



## **ANNUAL REPORT**

**FISCAL YEAR 2001-2002**

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

**IVIN B. LEE  
EXECUTIVE DIRECTOR**



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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**Room 108A**

**Charleston, WV 25301-1400**

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**TOLL FREE: 1-888-676-5546**

**Bob Wise**  
Governor

**Ivin B. Lee**  
Executive Director

January 1, 2003

The Honorable Bob Wise  
Governor, State of West Virginia  
State Capitol  
1900 Kanawha Boulevard, East  
Charleston, WV 25305

Members of  
The West Virginia Legislature

Dear Governor Wise and Members:

It is with pleasure that I present to you the 2001-02 Annual Report which documents a year of the many activities of the West Virginia Human Rights Commission. This report will provide you with information on the past year's activities and outline future programs which are designed to ensure the Commission not only meets, but exceeds its mission.

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

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

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ivin B. Lee".

**IVIN B. LEE**  
Executive Director

# WEST VIRGINIA HUMAN RIGHTS COMMISSION ANNUAL REPORT

FY 2001-02

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**Norman Lindell**  
**Deputy Director**



**Gail Ferguson**  
**Administrative Law Judge**



**Edna Martin**  
**Office Manager**



**Kaye Vealey**  
**Office Assistant II**

These employees have contributed a total of 97 years of service to the citizens of the State of West Virginia. We will certainly miss them and are grateful for their years of service to the Human Rights Commission.



## THE COMMISSIONERS



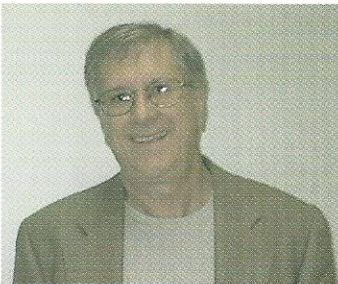
Lew G. Tyree  
Chair



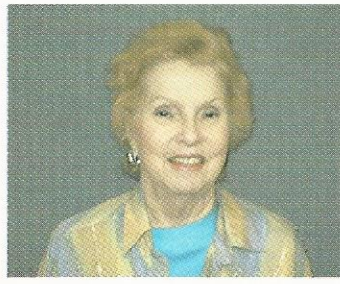
Elizabeth Brown  
Vice-Chair



Marion J. Capehart  
Commissioner



Kenneth Gilbert  
Commissioner



Betty A. Hamilton  
Commissioner



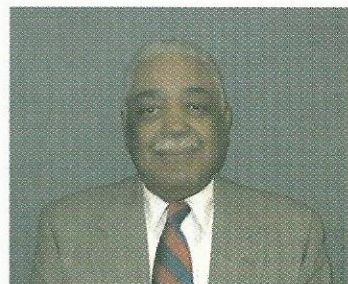
Charlene Marshall  
Commissioner



William A. Peddicord  
Commissioner



Wendy Radcliff  
Commissioner



William L. Williams  
Commissioner





### IVIN B. LEE, EXECUTIVE DIRECTOR

This past year has been an extremely productive year for the West Virginia Human Rights Commission's Executive Director. In addition to her extended outreach activities, worthy of mentioning are the following honors:

In March of 2002, Director Lee was the keynote speaker to families of Navy personnel at Arlington Cemetery in Washington, D.C.

Ms. Lee gave the welcome speech to new United States citizens at the Naturalization Ceremony at the request of United States District Judge John T. Copenhaver, Jr.

She had the personal honor to be the keynote speaker at the Basic Graduation Class of the WV State Police in August 2002. Having been a former Chief of Police herself, with a background in law enforcement, Ms. Lee felt a special pride at this invitation.

The WV Women's Commission honored Director Lee by presenting her with a trophy and a copy of a book published by that agency entitled: *American Sampler, West Virginia's African-American Women of Distinction*, Volume I. Ms. Lee was one of the women memorialized in that publication.



## MY VISION

THE COMMISSION'S STAFF WILL CONTINUE TO PROCESS AND 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 IN EMPLOYMENT, PLACES OF PUBLIC ACCOMMODATIONS OR HOUSING BECAUSE OF THEIR RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY SEX, AGE (40 OR ABOVE), BLINDNESS OR DISABILITY, AND IN HOUSING—FAMILIAL STATUS.

THE COMMISSION WILL CONTINUE TO PARTICIPATE IN MEANINGFUL DIALOGUE WITH ALL WEST VIRGINIANS AND DO ALL THAT IT CAN TO RID OUR STATE OF ALL FORMS OF DISCRIMINATION WHETHER IT IS THROUGH EDUCATION, MEDIATION, INVESTIGATION, OR ADJUDICATION.

WE BELIEVE THAT EQUAL OPPORTUNITY IN THE AREAS OF EMPLOYMENT, PUBLIC ACCOMMODATIONS AND HOUSING IS A HUMAN AND CIVIL RIGHT TO WHICH ALL WEST VIRGINIANS ARE ENTITLED. THE COMMISSION IS COMMITTED TO THE ENFORCEMENT OF LAWS THAT GUARANTEE THOSE RIGHTS AND WE PLEDGE OUR DILIGENCE, HARD WORK, AND PROFESSIONALISM TOWARD THIS END.

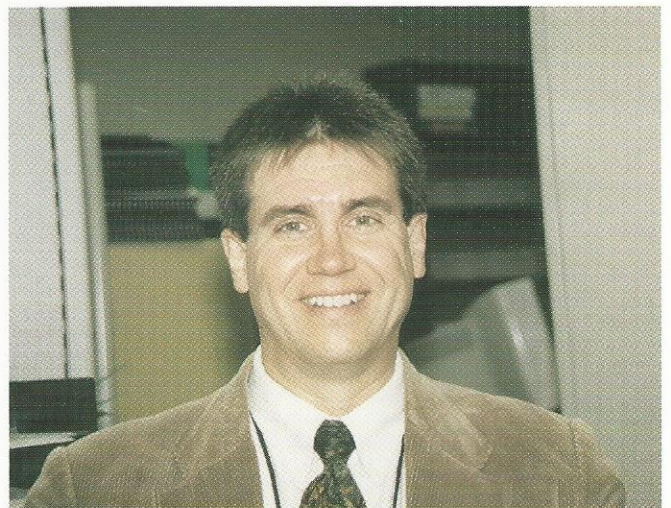
IVIN B. LEE  
EXECUTIVE DIRECTOR



## ADMINISTRATIVE LAW JUDGES



**Phyllis Carter**  
**Administrative Law Judge**



**Robert Wilson**  
**Administrative Law Judge**





Richard Ashwell  
Investigator



Kenneth Bailey  
Mail Runner



Yodora Booth  
Investigator



Linda Bowers  
Investigator



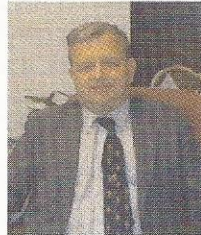
Joyce Brown  
Office Assistant



Sally Brown  
Investigator



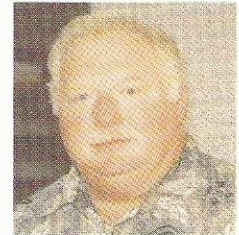
Leona Chupick  
Office Assistant



Paul W. Cook  
IS Coordinator



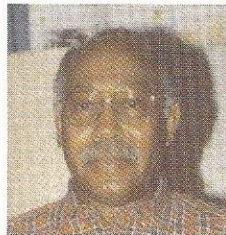
David Gillespie  
Investigator



Paul Hamilton  
Investigator



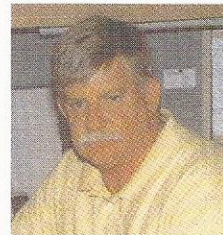
Jackie Health  
Investigator



James L. Johnson  
Investigator



Joyce Knotts  
Secretary



Thomas Lee  
Investigator



William Mahan  
Supervisor



Wilda McGill  
Office Assistant



Lisa Parks-Gist  
Office Assistant



Don Raynes  
Supervisor



Deborah Robinson  
Acct. Technician



Carolyn Smith  
Investigator



Tausha Stigall  
Investigator



Judy Tucker  
Office Assistant



Monia Turley  
Secretary



Bette Wilhelm  
Admin. Secretary



# WEST VIRGINIA HUMAN RIGHTS COMMISSION

## CENTRAL OFFICE BUCKHANNON AND HUNTINGTON STAFF

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Hate Crimes Task Force e-mail = [hatecrimes@wvhrc.state.wv.us](mailto:hatecrimes@wvhrc.state.wv.us)

WVHRC e-mail = [wvhrc@state.wv.us](mailto:wvhrc@state.wv.us) (\* For employee e-mail,

Add: @wvhrc.state.wv.us to e-mail name in third column)

Website: [www.state.wv.us/wvhrc](http://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	557-5823/528-5813
Brown, Sally	Investigator I	brown	242
Brown, Joyce R.	Office Assistant II	brownjr	201
Carter, Phyllis H.	Admin. Law Judge II	carterp	231
Chupick, Leona	Office Assistant III	chup	221
Cook, Paul	IS Coordinator	cookpw	205
Gillespie, David	Investigator II	gillesp	213
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	knottsj	216
<i>Lee, Ivin B.</i>	<i>Executive Director</i>	leeib	230
Lee, Thomas	Investigator II	leeta	203
Mahan, William D.	Supervisor III	mahanwd	243
McGill, Penny	Office Assistant III	mcgill	218
Parks-Gist, Lisa	Office Assistant III	parksgistcr	223
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	209
Tucker, Judie G.	Office Assistant II	tuckerjg	200
Turley, Monia	Secretary II	turleym	241
Wilhelm, Bette	Admin. Secretary	wilhelmbf	206
Wilson, Robert	Admin. Law Judge II	wilsonrb	224

\*\* (Fax 304-473-4207) (Phone 9-557-4282)

Box 460  
Buckhannon, WV 26201

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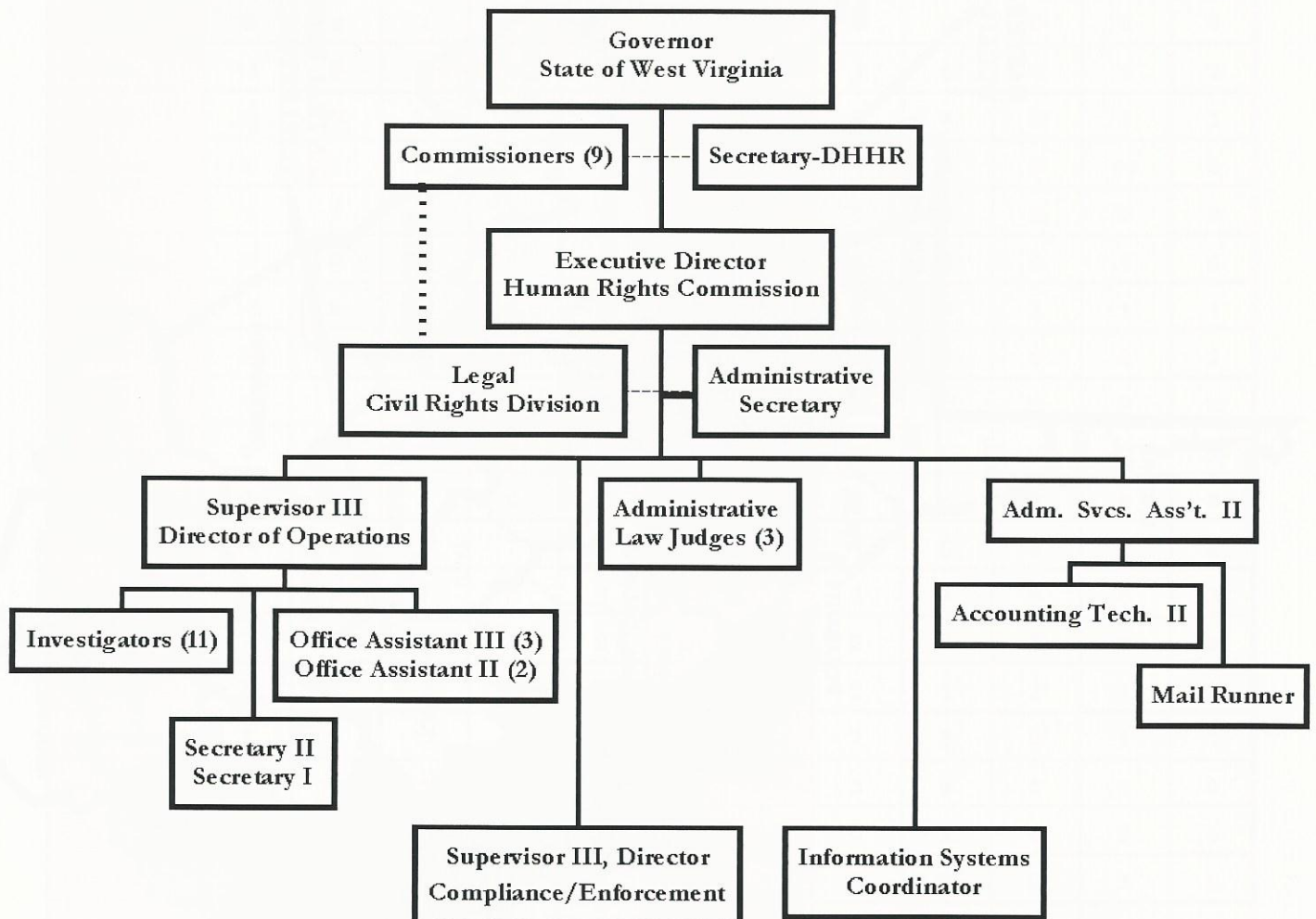
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CIVIL RIGHTS DIVISION  
558-0546 / Fax: 558-0649  
Toll Free: 877-421-5074

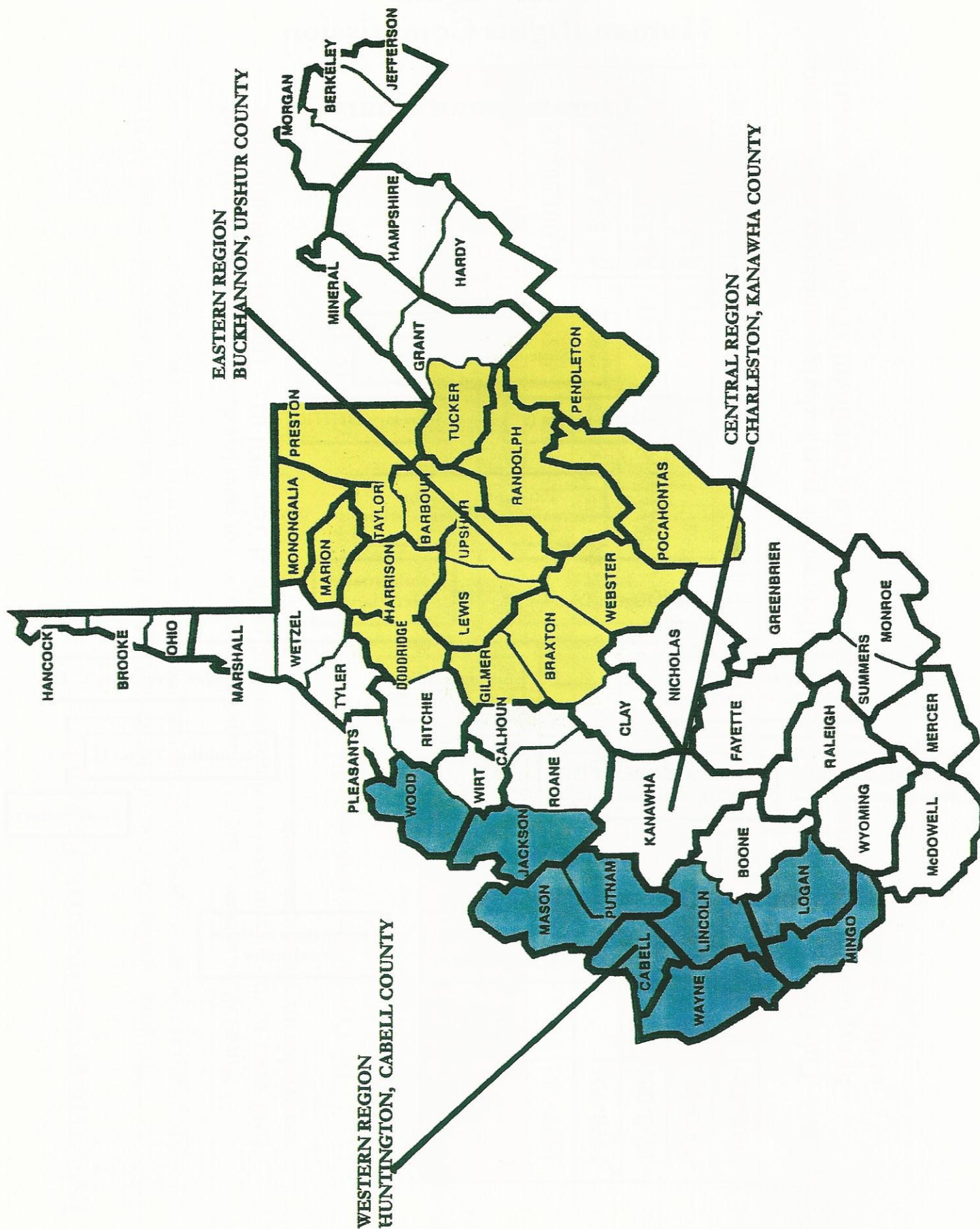


# West Virginia Human Rights Commission

## Organization Chart



# WEST VIRGINIA HUMAN RIGHTS COMMISSION REGIONS





## **HISTORY OF THE COMMISSION**

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 § 5-11A-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.*

{The West Virginia Code is available in public libraries and on the Legislature's web page, [http://legis.state.wv.us/.](http://legis.state.wv.us/)}



# 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.



## 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).

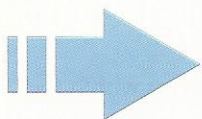
Specifically, the West Virginia Human Rights Act prohibits discrimination by any

employer employing 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 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.



## COMPLAINT PROCESS



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.



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).



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.



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.



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.



## COMMUNITY OUTREACH

Community Outreach is the most successful activity the Commission possesses in educating the citizens of the State of West Virginia to its commitment to eliminate discrimination and enforce the West Virginia Human Rights Act and all laws pertinent thereto.

Following are examples of the Commission's many outreach undertakings in education, community activities, and women's and other issues in which there was participation since the publication of its last Fiscal Year Annual Report:

The Executive Director has participated in many grant reviews on Crime, Delinquency and Correction; Rural Domestic Violence and Child Victimization Enforcement Program applications. She was named to participate as a ten-member Task Force sponsored by the West Virginia Supreme Court of Appeals to study Racial Disparity in the Juvenile System. In Addition, she received a governmental appointment to the Law Enforcement Training Subcommittee of the Governor's Committee on Crime, Delinquency and Correction.

In July 2002, the WV Human Rights Commission was featured on Public Television on "State Today." The Executive Director explained the function of the Commission and identified its activities around the state.

The Executive Director and staff have attended events such as: A two-day Philadelphia District EEOC Conference in Delaware; collaborated with the State HUD office and Charleston City Human Rights Commission in the distribution of literature and information on housing from respective agencies; the annual conference plenary session on Human and Civil Rights issues of West Virginia with the National Association of Human Rights Workers; and the premiere conference of the newly-formed Alliance of State/City Human Rights Commission and the ensuing organizational meeting which offered a grant-writing workshop for city human rights leaders from all parts of West Virginia. This association was created by the Commission, for example:

Throughout the year the Commission presented different educational services to thousands of students and school staff, for example:

- Spoke to approximately 300 students/staff at Kenna Elementary School;
- Attended the Community Mobilization Initiative of the MAACK (Maximizing the Achievement of African-American Students) in Kanawha County;
- Presented a workshop on Human Rights Commission's services at TRIO Student Leadership conference, sponsored by the West Virginia Association of Educational Opportunities Program personnel;
- Served as a panelist at the WV Association of Educational Opportunities Student Leadership Conference; Did a television "spot" at the request of students at Liberty High School for their hate crime prevention program;
- Spoke to students and faculty on Hate Crimes and Racism Upon request by Wheeling Middle School's Eighth Grade Language Arts class and a recommendation of Wheeling's City Human Rights Commission;
- Presented at the Charleston Job Corps on Hate Crimes and The New Walk of the Human Rights Commission to students/staff;
- Served as keynote speaker at Hugh O'Brien Youth Leadership at the University

of Charleston for high school sophomores to develop leadership in education, government, business, and industry;

- Served as hall monitors and food servers for Stonewall Jackson High School's cultural diversity event.
- Keynote speaker for a Youth Motivational Speech for the YWCA;
- Commencement speech for Charleston Job Corps graduates;
- Addressed Regional Job Corps graduates;
- Attended multi-cultural festival at Stonewall Jackson Middle School;
- Motivational speech at Opportunities Industrialization Center, Inc.
- Attendance at State Department of Education-sponsored workshop: Public Safety and Legal Services—Developing a State Model for West Virginia;
- In April 2002, Marshall University graduate Elliott Potter began an internship with the Commission under the Herndon Fellows Internship Program.

Black History Month was celebrated and other African-American activities were attended:

- The West Virginia State Martin Luther King ceremony, followed by a walk to the Capitol for "Ring of the Bells" led by the Governor;
- Attendance at the Black History Convocation with former U.S. Deputy Attorney General Eric Holder, Esquire, the guest of honor;
- Teleconference with Dr. Beny Primm, keynote speaker on HIV/AIDS in the African-American Community;
- Participated in the completion of the Booker T. Washington Walk from the Capitol to Malden, WV, (hometown of Booker T. Washington) which walk, known as Freedom Trek III began in Alabama;
- Attendance as a panelist with the 58<sup>th</sup> Annual State Convention of the West Virginia National Association of Colored People at Beckley, WV, with Judge J. R. Goodwin as the keynote speaker; State Senator Marie Redd also addressed the convention;

Community involvement was widespread this past year and includes:

- An informational seminar on the Human Rights Act and Service Dog Accommodations to 350 employees of Westbrook Health Services, a community behavioral health service;
- A presentation on the Fair Housing Act, filing out a complaint, investigation and processing of a claim at New Covenant Community Development, Inc.;
- A keynote speech to the CIVITAN Club at Charleston Civic Center;
- Attendance at the Charleston Job Corps Center—Community Relations Counsel/General Business luncheon with the keynote speaker being Congresswoman Shelley Moore Capito;
- Attendance at the 10<sup>th</sup> Anniversary of the Religious Coalition for Community Renewal at Smith Street Station;
- Attended Washington Lodge #4, F.&A.M. Prince Hall Day Annual Banquet at West Virginia State College; keynote speaker—Congresswoman Shelley Moore Capito;

Because of her law enforcement background, Ms. Lee was called upon many times for presentations on Personal Safety and Rape Prevention. The Executive Director spoke to several



women's organizations, including being the keynote speaker at the 2002 Women's International Network of Utility Professionals' Conference and speaker at West Virginia State College on Women's Issues for Leadership.

Ms. Lee and members of the staff were very active in the area of hate crimes prevention. Some of the Commission activities include:

- Attendance at a Hate Crimes Task Force Meeting at Bluefield State College which was organized by Commissioner Brown;
- Staff attended a seminar and panel discussion on the state's Hate Crime Laws and ramifications of ethnic profiling;
- Attended an Upward Bound Workshop on WV Hate Crimes Act and anti-discrimination principles;
- Attended the Vigil Against Hate at Davis Park in Charleston;

Other important activities included:

- Attendance at the program entitled "Holocaust Remembered" sponsored by the WV Division of Culture and History, Federated Jewish Charities of Charleston, and Kanawha County Schools which took place at the Baptist Temple in Charleston;
- Keynote speaker at the Joy Fellowship Club at United Morris Memorial Church;
- Welcome to the 39<sup>th</sup> Annual Session of the Eastern Region of the Progressive Baptist Church;

In 2002 Commission staff participated, along with eight other state agencies, at the semi-annual meeting of the National Federation of the Blind in Romney, WV. {The WV Legislature passed Senate Bill No. 226 which provides certified accessibility to the blind and visually handicapped of voting machines by the Secretary of State}. Freedom-of-Information-Act training was attended by the Commission's Administrative Law Judges; Senior Assistant Attorney General of the Civil Rights Division and its intern; and, select Commission staff. Staff participated in Law Day 2002 with the Supreme Court of Appeals of West Virginia—the purpose was to educate regarding the legal system by expanding public knowledge and confidence in the courts and law. Ms. Lee was the keynote speaker at the Public Defenders' Annual Meeting in Canaan Valley, WV. She also conducted outreach with the City of Dunbar Police Department.

The West Virginia Human Rights Commission's Annual Retreat occurred at Ogleby Park, near Wheeling, WV in September 2002. The previous year's goals and objectives were reviewed. It was decided to retain many of these as they are considered ongoing from year to year. New and challenging goals were adopted for Fiscal Year 2003.





**GOVERNOR'S YOUTH ADVISORY BOARD  
TO THE  
WEST VIRGINIA HUMAN RIGHTS COMMISSION**

The purpose of the Governor's Youth Advisory Board to the West Virginia Human Rights Commission is to advise the Commission in promoting equality and encouraging the prevention of discrimination in schools as provided under the West Virginia Human Rights Act.

The West Virginia Human Rights Commission wishes to thank the West Virginia State Police, the State Department of Education, West Virginia State College, the West Virginia Department of Military Affairs and Public Safety, and all the community businesses and citizens who participated and contributed to the success of the Youth Advisory Board.





**Comprehensive Onsite Review of the  
West Virginia Human Rights Commission by the  
U.S. EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
(PHILADELPHIA DISTRICT OFFICE)**

**In Accordance with the Requirements of  
Contracting Principles for State and Local  
Fair Employment Practices Agencies  
Section III (6)**

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Philadelphia District Office**

21 South 5<sup>th</sup> Street, Suite 400  
Philadelphia, PA 19106-2515  
(215) 451-5800  
TTY (215) 451-5814  
FAX (215) 451-5804, 5767 & 5838

January 3, 2002

**TO** :Michael Dougherty, Director  
State and Local Branch

**FROM** :Marie M. Tomasso  
District Director

**SUBJECT** : West Virginia Human Relations Commission Onsite Review

In accordance with the requirements of **CONTRACTING PRINCIPLES FOR STATE AND LOCAL FAIR EMPLOYMENT PRACTICES AGENCIES Section III (6)**, an onsite review was conducted of the West Virginia Human Relations Commission's (WVHRC) dual filed charge processing procedures and practices. The review was comprehensive in scope and included the examination of agency statutes, literature, frequently used correspondences, case files, handouts, organizational chart, goals, investigative techniques, staff training, as well as interviews of staff concerning actual charge processing activities, etc.

**Mandate**

The West Virginia Human Rights Commission is charged with the eradication of discrimination in employment, housing accommodations, and property rights through the enforcement of laws that guarantee the civil rights of the citizens of West Virginia. These laws include the West Virginia Human Rights Act, the West Virginia Fair Housing Act, the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans With Disabilities Act, and the Equal Pay Act. To achieve that goal WVHRC uses education, mediation, investigation, and adjudication. The Executive Director has charged the WVHRC Staff with processing and bringing cases to a timely closure while ensuring quality investigations and the protection of procedural and substantive due process rights. WVHRC currently has dual filed charge processing contracts with both EEOC and HUD.

**Staffing**

WVHRC currently has 8 Commissioners who serve at the pleasure of the Governor of the State of West Virginia. The Commissioners are not required to approve the closure of dual filed charges. The staff itself is headed by the Executive Director who has one Deputy Director. There is currently a Director of Operations who oversees the entire dual filed charge processing system. There is also a Director of Field Operations who supervises the Investigators in the field offices of whom there are 3, 2 in Huntington and 1 in Buckhannon. In Charleston there are 6 full-time Investigators processing dual filed charges, 1 Intake Investigator and 1 Intake Assistant. Also, there are currently 3 Administrative Law Judges and 1 Administrative Services Manager. Currently, 9 persons provide various types of clerical support.

**Dual Filed Charge Processing**

Charge processing procedures are clearly delineated in the **WEST VIRGINIA HUMAN RIGHTS COMMISSION INVESTIGATIVE TECHNIQUES MANUAL** and the **WEST VIRGINIA HUMAN RIGHTS COMMISSION INVESTIGATORS' STANDARD OPERATING PROCEDURE MANUAL**. The two manuals are comprehensive in scope and address every phase of the charge resolution process. In Charleston, Intake is done by 2 staff persons exclusively, an Intake Officer and an Intake Staff Assistant. In the 2 satellite offices the Investigators assigned do the Intakes. The Potential Charging Party (PCP) fills out a form similar to EEOC Form 283 that is designed to elicit the particulars of the proposed charge and is then interviewed. The interviews generally take between 15 and 30 minutes and are designed to identify the PCP's perception of the alleged discrimination and to make PCP aware of the investigative process. Potential remedies are not discussed at Intake. The actual charge is not drafted immediately. The information on the form filled out by the PCP is taken to Triage where the potential allegations are scrutinized and jurisdictional considerations are discussed. Nonjurisdictional allegations are weeded out at this point. The Intake Staff then drafts the charge itself and mails 3 copies of it to the PCP for signature. The PCP must have his/her signature notarized and return the signed complaint (charge) to WVHRC for processing. WVHRC has Notary Publics on staff,



so PCP has the opportunity to bring the charge into the office to be notarized or to go to a Notary Public of their choice and mail the perfected charge in. PCPs who mail in allegations are sent the initial forms to be filled out and mailed back. The charge is then drafted utilizing the information on the forms and mailed to the PCP for notarized signature. The manual indicates that charges are to be processed to resolution within 180 days of WVHRC's receipt of the notarized complaint.

WVHRC utilizes a unique team concept in processing dual filed charges. The team in the Charleston Office consists of 4 Investigators, the Investigators in the Huntington Field Office form a second team and the lone Investigator in the Buckhannon Field Office works alone. All members of each team have responsibility for the charges assigned to the team. At the time of this review, the Charleston team had approximately 224 charges assigned to it. The team meets every Friday to discuss the progress on each individual case. The charges are served via certified mail. By statute, Respondent must submit a position statement within 10 days of receipt of the charge. Extensions of up to 10 days may be granted with the approval of the Supervisor. When Respondents are slow to respond or, for whatever reason, choose not to respond, subpoenas are issued and are enforced by the Attorney General's Office. All charges awaiting Respondent position statements are kept in one location. Once the position statement is received, a copy is sent to the Charging Party who is asked to provide a rebuttal. The case is then presented at a process called Entrance Triage. Triage is held bi-weekly. The Triage Panel consists of the Deputy Director, an attorney from the Attorney General's Office and the Director of Operations. Each Investigator is responsible for presenting 3 cases at each Triage. Once the case has been presented, the Triage Panel recommends what should be contained in the follow-up interrogatory and request for information that goes out to Respondent. The reviewing attorney prepares a Triage Action Sheet for all Entrance Triage Cases which is designed to record minimum actions to be accomplished during the investigation. Where onsite investigations are deemed necessary, they are always done by 2 or more investigators.

In cases where the investigation has been completed and enough evidence has been gathered to make a Determination, the allegations and evidence are presented to the Triage Panel who recommends the Determination. The presentations by the Staff to the Triage Panel do not normally contain recommendations concerning the Determinations. That is normally left to the Triage Panel.

An obvious advantage of the Triage Panel system is the attorney involvement in all phases of charge processing. If Probable Cause is found and the charge ends up in Public Hearing, the Attorney General's Office which will be charged with arguing for Charging Party will have been involved in the processing of the charge itself beginning with Intake.

In cases where there is No Cause to believe discrimination has occurred, CP may appeal directly to WVHRC. In those instances the Executive Director reviews the evidence and makes a ruling concerning the sufficiency of the investigation and the accuracy of the Determination. CPs also have and are advised of the option to request a Substantial Weight Review (SWR) by EEOC. Here it should be noted that requests for Substantial Weight Reviews of charges investigated by WVHRC are rare. Apparently the systems in place are highly effective at the FEPA level and, where there is a No Cause Determination, CPs do not feel the need for further recourse. The rarity of requests for SWRs serves to lessen the workload on the District Office and is an important byproduct of the WVHRC charge processing system.

The Deputy Director is responsible for all conciliations. Predetermination settlements are called predetermination conciliations. If the Respondent expresses an interest in settlement prior to a determination, the case is immediately assigned to the Deputy Director who facilitates all settlement efforts. If settlement efforts fail, the case goes back to investigations. Likewise, when Probable Cause is found, the case is assigned to the Deputy Director for conciliation. If conciliation fails, the case then goes to Public Hearing.

The Hearings are conducted by the Administrative Law Judges on staff. Because of the large number of cases awaiting Hearings, the ALJs or the Executive Director may order Mediations on selected cases. The parties involved in the case may also request Mediation. The Mediations are normally done pro bono by members of the private bar who are trained by WVHRC. Although CPs holding Probable Cause Determinations may request



a Notice of Right to Sue in Federal District Court from EEOC, this option is rarely selected. The speculation is that members of the local private bar, for whatever reason, are loathe to take employment discrimination cases to trial. Thus, suits in Federal District Court are rare in that jurisdiction.

### **Conclusion**

WVHRC routinely processes between 300 and 400 dual filed charges annually. The agency is highly effective in the timely processing of charges. Charges are normally processed to resolution in under 200 days as a result of the highly innovative team processing concept. The regular weekly team meetings and bi-weekly triage sessions not only ensure the timely processing of charges, but appear to have identified the optimum utilization of staff and resources. On sites are a regular part of the charge processing system as well as predetermination settlement efforts. Mediations are also utilized where appropriate following Probable Cause Determinations. WVHRC's settlement rate is commendable. The system in place never precludes settlement as an alternative regardless of the processing stage when settlement becomes a viable option.

A direct result of the team concept and regular team meetings and Triages is the timely processing of charges. Since the team is responsible rather for the resolution of each charge rather than the individual Investigator, no charge falls through the cracks. Apparently charges are not stalled within the system because of an individual Investigator's reluctance or inability to identify and make the next step toward resolution. This is an important distinction because ownership of the personal caseload in other systems, no matter how closely scrutinized by management, tends to allow for the selection of investigative steps by the individual for each of the cases in the individual Investigator's case load. Having to discuss each charge weekly at the team meeting and bi-weekly at the Triage ensures that action on each charge will be discussed in open session and that continual progress on each charge will occur.

Investigations are normally well done. Case files are well organized and easily reviewed. As mentioned earlier, the number of CPs requesting Substantial Weight Reviews following No Cause DETERMINATIONS is very low. This speaks to the professionalism of the staff and the integrity of the dual filed charge processing system.

The majority of Cause Determinations that fail conciliation are scheduled for Public Hearing. Ostensibly, when a case with a Cause Determination fails conciliation, CP has several options. CP may choose to go to Public Hearing. Once the Hearing has been scheduled, CP may opt to have the State Attorney General's Office argue on CP's behalf at the Hearing. CP may chose to go into State Circuit Court and, utilizing private counsel, argue the merits of the charge in that venue. The third option is that CP may chose to request the Notice of Right to Sue in Federal District Court, secure private counsel, and pursue substantially greater remedies in that venue. For whatever reason, the norm has been for CP's with Probable Cause Determinations to elect Public Hearing. This has served to overburden the Public Hearings process. There are more Hearings awaiting scheduling than the 3 Administrative Law Judges and their support staff can effectively accommodate. This is heightened by the burden placed on the Attorney General's Office to provide CPs counsel. This has created a logjam that could be alleviated by more diverse choices. The choice to secure private counsel and to request a Federal Notice of Right to Sue has routinely been eschewed by CPs holding Probable Cause Determinations in this venue. The choice to pursue private suit rights by a greater segment of those CP's holding Probable Cause Determinations would effectively serve to reduce the burden on the State Attorney General's Office who must argue on behalf of CPs and on the ALJs themselves.

The Mediations Project is apparently highly successful. The ability of the ALJs to designate cases for Mediation is an important and aggressive tactic designed to limit the number of cases that actually go to Public Hearing. The high settlement rate among cases that are mediated is a testament to the success of the program.

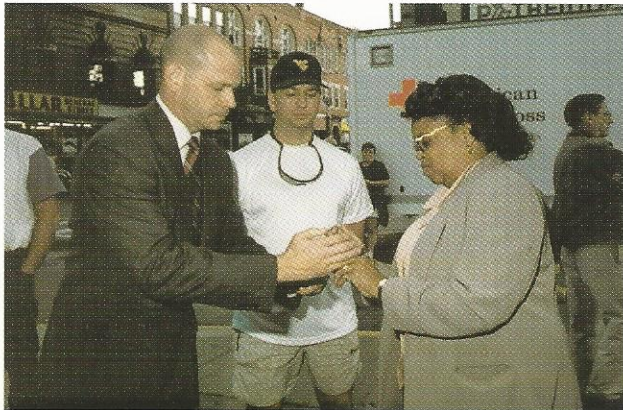
The Investigative Staff is well trained and individual Investigators have strong backgrounds in gathering and analyzing evidence.

All in all, WVHRC is a highly effective Fair Employment Practices Agency which is an integral part of the effort to fulfill the mission of the Commission.





Matthew Hought, ALJ Phyllis Carter, Executive Director Ivin Lee and Angie Carter meet with Governor Wise. Mr. Hought and Ms. Carter were appointed by the Governor to the Youth Advisory Board



Commissioner Charlene Marshall participates with members of the American Red Cross in memorializing the September 11, 2001 tragedy.



Judge Carter, Commissioner Ken Gilbert and Executive Director Ivin Lee meet with high school students who were appointed to the Governor's Youth Advisory Board.





Investigators James L. Johnson and Carolyn Smith participated in Law Day 2002 with the Supreme Court of Appeals of WV expanding public knowledge and confidence in the courts and law.



William D. Mahan, Director of Compliance/Enforcement, addresses the newly formed WV Alliance of State and City Human Rights Commissions

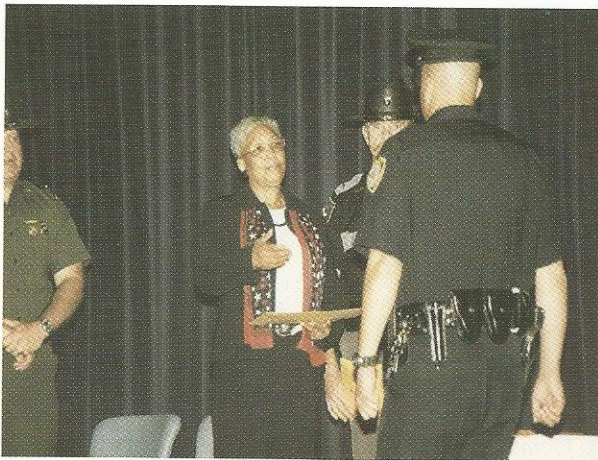


The West Virginia Human Rights Commission has formed an alliance with the Goodwill Industries. Don Raynes, Director of Operations, speaks with employees and clients of GI.





WVHRC Commissioners Brown and Gilbert attending the first meeting of the WV Alliance of State and City Human Rights Commissions.

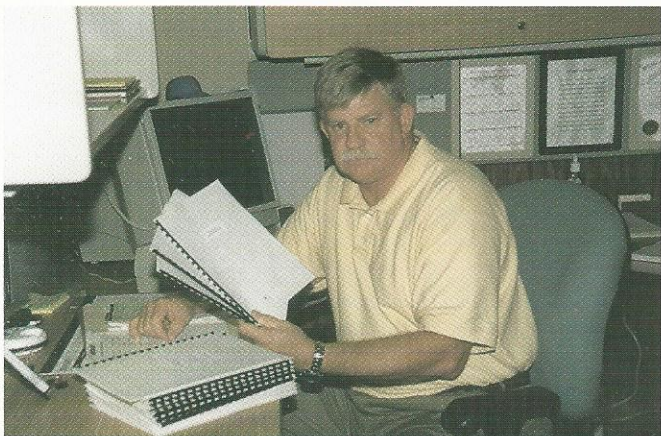


Executive Director Ivin B. Lee presenting diplomas to graduating members of the WV State Police Academy.



Nine of the twenty-two members of the Governor's Youth Advisory Board.

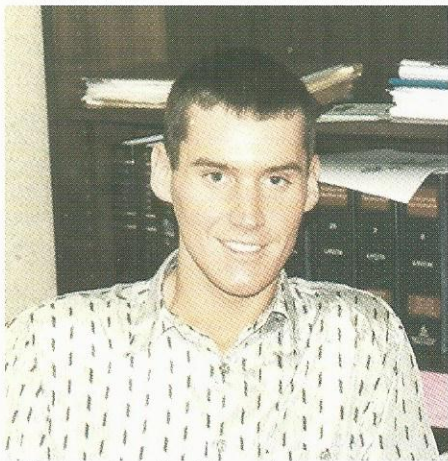




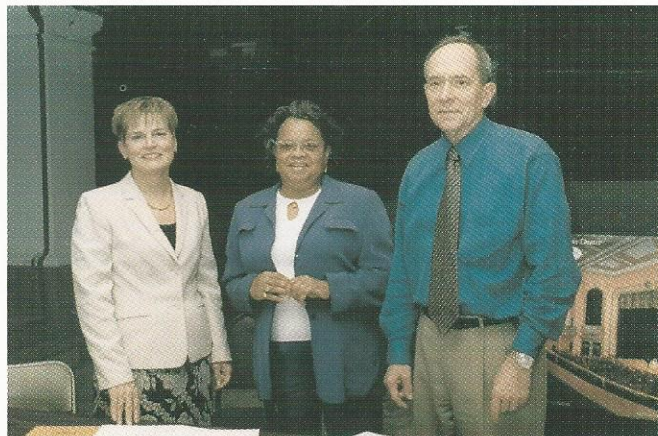
Investigator Thomas Lee reviews one of the many Documents the WV Human Rights Commission has translated into Braille.



Investigator Thomas Lee meeting with the members of the Federation of the Blind.



Elliot Potter, the Commission's intern in the spring of 2002, who was a recipient of the Judith A. Herndon Fellowship at Marshall University.



Commissioner Charlene Marshall taking part in many of the Commission's outreach activities.





**Charleston Job Corps Center maintains a student-partner relationship with the West Virginia Human Rights Commission on a variety of opportunities. Pictured above are Mandy Weaver and Holly Gunther.**



**Tamira Austin and Vanessa Castaneda**



## 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 those 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 (the respondent) 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 "triage" meeting, along

with the original complaint. At this meeting, the assigned investigator, the investigator's supervisor, 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. Triage ensures that issues have been properly identified and allows for early disposition of urgent cases and promotes resolution of cases which require minimal investigation.

The investigator presents the case to the group. The case is reviewed until a consensual plan is developed in this phase of the investigation.

If at this point a rebuttal to the position statement from the complainant has not been received, the investigator must obtain one. It is helpful for the respondent to provide supporting documentation of its position; however, the respondent has 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 complainant or developed by investigation showing the position statement to be a pretext for illegal discrimination. Additionally, in disparate-treatment allegations, the complainant's membership in one of the protected categories must be motivating in the act of harm. Where motive is not present, evidence must establish a disproportionate, adverse impact upon the protected category of an otherwise neutral policy or procedure.

The WV HRC 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 complainant or respondent. 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, the complainant chooses to withdraw the complaint or fails to cooperate with the Commission's investigation.

In predetermination settlements, the investigator does not propose or negotiate settlement terms. The investigator facilitates the exchange of offers and responses and will prepare a Predetermination Settlement Agreement which protects the interests of each party and the Commission in a contract.

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 be reached.

At the Pre-hearing stage, the cause determination stands, but a settlement agreement between the parties 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 complainant may choose to withdraw the case 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 decision.

The judge's decision may be appealed to the West Virginia Human Rights Commission Commissioners. In turn, the Commissioners' 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 \$5,000.00 or back pay in excess of \$30,000.00, or by agreement of the parties. Cases on appeal to the courts remain on the active docket until the court issues its 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 2001-02, **484** new charges were filed while **482** were closed. These new filings are set out below by county:

COUNTY	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	COUNTY	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Barbour	0	2	1	0	0	Mineral	2	1	2	5	4
Berkeley	11	27	21	19	9	Mingo	3	6	5	5	7
Boone	4	4	1	2	4	Monongalia	10	16	13	11	25
Braxton	0	2	4	1	2	Monroe	0	0	0	0	1
Brooke	11	0	0	0	2	Morgan	1	0	1	1	2
Cabell	27	24	24	38	37	Nicholas	5	4	5	1	3
Calhoun	0	1	0	0	1	Ohio	4	6	5	11	6
Clay	1	1	0	0	1	Pendleton	0	0	2	0	0
Doddridge	0	0	2	1	0	Pleasants	0	0	0	1	0
Fayette	13	8	11	5	8	Pocahontas	0	0	3	1	1
Gilmer	0	0	1	1	1	Preston	2	1	0	2	2
Grant	1	3	1	2	2	Putnam	7	11	11	9	10
Greenbrier	5	5	11	8	4	Raleigh	22	39	16	21	28
Hampshire	0	0	1	0	1	Randolph	4	8	8	8	8
Hancock	28	8	7	7	7	Ritchie	1	0	0	1	2
Hardy	0	5	7	2	8	Roane	1	0	0	8	3
Harrison	7	14	16	18	9	Summers	3	1	2	0	0
Jackson	4	8	1	5	7	Taylor	2	1	2	1	1
Jefferson	7	4	12	8	11	Tucker	2	0	0	1	1
Kanawha	141	145	152	136	182	Tyler	3	0	1	1	0
Lewis	1	0	2	2	3	Upshur	0	2	1	0	1
Lincoln	1	1	0	0	1	Wayne	6	3	0	3	5
Logan	9	8	7	8	9	Webster	0	0	2	0	0
McDowell	3	3	9	1	4	Wetzel	3	2	0	1	1
Marion	8	10	11	5	11	Wirt	0	0	0	0	1
Marshall	2	2	3	2	2	Wood	9	17	26	13	19
Mason	0	4	5	4	2	Wyoming	2	0	4	0	3
Mercer	10	16	9	10	22	<b>TOTALS</b>	<b>356</b>	<b>423</b>	<b>427</b>	<b>390</b>	<b>484</b>



## INVESTIGATIVE DIVISION REPORT

The Investigative Division of the West Virginia Human Commission has a total of eleven (11) 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 **462** cases (end of Fiscal Year 2001-02). This has resulted in more manageable investigator caseloads.

The Commission's performance in case resolution for the Fiscal Years 1997-98 through 2001-02 is summarized as follows:

Fiscal Year	Complaints Closed	No-Probable Cause	Administrative Closures	Probable Cause Determination/Settlement	Monetary Benefits to Complainants
1997-98	478	325 (68%)	91 (19%)	62 (13%)	\$1,061,362.12
1998-99	440	272 (62%)	84 (19%)	84 (19%)	\$ 594,841.87
1999-00	403	201 (50%)	121 (30%)	81 (20%)	\$1,331,428.57
2000-01	615	352 (57%)	129 (21%)	134 (22%)	\$1,166,413.40
2001-02	482	288 (60%)	68 (14%)	126 (26%)	\$ 939,020.69 ■

- This figure is a result of settlement offers which particularize monetary information. Some settlement agreements are specific as to the confidentiality of figures as part of the agreement.



## MEDIATION REPORT OF FISCAL YEAR 2002

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 increase yearly in volume and proves 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, 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. Previously, it was felt that only those cases set for hearing which could possibly benefit from mediation were so ordered. However, the Commission's project has grown to an extent that its present goal is to schedule every case docketed for public hearing to Mediation.

A State Bar-trained mediator, 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.

Because parties to the cases and mediators do not all reside close to the Commission's locale, many cases are handled at mediators' offices throughout the state. This has saved time and money for the participants because previously all cases were mediated in Charleston. With this new approach, the Commission has been able to utilize more mediators around the state and 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: [wilhelmbf@wvhrc.state.wv.us](mailto:wilhelmbf@wvhrc.state.wv.us).

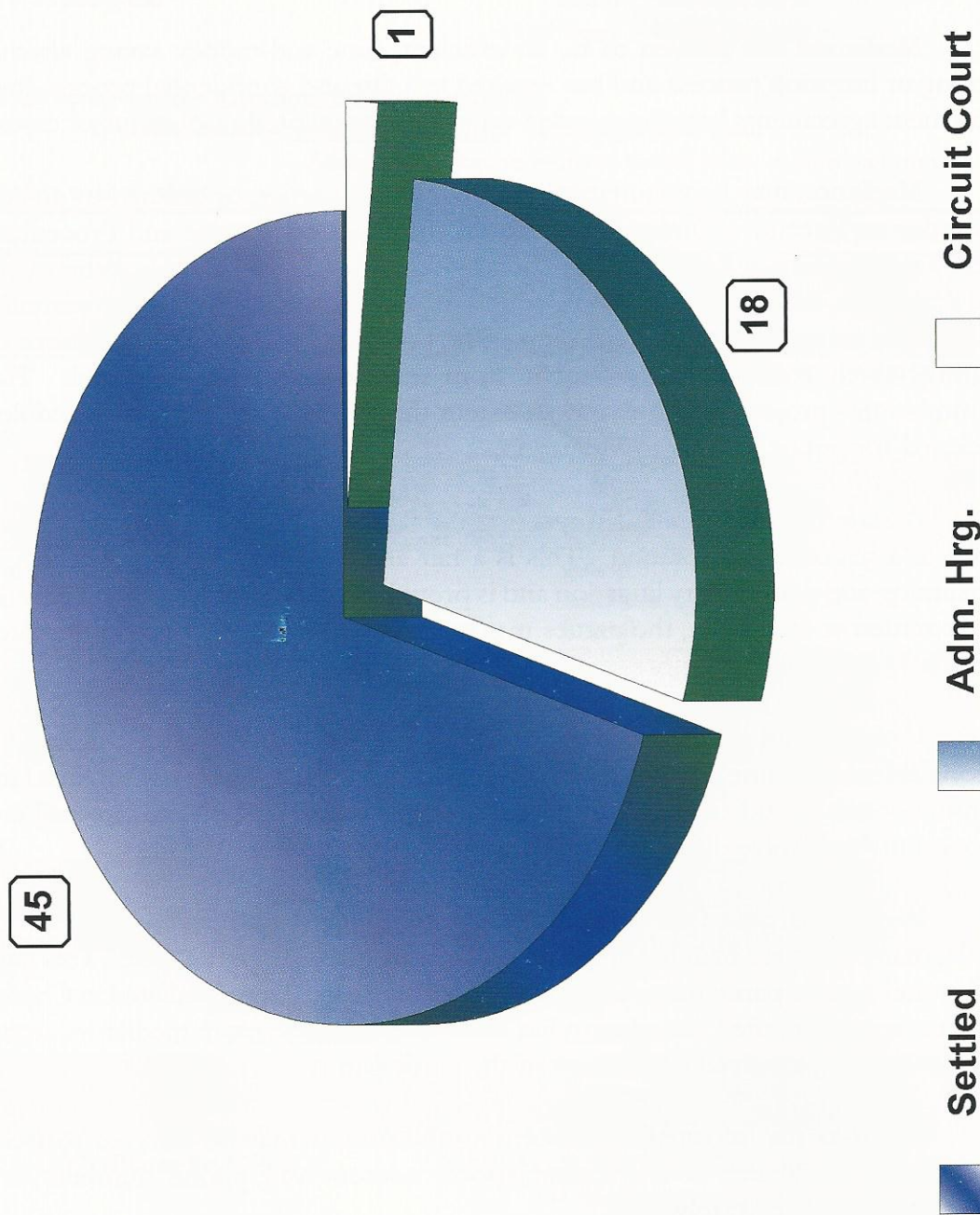
Following is a chart reflecting the results of this fiscal year's mediation cases:



## Mediation Results FY 2002

Processed Without Going to Public Hearing--72%:  
 70% Settled and 2% Withdrew to Circuit Court.  
 28% Placed back on the docket for hearing.

Total: 64 Cases Referred to Mediation



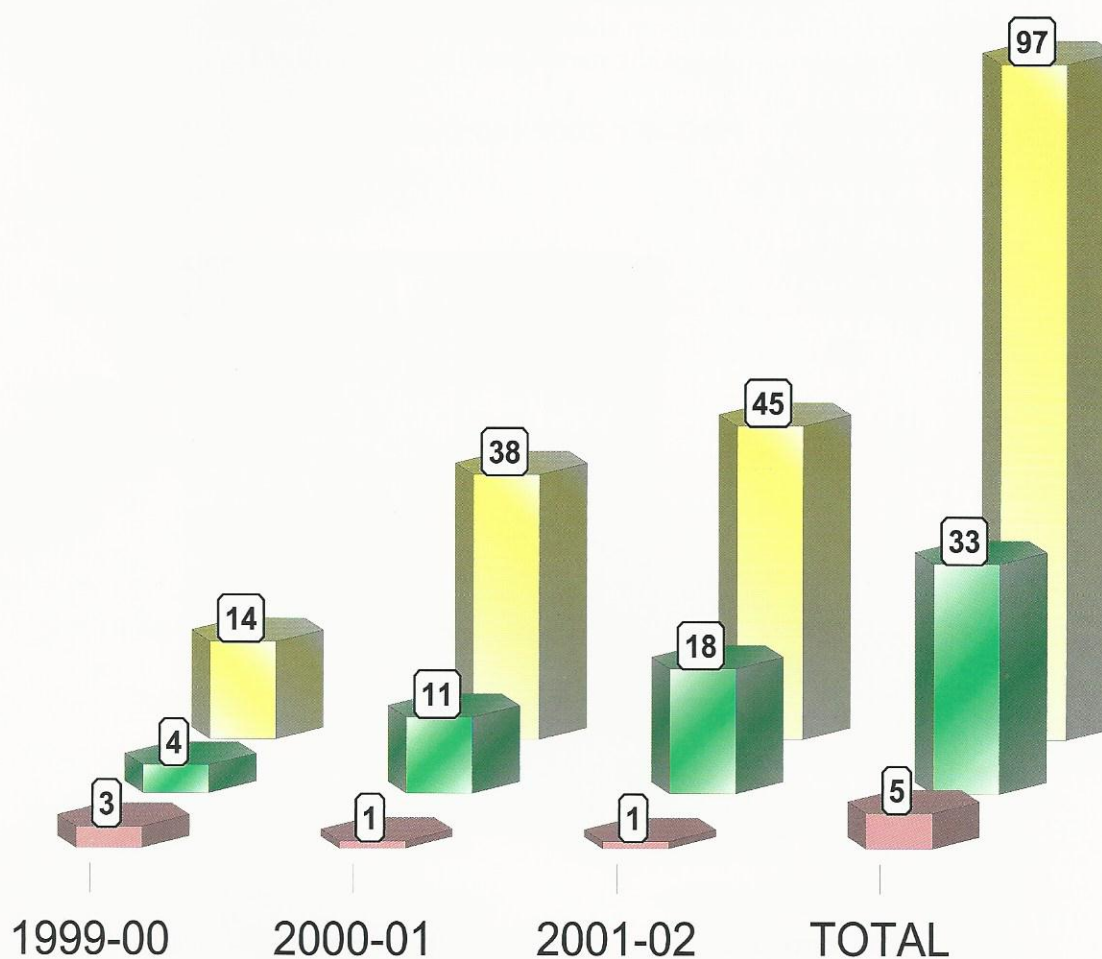
With 45 cases being settled and one opting to continue in Circuit Court, at an average cost of \$3,000.00 per public hearing, the savings to the Commission totals \$138,000.00 for FY 2002.



Fiscal Year	Settled	%	Adm.Hrg.	%	Cir. Ct.	%	Total Mediated	Monetary Awards	WV HRC Saved*
99-00	14	67%	4	19%	3	14%	21	224,177	51,000
00-01	38	76%	11	22%	1	2%	50	694,145	117,000
01-02	45	69%	18	30%	1	1%	64	425,396	138,000
Totals	97	72%	33	24%	5	4%	135	1,343,718	306,000

\* The Commission has calculated the average cost of a public hearing to be \$3,000

### Three-Year History of Mediation Project





## PRE-DETERMINATION CONCILIATION REPORT

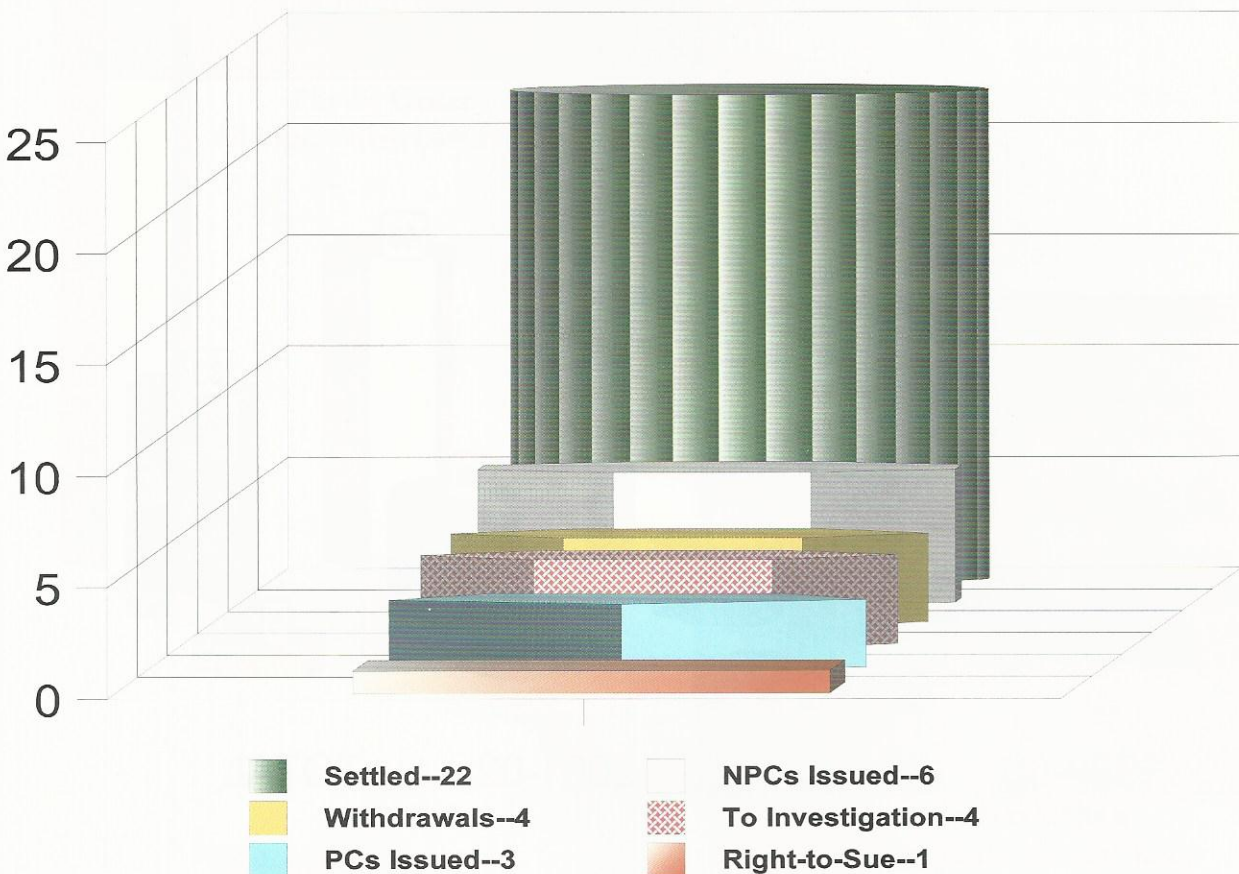
Before a case is fully investigated certain elements may be identified which suggest that there could be a fast-track completion of the matter based upon information contained in the Complainant's Complaint and the Employer's Position Statement. (Most cases require more extensive investigation.)

Because of the possibility of early reconciliation, 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 to the Commission and to the parties in processing cases.

For Fiscal Year 2002, of **40** cases processed in PDC, **22** were settled, which represents **55%**. No-probable cause was determined for **six** cases (**15%**); **four** were withdrawn to circuit court or a civil action was filed, representing **10%** of the cases completing the program; **four** were returned for further investigation (**10%**); **three** were found to be probable cause (**7.5%**); and, **one** right-to-sue was requested (**2.5%**). For Fiscal Year 2002, of the 40 cases negotiated, **27 (67.5%)** were dismissed from the Commission's docket—those categories are: Settled; Withdrawals; and, Right-to-Sue.

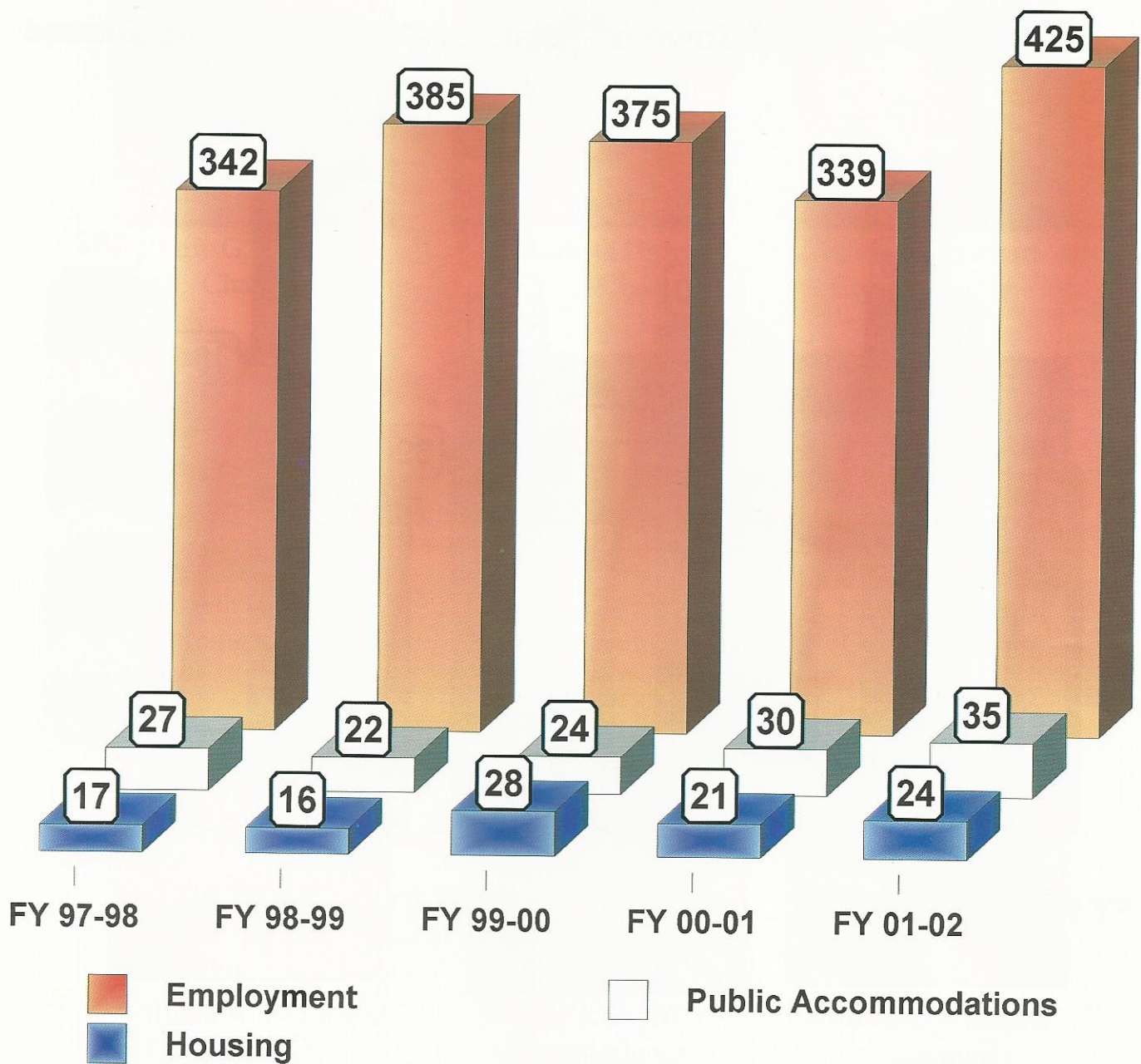
The Commission has found this to be another successful negotiating tool in the processing of cases which saves time and money to both the parties and the Commission.

**PDC--FY 2002 (40 Cases)**





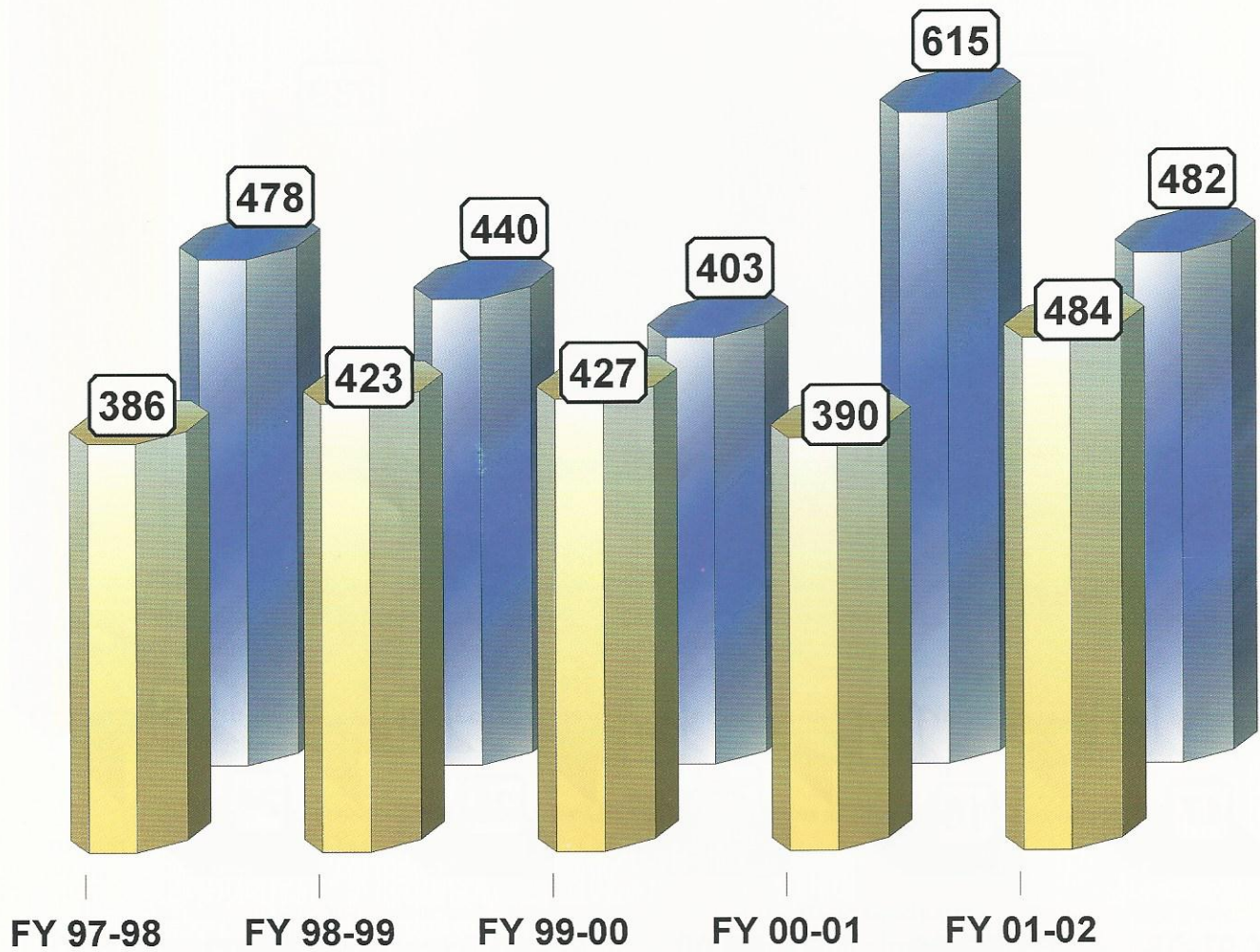
## Five-Year Breakdown of Total New Cases Filed



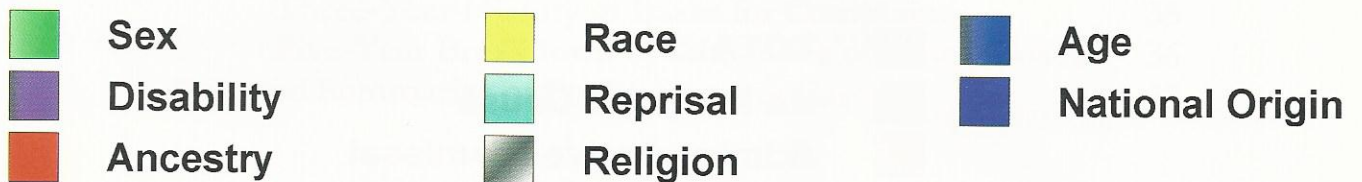
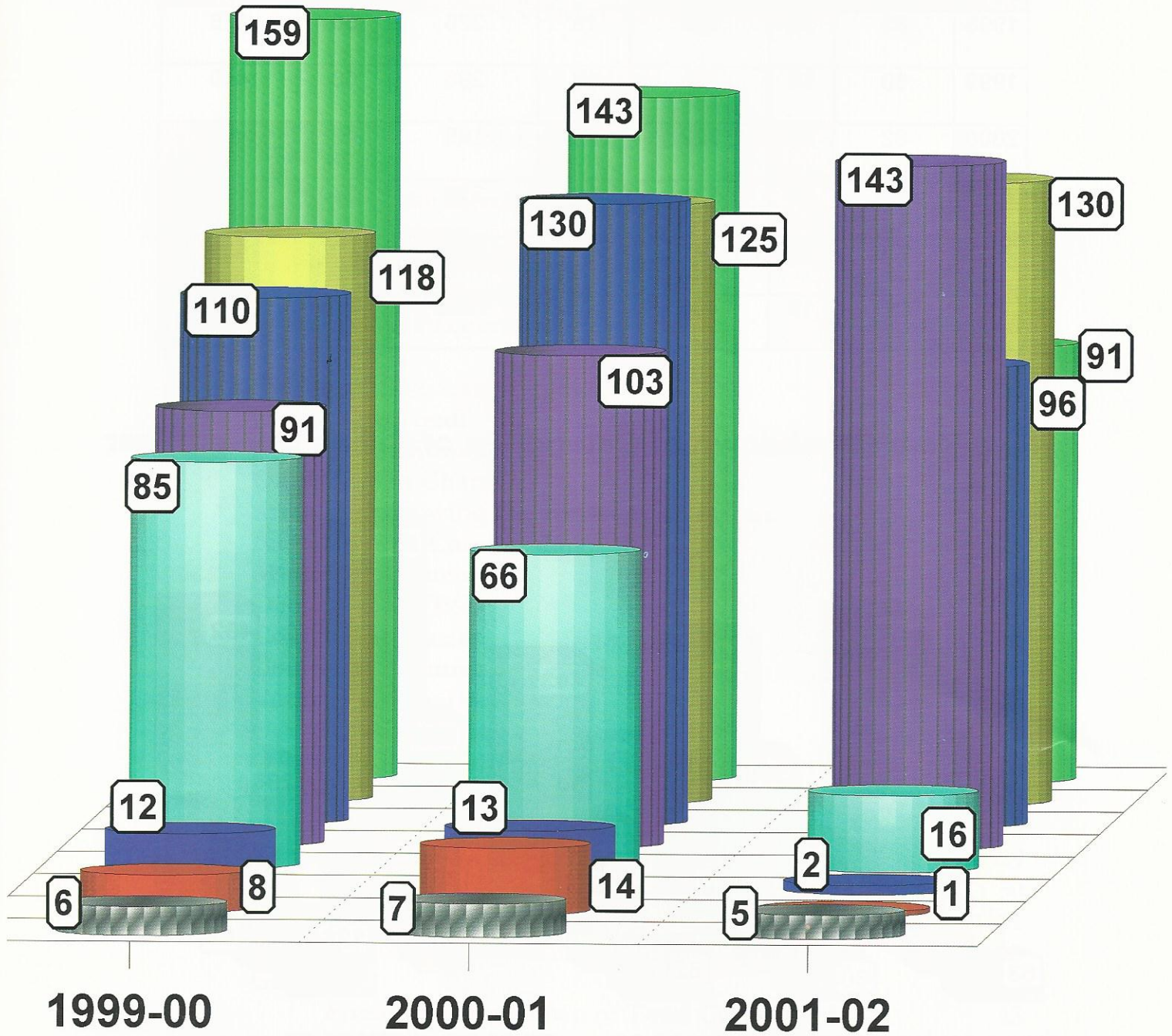


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### Five-Year Breakdown of Totals of Cases Filed and Closed



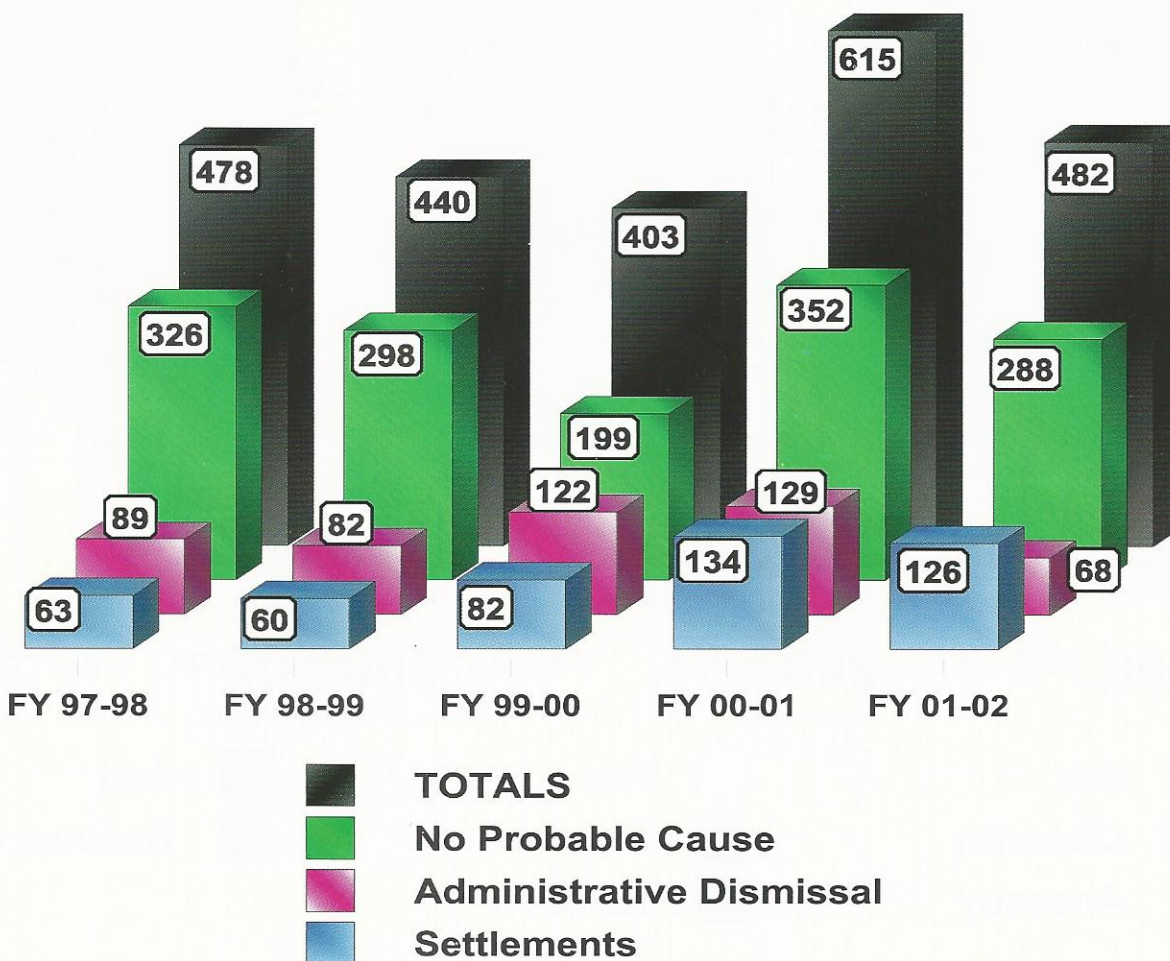
# Three-Year History of Bases for Complaints





FY	Number Settled	%	Adm. Dismissals	%	Number NPC'd	%	Total Closed
1998	63	13	89	19	326	68	478
1999	60	14	82	18	298	68	440
2000	82	21	122	30	199	49	403
2001	134	22	129	21	352	57	615
2002	126	26	68	14	288	60	482
	465	19	490	20	1463	61	2418

### Five-Year Breakdown of Categories of Cases Closed/Year





## SELECTED SUMMARIES OF PUBLIC HEARING CASES

1. Employee alleged he was subjected to a sexually hostile workplace and that he was laid off and not recalled in retaliation for complaining about the sexual harassment.

*The Human Rights Commission overturned the decision by the Administrative Law Judge that the employee had not found the sexually charged environment offensive and ordered appropriate relief.*

2. Employee alleged he was subjected to a sexually hostile workplace, interfering with his ability to perform his job. Employer argued that because the harassment was directed to a perception of his sexual orientation and was manifested in terms of sexual orientation, the employer failed to demonstrate the harassment was "because of sex." Alternatively, employer argued that the harassment was not severe or pervasive and that it was not imputable to the employer.

*The Human Rights Commission upheld the Administrative Law Judge's decision, finding that the employee had been subjected to severe and pervasive sexual harassment by his co-workers and that the employer's supervisors had acquiesced to and failed to take adequate steps to end the harassment.*

*The Administrative Law Judge awarded incidental damages for the sexual harassment, but found that the claims for back wages for lost time and constructive demotion were time barred. The Commission ordered that staff and supervisors have training on discrimination and harassment issues.*

3. Employee alleged he was subjected to racial harassment. Employer alleged that any racially offensive comments were not severe or pervasive; and, that even if made by supervisors, that employer had (a) used reasonable care in preventing and correcting harassing behavior; and, (b) the employee had unreasonably failed to take advantage of preventative or corrective opportunities (the so-called Faragher/Ellsworth affirmative defense).

*The Human Rights Commission affirmed the Administrative Law Judge's finding that the employee had been subjected to racial harassment. The Commission stated that the use of the terms involving forms of the "N" word and "Be my monkey" were clearly intended to denigrate the employee on the basis of race. Further, that subjecting the employee to racially offensive and intimidating drawings of the Ku Klux Klan thinly veiled as a joke, by and in the presence of supervisors, were of an aggravated nature. The Commission specifically rejected the availability of the Faragher/Ellsworth affirmative defense under the West Virginia Human Rights Act for acts committed by supervisory employees.*

4. Former employee on permanent disability alleged disability discrimination by employer in refusing to rehire him as a power sweeper operator after his treating physicians had indicated he was physically capable of performing the duties of that job. Employer alleged former employee would not be able to perform the duties without being a danger to himself or others.



*The Human Rights Commission affirmed the order of the Administrative Law Judge, ordering reinstatement to the position of power sweeper operator rejecting due process argument of employer based upon fact the final decision of the Administrative Law Judge was issued on a date after the Administrative Law Judge's contract had expired.*

5. **Employee was employed as a business manager at a television station. She alleged that she was subjected to discrimination on the basis of sex when the employer who purchased the station and consolidated operations with a second station it had purchased a few months earlier, hired a male business manager and assistant manager for the consolidated stations. Employee further alleged disparate treatment in not being offered some other position following the consolidation, as was done for other male station employees, whose positions were eliminated in the consolidation. Employer argued that it hired the best qualified individuals for the job.**

*The Administrative Law Judge held that the employer had discriminated on the basis of sex in failing to interview and investigate the employee's credentials for the business manager position, that the employer discriminated on the basis of sex in failing to offer another slot in the business department as was done for other male station employees whose positions were eliminated during consolidation of the station, and that employee had superior qualifications for the assistant business manager than the male given that position following consolidation of the station's operations; but, that employer had demonstrated it would have hired the male*

*business manager even if sex discrimination had not played a part in the hiring decision for business manager. The Administrative Law Judge awarded appropriate relief.*

6. **Employee was employed as a records clerk with a city police department and alleged she was constructively discharged due to a sexually hostile workplace and due to retaliation in response to her complaints to city officials. Employer contended that employee failed to report harassment to supervisors as designated in the city employee handbook and that employee quit because she did not like shift assignment on midnight shift. Employer also contended that sexual conduct was not unwelcome.**

*The Administrative Law Judge found that employee was subjected to unwelcome sexually charged behavior of uniformed officers that was severe and pervasive, that she had complained to the shift commander and chief of police, who failed to take corrective action, and that other female employees in the records office had been subjected to similar sexually hostile workplace. When the complaints were made, the chief of police intimidated the employee. Employee suffered substantial emotional distress and was constructively discharged as a reasonable person subjected to that environment would not be able to work under those conditions. The Administrative Law Judge awarded appropriate relief.*





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