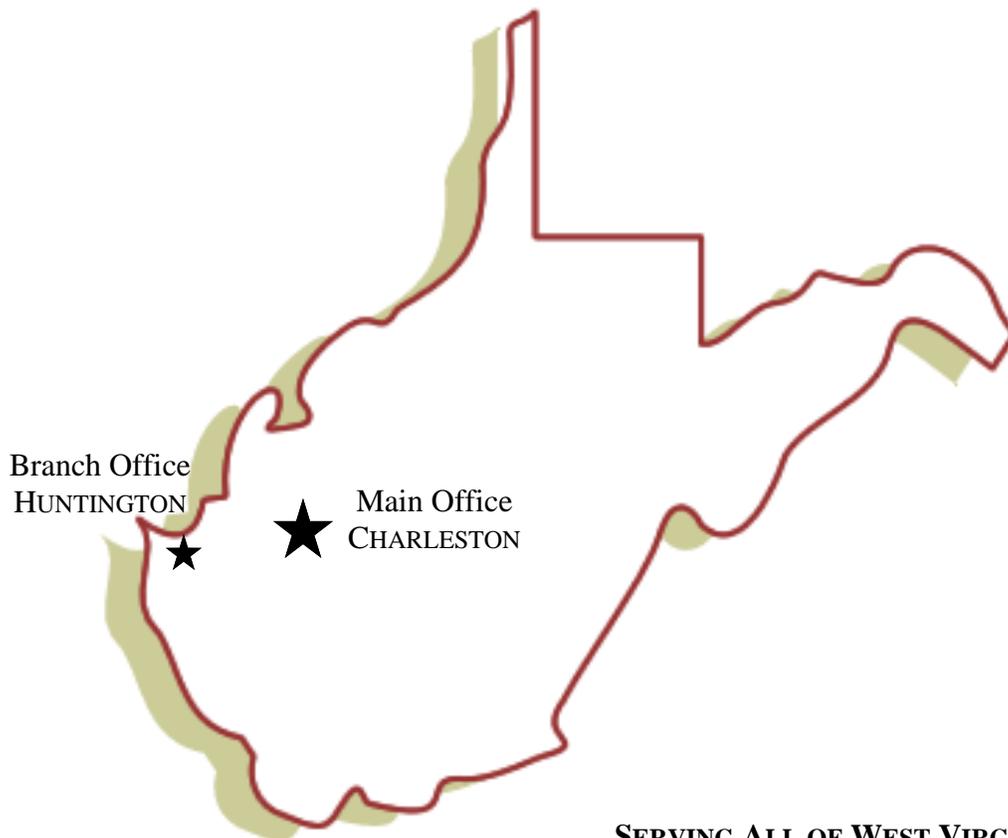




# West Virginia Human Rights Commission

**Annual Report**  
**FY 2007 - 2008**



SERVING ALL OF WEST VIRGINIA





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

**Joe Manchin III  
Governor**

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

**Martha Yeager Walker  
Secretary**

**December 1, 2008**

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

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

**Dear Governor Manchin and Members:**

It is with pleasure that I present to you the 2007-2008 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 Manchin and the West Virginia Legislature has enabled this Commission to work more diligently in our efforts to eradicate discrimination and protect civil and human rights in West Virginia.

**Respectfully submitted,**

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

**Ivin B. Lee  
Executive Director**

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## **MISSION STATEMENT**



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

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



## DECLARATION OF POLICY



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

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

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

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## DECLARATION OF POLICY (CONT.)

no matter what your social position, you cannot live here.

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

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

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



# HIGHLIGHTS OF THE WEST VIRGINIA HUMAN RIGHTS ACT



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

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

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

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

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

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

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

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

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

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

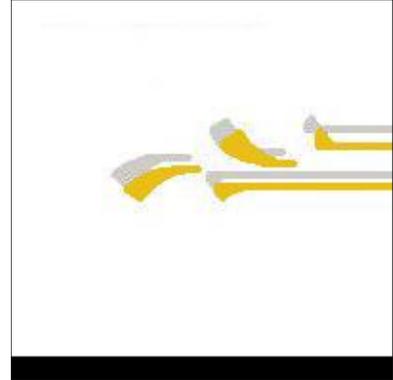
# THE COMMISSIONERS



**Ellen Allen**  
Mercer County



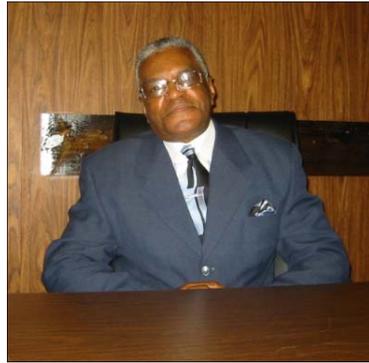
**Helen Bond**  
Berkeley County



**Dr. Darrell Cummings, Chair**  
Ohio County



**Karl Gattlib**  
Kanawha County



**Wesley Dobbs**  
Marion County



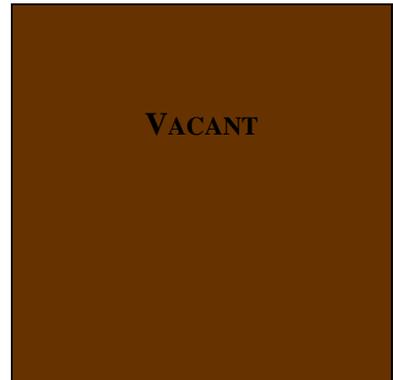
**Timothy Hairston**  
Monongalia County



**William L. Williams**  
Logan County  
Vice Chair



**Lisa Younis**  
Jefferson County



VACANT

# ROLE OF THE COMMISSIONERS



Set policy for the Commission.

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

**EXECUTIVE DIRECTOR**

**IVIN B. LEE**

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**EXECUTIVE DIRECTOR**

# MY VISION

Ivin B. Lee  
Executive Director

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

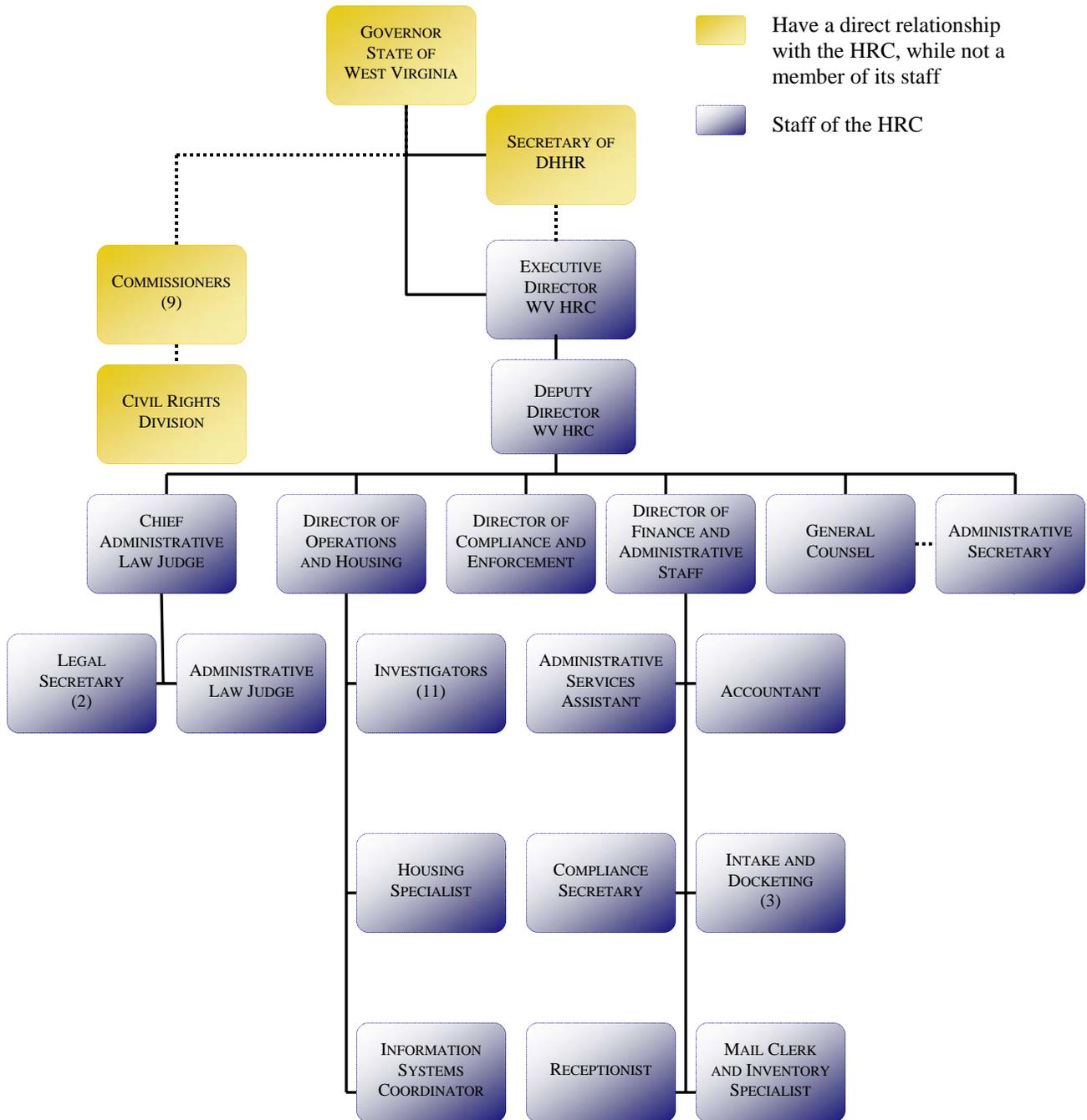
First, I am committed to hiring more experienced investigators who can conduct more efficient and effective investigations. My goal is to process cases in a timely manner without jeopardizing the quality of our investigations.

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

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

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

# HRC ORGANIZATIONAL CHART



**STAFF OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**CHARLESTON OFFICE**

**OFFICE OF THE JUDGES**



**Phyllis H. Carter**  
Chief Administrative Law Judge



**Robert B. Wilson**  
Administrative Law Judge



**Rebecca Lester**  
Legal Secretary



**Joyce Knotts**  
Legal Secretary

**EXECUTIVE DIVISION**



**Brian W. Wells**  
General Counsel



**Monia Turley**  
Administrative Secretary



**Marykaye Jacquet**  
Deputy Director

**INVESTIGATIVE AND  
COMPLIANCE  
ENFORCEMENT  
STAFF**



**Yodora P. Booth**  
Director of Operations and Housing



**Paul W. Cook**  
Information Systems Coordinator



**Jackie Heath**  
Director of Compliance & Enforcement



**Marshall Moss**  
Housing Specialist



**Sally Brown**



**Arthur Duiguid**



**Joshua Brown**



**David Fix**



**Richard Mangus**



**Tausha Rucker**

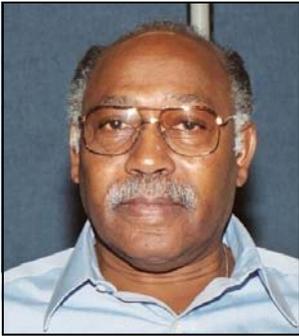


**James Slack**

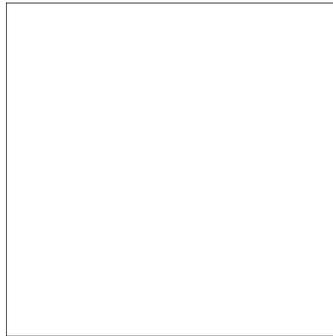


**Carolyn Smith**

## FINANCE AND ADMINISTRATIVE DEPARTMENT



**James L. Johnson**  
Director of Finance and  
Administrative Staff



**Karen Boston**  
Accountant



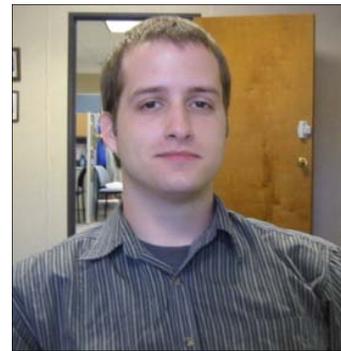
**Carletha (Lisa) Gist**  
Administrative Services Assistant



**William (Kenny)  
Bailey**  
Mail Clerk/Inventory



**Leola Bateman**  
Compliance Secretary



Christopher Nelson  
Receptionist



**Esther Hupp**  
Intake and Docketing



**Wilda (Penny)  
McGill**  
Intake and Docketing



**Glenda Sue Means**  
Intake and Docketing

**HUNTINGTON OFFICE**



**Linda Bowers**  
Investigator



**Paul Hamilton**  
Investigator

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

**West Virginia Human Rights Commission**

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

**Located on the Web at:  
[www.wvf.state.wv.us/wvhrc](http://www.wvf.state.wv.us/wvhrc)**

**Satellite Office**

**801 Madison Avenue  
Huntington, WV 25701  
(304) 528-5823 or (304) 528-5798  
Fax: (304) 528-5822**

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## Tribute to Leona Chupick

February 1953 – March 2008

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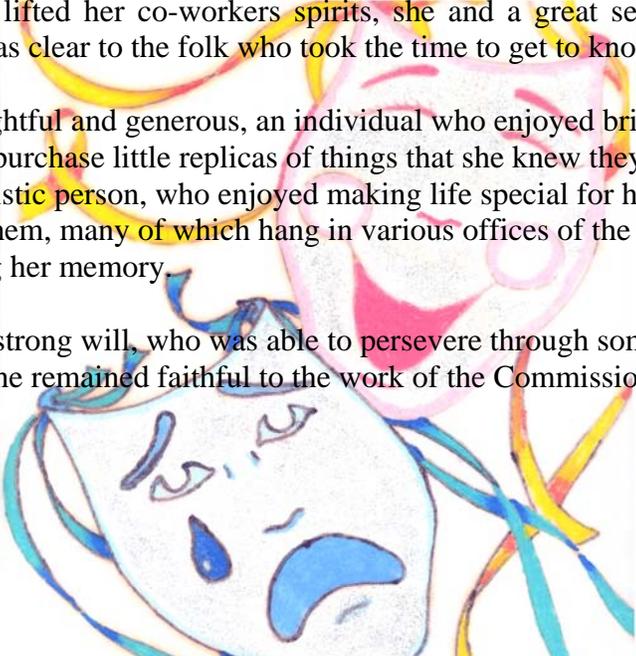
Leona gave nearly 30 years of her life as an Employee of the State of West Virginia, beginning with Voc Rehab in 1977, and then to the West Virginia Human Rights Commission, where she worked until her health would no longer allow.

No life can be reduced nor summarize in the space of this single page that has been dedicated to Leona's memory; however the information that was submitted by the Commission staff who knew and worked with Leona over the years, is a good indication that she has left an indelible impression on the minds and in the hearts of those who knew her best.

Leona's life and love was her work. Next to raising and caring for her daughter Amber, (pictured with her here), Leona seemed comforted by the fact that, though she faced health challenges, it was the work of the Commission that kept her going. She was thoughtful, always doing "little" things that lifted her co-workers spirits, she and a great sense of humor, though rarely seen by others was clear to the folk who took the time to get to know that side of her.

Leona was a very thoughtful and generous, an individual who enjoyed bringing goodies in for the staff; or she would purchase little replicas of things that she knew they would enjoy. She was a creative, very artistic person, who enjoyed making life special for her friends by the things she created for them, many of which hang in various offices of the Commission today; further commemorating her memory.

Leona was a person of strong will, who was able to persevere through some very difficult health challenges and she remained faithful to the work of the Commission for as long as her health would allow.



*"I may never see tomorrow, there's no written guarantee,  
And things that happened yesterday belong to history,  
I can not predict the future, I can not change the past,  
I have just the present moment, I must treat it as my last"*

*Sarah@findangnel.com*

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*In Loving Memory*  
*Judge Gail Marie Ferguson*

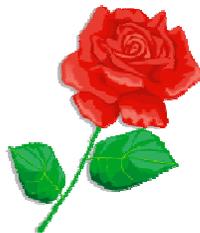


April 3, 1941 - October 11, 2008

The Human Rights Commission humbly submits this memorial page on behalf of the Honorable Judge, Gail Marie Ferguson, who departed this life on October 11, 2008. Judge Ferguson worked for many years as General Counsel for the Human Rights Commission, and as an Administrative Law Judge from which she retired in 2003.

Judge Ferguson received her law degree from Georgetown Law Center in Washington, DC and devoted much of her career to civil rights issues. In 2004, she was awarded the Civil Rights Award by the Human Rights Commission for her landmark decision on race, disability and sex discrimination. It is believed by many, that her rulings set precedents that mark a progressive shift in civil rights laws in the State of West Virginia.

She was as devoted to her family as she was passionate about her work. Her loving daughters, and husband that she lived at home and in memories within the hearts of the Commission and will be remembered by all those who knew her.



band Warne all praise her for the life she lived at the workplace. She has left fond memories of the people who worked with her at the Commission and will be sadly missed but fondly remembered by all those who knew her.



*In Loving Memory*

*George Frederick Bearfield*

*1952- October 12, 2008*

The West Virginia Human Rights Commission humbly submits this memorial page in honor of George Bearfield, who lost a long battle with cancer on October 12, 2008.

In addition to his work with the West Virginia Human Rights Commission, as a mediator and state investigator, George was 25-year veteran of the Kanawha County Sheriff's Department. He was also a previous member of the Air National Guard, and various other community auxiliaries and organizations.

George was a member of the Air National Guard; a member of the Salina Lodge #27 A.F. & A.M., Beni Kedem Shrine, where he had been elected vice-president of the Oriental Band, just prior to his death. He was a member of the Salina #81 and the Franklin #138 O.E.S. George was a recipient of the Billy Mitchell Award, a past Scout master and Boy Scout leader. He was an avid ham radio operator and was very active in his community.

As most who knew him and celebrated his life remember him as a loving father, a devoted husband and a cherished friend. We here at the Commission will miss him and continue to appreciate the work that he contributed as a faithful employee.

*"When I must leave you for a while,  
Do not grieve; but wear a brave smile.  
Live on and do all things the same  
For in your hearts I shall remain."*





# COMMUNITY OUTREACH

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

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

## **Extensive Orientation for New Commissioners** **October 2008**

New Commissioners received extensive training from the Human Rights Commission's staff and the Attorney General's Civil Rights Division. The training included a review of the Role of the Commissioners, training on the process of complaints filed at the Commission and the Commission's Rules of Practice and Procedure.

## **Final Decisions Available Online** **December 2006**

A team headed by Chief Administrative Law Judge Phyllis Carter took on the daunting task this year of making the Judges' Final Decisions available on the Commission's website. The new feature provides an easy way to quickly refer to the administrative law judges' Final Decisions by date, Complainant's name, and/or Respondent's name.

Visit [www.wvf.state.wv.us/wvhrc](http://www.wvf.state.wv.us/wvhrc) for the Final Decision Directory.

## **Faith Based Initiative Through Community Outreach** **July 8, 2008**

The West Virginia Human Rights Commission in partnership with West Virginia State University's College of Professional Studies, the West Virginia Council of Churches, and the Charleston Black Ministerial Alliance, co-sponsored an in-depth training session on **Unconscious Bias, Cultural Diversity, Racial Discrimination**, and other prejudices that secretly affect many individuals who work in these areas. The training was held at First Baptist Church, in Charleston, WV. with the Pastor, Rev. Paul A. Dunn acting as host. The training was specifically designed to benefit area clergy, social service personnel, and other community groups who work with individuals who face the challenges that are often associated with and indicative of individuals who come from poverty stricken backgrounds.

Judge Phyllis Carter lead the group in an exercise which demonstrated how some individuals carry unconscious, preconceived opinions or thoughts about certain classes and/or races of people which helps to shape their attitudes toward those individuals throughout their lifetime. The first phase of the training was such a success that it will be extended through the Spring of 2009 and will include a more in-depth look at understanding the differences of "situational poverty as opposed to "generational poverty" and the effects poverty has overall on the different classes of people.

Much of the training is based on the model "A Framework for Understanding Poverty" by Ruby K. Payne, well known author of the same. Her work has inspired educators, social, service personnel, legal professionals and others to become more effective in working with people from all socioeconomic background and especially those who are victimized by the struggle to survive the strains of poverty.

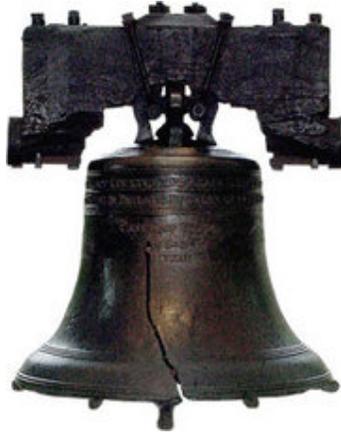


Faith Based Initiative group listens to:



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

**West Virginia Civil Rights Day  
Luncheon and Awards Ceremony  
February 28, 2008**



***FROM WHENCE WE CAME***



***Joe & Gayle Manchin  
Governor and First Lady  
of West Virginia***

# Proclamation

By Governor Joe Manchin III

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

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

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

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

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

**Now, Therefore,** Be it Resolved that I, Joe Manchin III, Governor of the State of West Virginia, do hereby proclaim *February 28, 2008*, as:

## *Civil Rights Day*

in the Mountain State.

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

**Done** at the Capitol, City of Charleston, State of West Virginia, this the Twelfth day of February, in the year of our Lord, Two Thousand Eight and in the One Hundred Forty-fifth year of the State.

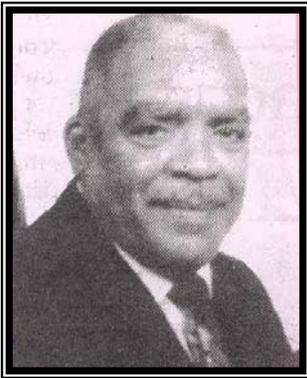


Joe Manchin III  
Governor

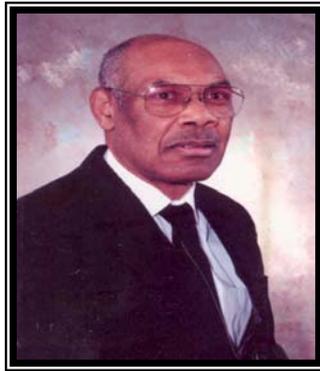
By the Governor:  
  
Betty Ireland  
Secretary of State

# 2008 Honorees

On February 28, 2008, in celebration of the Governor's Civil Rights Day, the Commission and its partners presented awards to honor members of the community who have helped champion the cause for equality throughout the state at the 6th Annual Civil Rights Day Luncheon, hosted by the Charleston Job Corps Center. Governor Joe Manchin III and First Lady Gayle Manchin presented special medallions and plaques to the 14 honorees pictured below.



**The Seventeen Black Railroad Yardmen**  
C.O. Baumgardner



Thomas H. Mack



Rabbi Helen Bar-Yaacov



William Anthony  
"Tony" Brown



The Charleston Women's  
Improvement League, Inc.

# 2008 Honorees



Gertrude Diana Campbell-Jackson (Posthumously)



James E. Griffin



James Arthur Jackson (Posthumously)



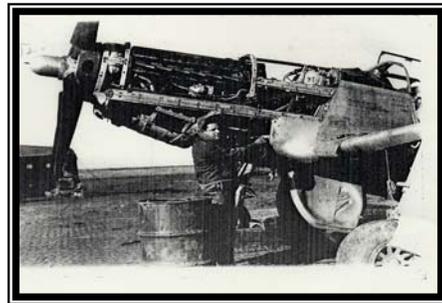
Charles Howell James II (Posthumously)



The Honorable A. Andrew McQueen



Benjamin Clyde Perkins, Jr. (Posthumously)



The West Virginia Tuskegee Airmen - Benjamin Clyde Perkins (Posthumously)

# 2008 Honorees

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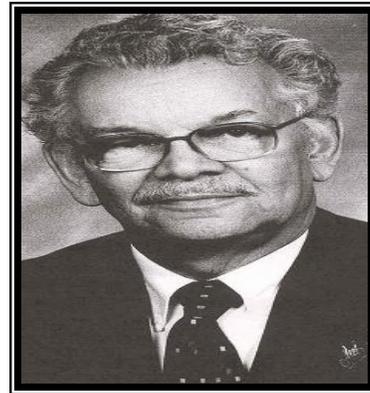
Eugene K. Young



The Silver Leaf Club



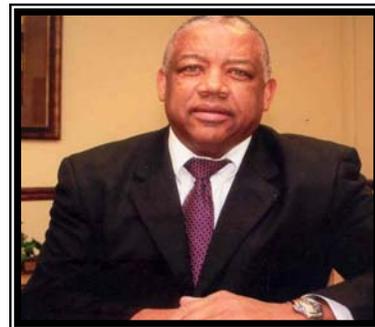
Attorney James E. Parker



Richard H. Payne



The Honorable Margaret L. Workman



Quewanncii Canonova Stephens, Sr.



# Civil Rights Day 2008



**First Lady Gayle Manchin,**  
Greetings and Remarks on behalf of Governor Joe Manchin , III



**Michael Peyton,**  
Executive Director  
Ohio- HR

**Ivin Lee**  
Executive Director,  
WV-HRC



Attending Civil Rights Day 2008



Honorees received Commendation for Civil Rights Contribution to the State of West Virginia

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# COMMUNITY RELATIONS

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

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

## PARTNERS

State of West Virginia, Office of the Governor

West Virginia State University

Charleston Job Corps Center

Appalachian Power

Martin Luther King, Jr. West Virginia Holiday Commission

Marshall University Multicultural Affairs

**Celebrating Fair Housing Month**  
**April 2008**



Governor Joe Manchin, III  
Introduced by Dr. Hazo Carter, Jr., President  
West Virginia State University

**Thursday, April 4th - Lobby Information Booth**

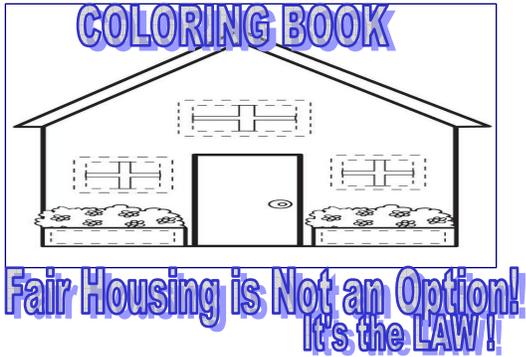
In recognition of the 40<sup>th</sup> Anniversary of the month of April being Fair Housing Month – The Governor was on hand to give remarks and words of welcome as well as Dr. Hazo Carter, Jr., President of West Virginia State University.

The West Virginia Human Rights Commission, The West Virginia Housing Development Fund, West Virginia State University and the U.S. Department of Housing and Urban Development are teamed up to earmark this event by bringing to the forefront and underscoring: Fair Housing Law & Practice in Rental Management as well as a Diversity Training, Brown Eyes, Blue Eyes: Presenter, Mary Mason. We will also look at the awareness of Unconscious Bias as pertains to Discrimination – Presenter – Honorable Administrative Law Judge Phyllis H. Carter

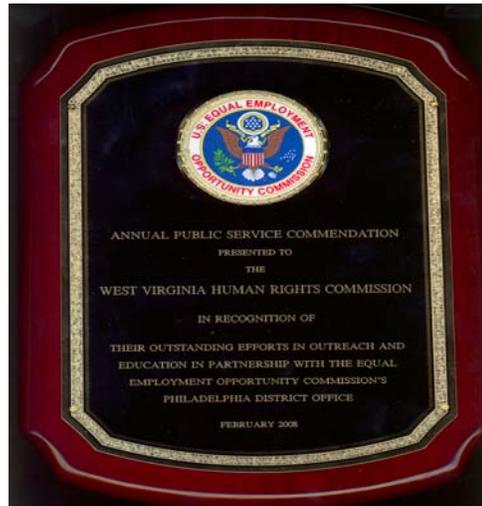


“Fair Housing Law and Practice in Rental Management” Seminar 2008

# WVHRC OUTREACH 2008



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



EEOC Public Service Commendation 2008



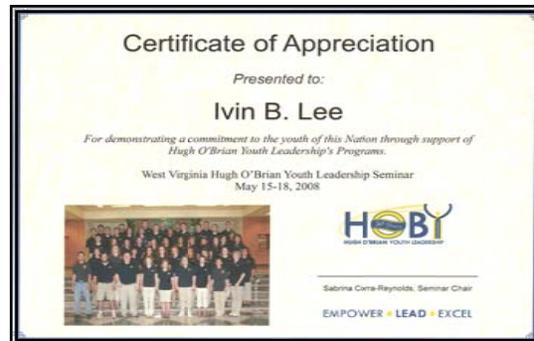
Goodwill Industries of Kanawha Valley



Special Presentation for Developmentally Challenged



WVHRC receives recognition for its presence and service to the Community



## **EEOC Public Forum and Employer Seminar**

### **June 23 - 24, 2008**

#### **Public Forum - June 23, 2008**

The West Virginia Human Rights Commission, West Virginia University, and the Equal Employment Opportunity Commission (EEOC) held a two day public forum and employer seminar to educate and inform citizens of West Virginia about their rights. On the evening of Thursday, June 23, 2008, Commission staff and EEOC representatives, answered questions from the public at a forum hosted by West Virginia University. The public shared their experiences with discrimination, asked questions about their legal rights and the role of the Commission and the EEOC.

#### **Employer Seminar - June 24, 2008**

On day two of the program, the Commission, West Virginia University, and the Equal Employment Opportunity Commission (EEOC) addressed over more than over 70 attendees representing more than 50 companies and agencies throughout West Virginia, which included lawyers, business owners, human resource managers and personnel, and West Virginia Human Rights Commissioners. The seminar focused on equal employment policies and proper ways to handle discrimination complaints. Speakers included Marie Tomasso and representatives from the EEOC, Dr. Jennifer McIntosh, West Virginia University and Ivin B. Lee, Executive Director of the West Virginia Human Rights Commission. Qualified attendees received CLE credit for attending the event.



The event sponsors and speakers including EEOC Representatives, Ivin B. Lee of the Commission.



EEOC Representatives spoke to West Virginia business owners, managers and attorneys about possible training options for employees and staff.

## **Appalachian Power** **Charleston, West Virginia**

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

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

### Event Hosting

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

### Internship Program

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

### The Future of the Job Corps/Commission Relationship

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

**Equal Employment Opportunity Commission**  
**Philadelphia, Pennsylvania District**

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

**Marshall University Multicultural Affairs**  
**Huntington, West Virginia**

Under the guidance of Dr. Betty Jane Cleckley, Vice President of the Marshall University Multicultural Affairs, the Commission and Marshall have formed a community bond dedicated to enriching the lives of West Virginians through diversity. Established in 1989, Marshall University Multicultural Affairs is rooted in Marshall's mission of training and education while welcoming diversity of race, color, sex, sexual orientation, age, religion, national origin, marital status and political and ethnic backgrounds. Multicultural Affairs is a sponsor of the Commission's Annual Civil Rights Day Luncheon.

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

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

**The National Federation of the Blind**  
**Clarksburg, West Virginia**

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

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

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

**West Virginia State University  
Institute, West Virginia**

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

**The West Virginia Women's Commission  
Charleston, West Virginia**

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

# THE COMPLAINT PROCESS

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

## I. Intake

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

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

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

## II. Investigation

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

When a determination of no-probable cause is made the complaint is dismissed and the case is closed. The complainant receives a right to sue letter and may file the action directly in Circuit Court. When a determination of probable cause is made, the case must be set for a public hearing before one of the Commission's administrative law judges.

### III. Administrative Hearing

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



## **DISPUTE RESOLUTION PROGRAMS**

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

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

### **Pre-Determination Conciliation Program**

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

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

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

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

## Mediation Program

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

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

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

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

# FACTS AND FIGURES

**Table 1: Requests for Information on Filing a Complaint FY 2008**  
By Method of Contact, Per Month

	Telephone	Walk-In	Mail	Total
<b>July</b>	<b>90</b>	<b>0</b>	<b>1</b>	<b>91</b>
<b>August</b>	<b>108</b>	<b>0</b>	<b>3</b>	<b>111</b>
<b>September</b>	<b>99</b>	<b>2</b>	<b>0</b>	<b>101</b>
<b>October</b>	<b>113</b>	<b>0</b>	<b>0</b>	<b>113</b>
<b>November</b>	<b>87</b>	<b>0</b>	<b>0</b>	<b>87</b>
<b>December</b>	<b>58</b>	<b>0</b>	<b>0</b>	<b>58</b>
<b>January</b>	<b>97</b>	<b>9</b>	<b>3</b>	<b>109</b>
<b>February</b>	<b>95</b>	<b>16</b>	<b>1</b>	<b>112</b>
<b>March</b>	<b>130</b>	<b>5</b>	<b>4</b>	<b>139</b>
<b>April</b>	<b>174</b>	<b>10</b>	<b>1</b>	<b>185</b>
<b>May</b>	<b>115</b>	<b>2</b>	<b>0</b>	<b>117</b>
<b>June</b>	<b>115</b>	<b>5</b>	<b>0</b>	<b>120</b>
<b>Totals</b>	<b>1281</b>	<b>49</b>	<b>13</b>	<b>1343</b>

**Table 2: Complaints Docketed FY 2008**  
By Type of Complaint, Per Month

	<b>Public Accommodation</b>	<b>Housing</b>	<b>Employment</b>	<b>Total</b>
<b>July</b>	<b>5</b>	<b>10</b>	<b>33</b>	<b>48</b>
<b>August</b>	<b>2</b>	<b>6</b>	<b>36</b>	<b>44</b>
<b>September</b>	<b>4</b>	<b>2</b>	<b>38</b>	<b>44</b>
<b>October</b>	<b>5</b>	<b>7</b>	<b>10</b>	<b>22</b>
<b>November</b>	<b>3</b>	<b>2</b>	<b>6</b>	<b>11</b>
<b>December</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>
<b>January</b>	<b>9</b>	<b>4</b>	<b>60</b>	<b>73</b>
<b>February</b>	<b>9</b>	<b>1</b>	<b>39</b>	<b>49</b>
<b>March</b>	<b>14</b>	<b>3</b>	<b>55</b>	<b>72</b>
<b>April</b>	<b>9</b>	<b>4</b>	<b>39</b>	<b>52</b>
<b>May</b>	<b>7</b>	<b>5</b>	<b>49</b>	<b>61</b>
<b>June</b>	<b>7</b>	<b>5</b>	<b>45</b>	<b>57</b>
<b>Totals</b>	<b>74</b>	<b>50</b>	<b>410</b>	<b>534</b>

**Table 3: Complaints Closed FY 2008**  
By Type of Complaint, Per Month

	<b>Public Accommodation</b>	<b>Housing</b>	<b>Employment</b>	<b>Total</b>
<b>July</b>	<b>4</b>	<b>0</b>	<b>26</b>	<b>30</b>
<b>August</b>	<b>5</b>	<b>0</b>	<b>36</b>	<b>41</b>
<b>September</b>	<b>3</b>	<b>0</b>	<b>42</b>	<b>45</b>
<b>October</b>	<b>6</b>	<b>3</b>	<b>31</b>	<b>40</b>
<b>November</b>	<b>1</b>	<b>4</b>	<b>22</b>	<b>27</b>
<b>December</b>	<b>2</b>	<b>0</b>	<b>18</b>	<b>20</b>
<b>January</b>	<b>1</b>	<b>0</b>	<b>19</b>	<b>20</b>
<b>February</b>	<b>4</b>	<b>0</b>	<b>23</b>	<b>27</b>
<b>March</b>	<b>5</b>	<b>3</b>	<b>32</b>	<b>40</b>
<b>April</b>	<b>3</b>	<b>3</b>	<b>34</b>	<b>40</b>
<b>May</b>	<b>11</b>	<b>7</b>	<b>45</b>	<b>63</b>
<b>June</b>	<b>6</b>	<b>3</b>	<b>41</b>	<b>50</b>
<b>Totals</b>	<b>51</b>	<b>23</b>	<b>369</b>	<b>443</b>

**Table 4: Pre-Determination Conciliation Outcomes FY 2008**

Cases referred to conciliation	<b>46</b>
Cases settled or closed as a result of conciliation	<b>17</b>
Cases returned to investigation	<b>29</b>
Cases transferred to the Office of Judges	<b>0</b>
Amount of monies generated from settlements*	<b>\$ 67,000.00</b>

**Table 5: Mediation Outcomes FY 2008**

Cases set for Public Hearing	<b>47</b>
Cases settled	<b>30</b>
Amount of monies generated from settlements*	<b>\$ 588,867.52</b>

**Grand Total of Monies Collected Generated Through Settlements Resulting From Conciliation and Mediation\***  
**\$ 655,867.52**

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

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

## FREEDOM OF INFORMATION ACT

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

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

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

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

The Commission processed 65 requests and collected \$3,553.50 as result of FOIA. These funds were deposited into the state's general fund.



## **OFFICE OF JUDGES SELECTED CASE SUMMARIES**



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

**SELECTED FINAL ORDERS AND  
DECISIONS OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION  
AND DECISIONS OF THE CIRCUIT COURT OF KANAWHA COUNTY AND THE WEST VIRGINIA  
SUPREME COURT OF APPEALS FOR THE FISCAL YEAR 2007-2008  
AN ORDER DENYING PETITIONS FOR APPEAL AND AFFIRMING THE WEST VIRGINIA HUMAN  
RIGHTS COMMISSION'S FINAL ORDER ENTERED ON JULY 7, 2005 AND ORDER DENYING PETI-  
TIONER'S MOTION TO STRIKE  
IN THE MATTER  
OF  
WEST VIRGINIA DEPT. OF TRANSPORTATION, RK&K, LLP  
v. WEST VIRGINIA HUMAN RIGHTS COMMISSION and ANGELA BEAVERS  
IN THE CIRCUIT COURT OF KANAWHA COUNTY  
Civil Action Nos. 05-AA-106 and 108**

The Circuit Court denied the Respondents' Motion to Strike the Final Decision of the Administrative Law Judge and Final Order of the Commission and affirmed the Final Order of the Commission denying Respondents' Petitions for Appeal. The Final Decision and Final Order held that Complainant, Angela Beavers, had been subjected to severe sexual harassment in the workplace which was jointly controlled by Rummel, Klepper & Kahl, and the West Virginia Department of Transportation; and, that she had been subject to retaliation in her subsequent termination and the refusal to rehire her by the Department of Transportation. Respondents moved to strike on the grounds that the ALJ and the Human Rights Commission in affirming the ALJ's Final Decision were biased against Respondents. The Circuit Court concluded from the various admissions of the Respondents, that the evidence established that Complainant had been subjected to severe sexual harassment which altered the terms and conditions of her employment, precluded any issue regarding a bias of the ALJ in concluding that such harassment had occurred.

RK&K was contracted by the DOH to provide construction and materials inspection personnel to the DOH to work under DOH supervision on DOH projects in a seven county region. Complainant was submitted as a Level I inspector and approved for hire by DOH on its Corridor H project. Complainant was paid by and was an employee of RK&K. However, her daily activities were directed by a DOH supervisor. Complainant also was subject to RK&K's direct supervision through its employee on the site. Both DOH, by its supervisor and RK&K through its employees reviewed and evaluated Complainant's work performance, and both participated in the training of the Complainant to perform her duties.

DOH had the authority to recommend and approve promotions of RK&K's employees on the site. During the course of her employment at the Corridor H site, the DOH supervisor engaged in persistent and severe sexual harassment of the Complainant, including attempted sodomy in a State vehicle, on State time; as well as the downloading of sexually explicit materials which the supervisor e-mailed to the Complainant's home. After Complainant complained to higher management both within the DOH and RK&K she was given the "opportunity" to move to another site on the Corridor H project under a different supervisor. After an RK&K supervisor "warned" the Complainant's new DOH supervisor of the prior complaint and that Complainant was "trouble" Complainant was selected for lay-off as the project at that particular site wound down.

Complainant subsequently attempted to be hired through a different employer as a Level I technician on the DOH Corridor H project but was tacitly rejected by the DOH senior management, who suggested that the other employer come up with additional resumes. The reason offered by that official was because he was aware of "performance problems". This was contrasted with the evidence establishing that the Complainant was an excellent employee which included documentary evidence of a performance review by the DOH which had been removed from Complainant's file maintained by the DOH, which was at odds with the DOH's original defense that Complainant was incompetent.

The Circuit Court concluded there was no error in finding liability by both DOH and RK&K as both had a duty to maintain a work place free from sexual harassment and discrimination. The Circuit Court concluded that the position of RK&K that it conducted a "proactive investigation" and yet "knew nothing" was somewhat at odds. In fact no documentation of the "proactive investigation" existed though the senior RK&K Human Resource Manager admitted such documentation should be made. That individual had written on his Charge of Discrimination that it was "True" that Complainant had reported the inappropriate behavior to RK&K and that it was investigated by DOH personnel. The DOH Assistant District Engineer admitted that he had obtained a copy of the sexually explicit materials e-mailed to the Complainant by the supervisor from that supervisor after the complaint had been filed. The Assistant District Engineer had prepared a Record of Significant Occurrence concerning the matters involved which concluded "it has become apparent that the employee has engaged in conduct that could be construed as sexual harassment." Despite these documents in the possession of the DOH, the DOH asserted that no sexual harassment had occurred and that it was aware of no incidents occurring on the Corridor H Construction Project during that time.

The numerous proposed findings of fact from DOH established liability under the Human Rights Act as did other admissions concerning subsequent employment of the Complainant at the different construction site and of black-balling of the Complainant by DOH in some of RK&K's filings. The Circuit Court noted that the Complainant did not receive the benefit of this finger pointing between DOH and RK&K at the Public Hearing, as Respondents had chosen to proceed at Public Hearing presenting a joint defense.

The Court held that Respondents were joint employers and thus that joint and several liability applied as found by the ALJ. Further, DOH was not subject to the defense of sovereign immunity of the state on two grounds. Since the case is dual filed as a Title VII case under the EEOC, the Fourteenth Amendment applies. Since the Human Rights Act specifically includes the State and its agencies within the definition of “employer” subject to its provisions, the Act applies by virtue of the “Legislatively Anticipated Liability” doctrine. The other significant holding was that the award of back pay and front pay through the end of the Corridor H project in 2012 and its reduction to present value by an economist, including an adjustment for the tax consequences of a lump sum payment in a single year, comported with the “make whole” intent of the remedies provided under the Human Rights Act where the DOH was in control of the ability to reinstate Complainant but had never attempted to do so. The West Virginia Supreme Court of Appeals did not accept the appeal of the DOH.

**A DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS**  
**IN THE MATTER**  
**OF**  
**COLGAN AIR, INC v. WEST VIRGINIA HUMAN RIGHTS COMMISSION and RAO ZAHID KHAN,**  
**221 W.Va. 588, 656 S.E.2d 33 (W.Va. 2007)**

A deeply divided Court overturned a Final Order of the Human Rights Commission and reinstated the Final Decision of the Administrative Law Judge, finding no liability on the part of Colgan Air, Inc. for discriminatory conduct in the workplace and claims of retaliation in Complainant’s forced resignation from his job as a pilot with the Respondent. The Court held that the employer was not liable to the employee for harassment because, as soon as the appropriate management officials were notified of the unlawful discriminatory conduct, swift and decisive action was taken that ended the complained-of conduct. Further, although the employee had established a prima facie case of retaliation in his dismissal as a pilot, the employer had proven by a preponderance of the evidence that the dismissal was for non-discriminatory reasons unrelated to the employee’s protected activity.

During his employment with Colgan, Mr. Khan was subjected to inappropriate treatment by some of his coworkers. Specifically, Mr. Khan was the victim of labels such as “sand n\* \* \* r,” “rag head,” and “camel jockey.” He was also subjected to repeated comments about being a terrorist. These fellow employees evidenced a general dislike of Mr. Khan, and displayed their feelings through inappropriate remarks about Mr. Khan's wife, his flying skills, and by threatening that they would do everything in their power to get him fired, including making him fail his proficiency test.

Mr. Khan and another coworker complained about the treatment to the Lead Pilot for Colgan at the Huntington, West Virginia, crew base. The Lead Pilot admitted to knowledge of the behavior by Complainant’s coworker Captains, and that each time he learned of inappropriate treatment towards Mr. Khan, he would tell them to “knock it off” as he deemed their behavior dishonorable and unprofessional. The Lead Pilot did not notify anyone at headquarters in Manassas, Virginia, regarding the conduct. The position of Lead Pilot is an administrative position acting as a liaison between the flight crews stationed at the base and the Chief Pilot. The Chief Pilot is the supervisor over the pilots, but is stationed at Colgan's headquarters in Manassas, Virginia.

In June 2001, Captain Riley made offensive comments to Mr. Khan about Mr. Khan's wife. Mr. Khan was so upset that he traveled to headquarters in Manassas, Virginia, to talk to someone about the harassment. In Manassas, Mr. Khan spoke to the Vice President for Personnel, about the treatment he received from Captain Riley. She spoke to Captain Riley on June 20, 2001, in Manassas, Virginia, regarding Mr. Khan's complaints of discriminatory comments. Captain Riley denied making any discriminatory comments. Captain Riley was retrained with respect to the sexual harassment and discrimination policy. The Chief Pilot, also at Manassas, Virginia, talked to Captain Riley about what is considered professional behavior and wrote a letter of reprimand dated June 20, 2001. Captain Riley was told that if any other incidents occurred, he would be severely disciplined, including possible termination.

Thereafter, on July 9, 2001, a hand-drawn cartoon was posted that was highly offensive. The cartoon depicted an airline with the caption "COLGAN AIR NOW HIRING PUNJAB PILOTS!!!" Further, it stated, "NOTE: PUNJAB AIRLINES NOT RESPONSIBLE FOR LOSS OF LIFE HUMAN ANIMAL OR OTHERWISE [.]" A coworker of Mr. Khan's faxed the cartoon to the Chief Pilot in Manassas, Virginia, who alerted the Vice President for Personnel. Upon inquiry, it was learned that the cartoon was drawn at Captain Riley's crash pad by his roommate, Captain Heuston. Mr. Khan informed her that Captain Riley made a death threat against him and his wife, and that he filed a criminal report. Captain Riley was suspended on July 9, 2001.

A meeting was scheduled for Captain Heuston to meet with the VP for Personnel and the Chief Pilot in Manassas, Virginia. However, prior to the time of the meeting, Captain Heuston faxed in a letter of resignation and did not report for the meeting. Captain Riley was scheduled to appear for a meeting on July 11, 2001. However, instead of reporting for the meeting, Captain Riley telephoned from his attorney's office. During the phone call, Captain Riley was terminated by the VP for Personnel; and, wherein, thereupon Captain Riley tendered his forced resignation. After the resignations of Captains Riley and Heuston, Mr. Khan was no longer the subject of any other improper conduct from his coworkers.

Mr. Khan was the only one from his training class who had not been upgraded from First Officer to Captain. On October 30, 2001, Mr. Khan underwent a mandated FAA proficiency check. Mr. Khan satisfactorily passed the oral portion of the exam, but failed the flying portion. As part of the proficiency check, Mr. Khan was directed to complete a VOR approach, which is a FAA required maneuver. Mr. Khan failed this attempt because he was late configuring the aircraft in terms of landing gear and reduction of power. Mr. Khan's actions placed the aircraft in a dive and caused the Ground Proximity Warning System to activate. The check airman was forced to take control of the aircraft to prevent a crash. FAA guidelines allow a maximum retraining on two maneuvers during a proficiency check. Because Mr. Khan had already received retraining on both the takeoff stall and the ILS approach, a third retraining was not allowed. Thus, the third failed maneuver resulted in a failed proficiency check under FAA guidelines. Mr. Khan's application to Colgan's training program illustrates that Mr. Khan had held one previous pilot position with American Eagle Airlines, from April to June 2000. He was involuntarily terminated from that position during training due to deficiencies in his flight skills, including difficulty with approaches and landings. Information provided by his previous employer also illustrated that Mr. Khan had failed a required proficiency check. The facts elicited during the ALJ hearing portrayed a pilot who was unsafe. After Mr. Khan's failed proficiency test, he was informed that Colgan did not have the funds to retrain him. Mr. Khan accepted a forced resignation.

Two of the five Justices felt that the liability for the discrimination of Mr. Khan's coworkers was imputable to the employer. They reasoned that, the record supports a conclusion that the harassing individuals can accurately be characterized as individuals who exercised supervisory control over Mr. Khan, despite Colgan Air's contention that they are merely coworkers. Mr. Khan was employed as a first officer, and the offending individuals were all captains. Mr. Khan contends that these individuals exercised supervisory control over him to the extent that they could control his activity and their judgments concerning his performance could impact his employment. Cases like this one suggest that the Court ought to re-examine the criteria it has articulated for identifying supervisors. The standard established has the allure of drawing a bright line between those who have the power to make formal employment decisions and those who do not, but it excludes from the category of supervisor those employees who, although lacking final authority to hire, fire, promote, demote, or transfer the plaintiff, nonetheless enjoy substantial authority over the plaintiff's day-to-day work life. To that extent, it is a standard that arguably does not comport with the realities of the workplace. To the extent that employers with multiple worksites vest the managers of such sites with substantial authority and discretion to run them but reserve formal employment authority to a few individuals at central headquarters, the adopted standard may have the practical, if unintended, effect of insulating employers from liability for harassment perpetrated by their managers, according to the two dissenting Justices.

**WILLIAM A. MORRIS v. WV DEPT. OF MILITARY AFFAIRS AND PUBLIC SAFETY/WV DIV. OF  
ADJUTANT GENERAL'S OFFICE  
DOCKET NO. EREP-482-06**

The Commission adopted the Final Decision of the Administrative Law Judge as its own without modification or amendment. The Administrative Law Judge held that the Respondent had retaliated against the Complainant for filing a Complaint against the Respondent; but that his claim for retaliation must be dismissed because his Settlement Agreement and Release in the earlier case prohibited him from filing the later retaliation case. Complainant had filed a previous case for age discrimination against the Respondent when it terminated him from his civilian employment after he reached the mandatory retirement age and retired from the West Virginia Air National Guard. In the later retaliation case Complainant charged that the Respondent's failure to present his Air Force Commendation Medal and his West Virginia Commendation Medal in a formal public ceremony was done in retaliation for his filing the earlier age discrimination case.

Orders were issued awarding the Complainant these medals after his age discrimination case was filed with the West Virginia Human Rights Commission. Nevertheless, when the time came for the Air Guard Squadron's December Christmas luncheon, at which time those who had retired during the previous year were publicly recognized, the Unit Commanders refused to ceremonially present the Complainant with his medals as was traditional within the Squadron, nor did they have a Shadow Box prepared for Complainant as was also the tradition. The ALJ concluded that the Respondent's agents had intentionally done these acts in retaliation against the Complainant for his filing the age discrimination case against the Air National Guard for terminating his civilian employment at the air base. Subsequently the age discrimination case was settled with a substantial monetary payment to the Complainant.

The Settlement Agreement and Release provided among other provisions, “. . . Complainant agrees that he may not and shall not use any claim, assertion, or fact which arose out of this cause of action to sue the Respondent in any . . . claims arising out of his discharge from his employment with the Respondent.” After the release was executed the Complainant wrote to the Adjutant General stating that the medals had not been awarded and requesting that they be presented to him at a squadron formation as is customary. Although the papers representing the awarding of the medals were ultimately sent to the Complainant, the actual medals were not, and the Respondents declined to ceremonially present them as requested.

The Administrative Law Judge held that the refusal was a continuing violation of the anti-retaliation provisions of the Human Rights Act yet found that as a matter of law, that Complainant and Commission are barred by reason of the prior agreement from pursuing the retaliation claim before the West Virginia Human Rights Commission. The ALJ found that the terms of the contract in the Settlement Agreement and Release were unambiguous and that the plain and natural meaning of that language meant that Complainant agreed he would not sue the Respondent for any claims that arose out of his age discrimination claim. Where the Complainant was aware the Respondent had not presented his medals prior to the negotiation and execution of the contract, such acts of reprisal are a claim, assertion and fact arising out of that cause of action.

**A FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**  
**AND**  
**A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**  
**IN THE MATTER**  
**OF**  
**RICHARD WAYNE BEVELLE v. PAR ELECTRICAL CONTRACTORS, INC.**  
**DOCKET NO. ER-102-07**

The Commission adopted the Final Decision of the Administrative Law Judge as its own with a modification requiring that Respondent provide diversity sensitivity training to its employees. The Administrative Law Judge held that the Respondent had subjected the Complainant to a racially hostile work environment and that it had constructively discharged him from his employment in retaliation for his complaints about the racial discrimination in violation of the West Virginia Human Rights Act. The Administrative Law Judge awarded back pay for the duration of the construction project, incidental damages for emotional distress, embarrassment and humiliation, as well as attorney’s fees.

Richard Wayne Bevelle, an African-American male age 46, was hired to work for PAR Electrical Contractors, Inc. on a large transmission line project for AEP. After being assigned to a job as a groundman working assembling tower bases, Mr. Bevelle was transferred to a “gravy” job working with the helicopter crews at the landing sites where he would load devices and equipment for use by the helicopter crews in recognition of the performance of his crew in assembling the bases ahead of schedule. His work in this capacity was recognized as superior resulting in Complainant being given a raise and the helicopter company reaping decreased costs through efficiencies Complainant instituted. On September 19, 2005, Kevin Tabor, a Foreman on another crew working at the helicopter landing site, told Mr. Bevelle he could not work for him because he would not join the KKK. When Mr. Bevelle walked away, he overheard Mr. Tabor use the “N” word, and said something to him. Mr. Tabor proceeded to explain himself with repeated use of the “N” word.

Given the severely humiliating circumstances surrounding Complainant=s transfer of work sites and job assignments immediately after Respondent=s Safety Manager discussed Complainant=s complaint of racial discrimination with Complainant=s Supervisor, such reassignment was held to have been

After Mr. Bevelle complained to the Safety Manager, the following day, the Safety Manager took the matter up with Mr. Bevelle's Supervisor, Donald Sines and Mr. Bevelle was reassigned after that conversation, to work as a tower groundman.

Given the severely humiliating circumstances surrounding Complainant's transfer of work sites and job assignments immediately after Respondent's Safety Manager discussed Complainant's complaint of racial discrimination with Complainant's Supervisor, such reassignment was held to have been taken in response to his complaint of discrimination and in retaliation for his complaining about unlawful race discrimination by the Respondent's supervisory employee, Mr. Tabor. The retaliation altered Complainant's conditions of employment and unreasonably interfered with Complainant's employment given these circumstances and the unarguably less desirable job duties between working with the helicopter crews (described as a Agravy@ assignment) and those of a very dangerous job picking up after tower crews where he could be killed in an instant by heavy objects dropped from great heights.

Respondent did not take swift and effective actions to correct the severe racial discrimination of the Respondent's supervisory employee. An undocumented verbal warning was held to be an inadequate response to a known incident of severe conduct of a supervisor employed by Respondent. Respondent's removal of Complainant from the work site shared by Complainant and the supervisory employee who had told Complainant, an African-American, that he could not work for him because Complainant wouldn't join the KKK, simply rewarded Mr. Tabor for his comments by giving him exactly what he threatened to do to Complainant. No adverse job actions were engendered by Mr. Tabor in response to his outrageously racist conduct, although his conduct was known to both Respondent's Safety Manager and Project Manager. Respondent cannot be said to have engaged in an effective investigation of the incident as no written documentation was ever produced, nor did the Project Manager ever receive any verbal report concerning such an investigation. The Administrative Law Judge held that viewed objectively, no reasonable person could be expected to remain on the job after being subjected to racially degrading treatment, knowing that the perpetrator was not subjected to discipline, and instead resulted in his being transferred to where the all white work force at the isolated rural work site in McDowell County could kill the Complainant in an instant and claim it was an accident. This was found to be particularly threatening to an African-American where the use of the "N" word and references to the KKK had been made by the supervisor resulting in his being placed in such a precarious situation.

## SUMMARY AND CONCLUSION

The Commission's budget appropriated for this fiscal year in state funds was \$1, 215,841. Cases are dually filed with the Equal Employment Opportunity Commission (EEOC). The Commission met its federal contract with the EEOC.

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

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

This concludes the Annual Report for Fiscal Year 2007-2008.



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