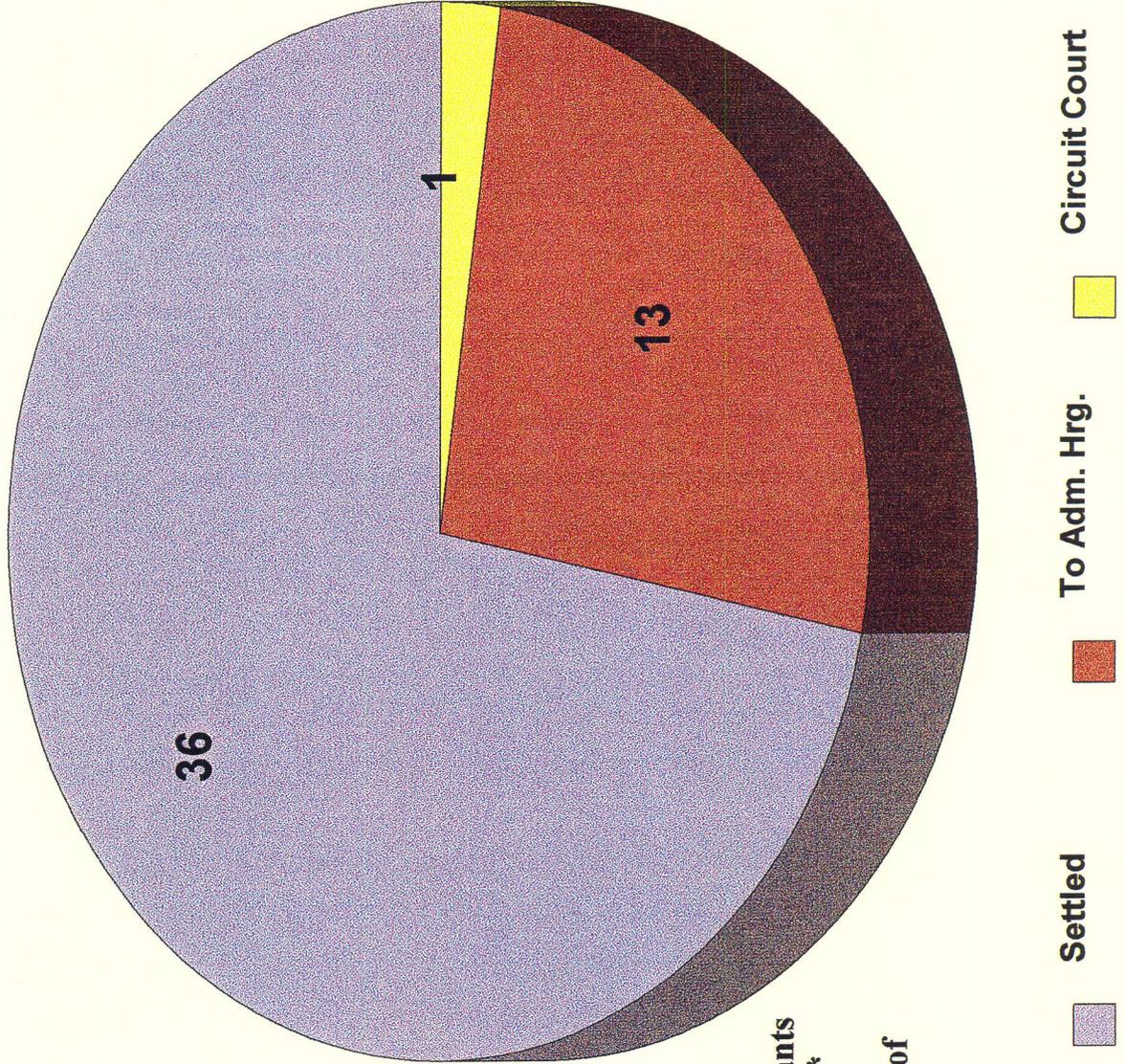
If the parties reach a settlement and execute a written agreement, this agreement is enforceable in the same manner as any other written contract. The West Virginia Human Rights Commission is proud to be a leader in utilizing this tool in order to present the parties an opportunity to resolve differences effectively and in an efficient manner.

This past fiscal year, the Commission took its mediation project throughout the state in order to accommodate all parties in these cases. This has saved time and money for the participants because previously all cases were mediated at the Commission's office in Charleston. With this new approach, the Commission has been able to utilize more mediators around the state as the process takes place in their offices and travel to Charleston is alleviated. Additionally, less travel is involved on the part of the participants.

Requests for information concerning the project may be directed to Bette Wilhelm, Mediation Coordinator at the Commission's address and phone numbers or by e-mail: willhelmbf@wvhrc.state.wv.us.

Following is a chart reflecting the results of this fiscal year's mediation cases:

WV Human Rights Commission Mediation FY 2001



Settled 70%
 Adm. Hrg. 24%
 Circuit Court 6%

\$736,895.00 Awarded to Complainants
 \$111,000.00 Saved by Commission *

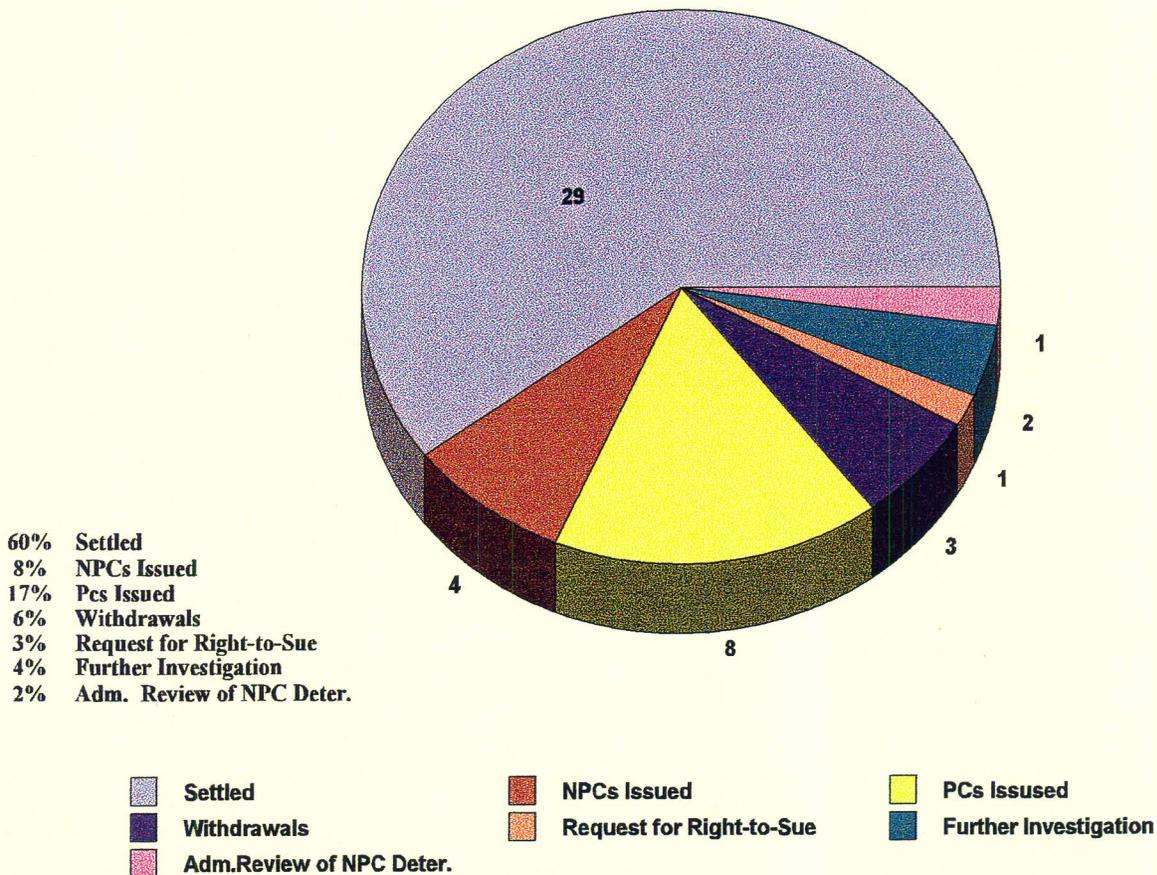
*(Calculated at the approximate sum of \$3,000.00/public hearing.)

PRE-DETERMINATION CONCILIATION REPORT

The West Virginia Human Rights Commission has undertaken several actions to improve the processing of cases. Management and staff have worked together to design a new investigatory methodology. The cases are evaluated at "triage" and are prioritized with the development of an investigatory plan. Some cases are identified for fast track completion of the investigation based upon information contained in the Complainant's Complaint and the Employer's Position Statement. (Most cases require more extensive investigation.)

In August 2000, the Commission instituted a Pre-Determination Conciliation Program. The intent of this program is to identify cases early in the process which would benefit from conciliation settlement discussions in an effort to reduce the time and expense both to the Commission and the parties in processing cases. For Fiscal Year 2001, of 48 cases, 29 were settled, which represents 60.4%. Four were withdrawn or a civil action was filed, representing 8.3% of the cases completing the program. No-probable cause was determined for five cases (10.4%) and ten were returned for completion of the investigation, equating to 20.9%.

The Commission has found this program to be a great success and commends Norman Lindell, the Deputy Director, who acts as the Program Conciliator. Following is a chart which sets forth the resolution of the 48 cases which underwent pre-determination conciliation for FY 2001.



SUMMARIES OF PUBLIC HEARING CASES

Summary No. One

The employee alleged that she was subjected to a sexually hostile work environment and discharged from her position as a sales associate. Other male employees made sexually explicit remarks to her on the job. The employee notified her employer in writing about this. The employer did speak to the male employees about their behavior and warn them against such behavior. Although the male employees continued with their verbal abuse towards the employee, there was no evidence presented that the employer knew of the continued abuse or that the employee reported the same to the employer. The employer subsequently terminated the employee alleging that her sales were below average and that she made many mistakes in her paperwork. The employee claimed that she was treated differently from male employees who also had below average sales. They were not terminated from their employment.

The administrative law judge found that the employer proved by a preponderance of the evidence that no actions on the part of its supervisory employees were imputable to the employer in regards to the hostile work environment. The employer did articulate a legitimate non-discriminatory motive for the employer's action in discharging the employee. Therefore, the Commission dismissed the Complaint.

Summary No. Two:

The employee alleged he was terminated from his position due to his disability. The employee was being treated

for his disability and presented his employer with medical documentation of the disability, as well as a request for reasonable accommodation.

The employer stated that the employee was dismissed from his employment because he abandoned his job.

The Commission ruled that the employee was a person with a disability, that he requested a reasonable accommodation and the employer repeatedly failed or refused to work with the employee in an attempt to find a way to comply with the request for accommodation. The Commission found that the employee was discharged due to his disability and awarded the appropriate relief.

Summary No. Three:

An individual alleged that he was denied a Special Class Q Hunting-and-Fishing License which is provided to persons with mobility disabilities.

The state agency contended that the individual's disability did not meet their rules and regulations to obtain a Class Q Permit. The state agency defined the term disability as "An individual disabled in the lower extremities," to mean an individual who is paraplegic, who is missing both legs, or who has a disability affecting both legs which requires permanent use of a wheelchair or crutches.

The Commission found the interpretation of the words "permanently and permanent," as they appear in the regulations, describe the extent and

nature of the disability, rather than requiring absolute exclusive use of a wheelchair or crutches, preserves and reconciles both the obvious safety concerns of the regulations and the mandate for reasonable accommodation of the disabled established by the West Virginia Human Rights Act. The Commission ordered the state agency to immediately provide the individual with a Class Q License. Further, the Commission ordered the state agency to immediately cease and desist from discriminating against qualified individuals with disabilities, and when feasible, shall provide reasonable accommodation.

Summary No. Four:

The employee alleged he was discharged due to his race (African-American). Further, employee alleged he was treated in a disparate manner as compared to his white co-workers. When the employee attempted to inform management of his concerns regarding his treatment, management refused to listen or entertain employee's concerns. The employer argued that the employee was discharged for failing to perform duties assigned to him.

The administrative law judge found that the employee was ordered to perform job duties that white employees were allowed to refuse to perform. Further, the administrative law judge found that the employer treated the employee in a disparate manner and his discharge was a pretext for discrimination based upon race. The administrative law judge ordered appropriate relief

Summary No. Five:

An individual alleged that he was not hired for the position of police officer for the municipality to his race (African-American). The municipality is small and the position of police officer requires minimal skills. The main duty was operating the radar to stop speeders in the town limits. The municipality also argued that it reviewed and interviewed qualified applicants whose applications were on file the longest with the city.

The administrative law judge found that although the individual was as qualified for the position as the successful candidate, the municipality had met its burden of articulating a non-discriminatory reason for its selection process. The administrative law judge, citing the West Virginia Supreme Court of Appeals, stated that the articulated reason need not be a particularly good one. Once the municipality has met its burden of articulating a legitimate non-discriminatory reason for its hiring decision, the burden shifts to the individual to show that municipality articulated reason is a pretext for discrimination. The administrative law judge determined that the individual failed to show either pretext or a nexus between the hiring decision and his race.

WEST VIRGINIA
HUMAN RIGHTS COMMISSION
APPROPRIATIONS AND DETAILED EXPENDITURES

FY 2000-01

| Account Name | Appropriated | Spent |
|--------------------------------------|-----------------------|----------------------|
| PAYROLL | \$ 613,031.00 | \$ 570,452.93 |
| INCREMENT | 12,400.00 | 10,316.91 |
| BENEFITS | 210,483.00 | 185,675.16 |
| CURRENT EXPENSES | 184,121.00 | 178,095.75 |
| HATE CRIMES & HUMAN RIGHTS SUMMIT | 18,000.00 | 16,982.61 |
| *GOVERNOR'S CONTINGENCY FUND | 4,263.50 | 2,582.50 |
| TOTAL STATE FUNDS | \$1,042,298.50 | \$ 964,105.86 |

*Money carried over from FY 2000