



West Virginia Human Rights Commission

Annual Report
FY 2006 - 2007



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, 2007

**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 2006-2007 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...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 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



Dawn Raines Burke ,
Vice Chair
Berkeley County



Naomi Cohen
Monroe County



Dr. Darrell Cummings, Chair
Ohio County



Timothy Hairston
Monongalia County



Dr. Judith Scully
Monongalia County



William L. Williams
Logan County



Lisa Younis
Jefferson County

ROLE OF THE COMMISSIONERS

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

IVIN B. LEE



EXECUTIVE DIRECTOR

MY VISION

Ivin B. Lee
Executive Director

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

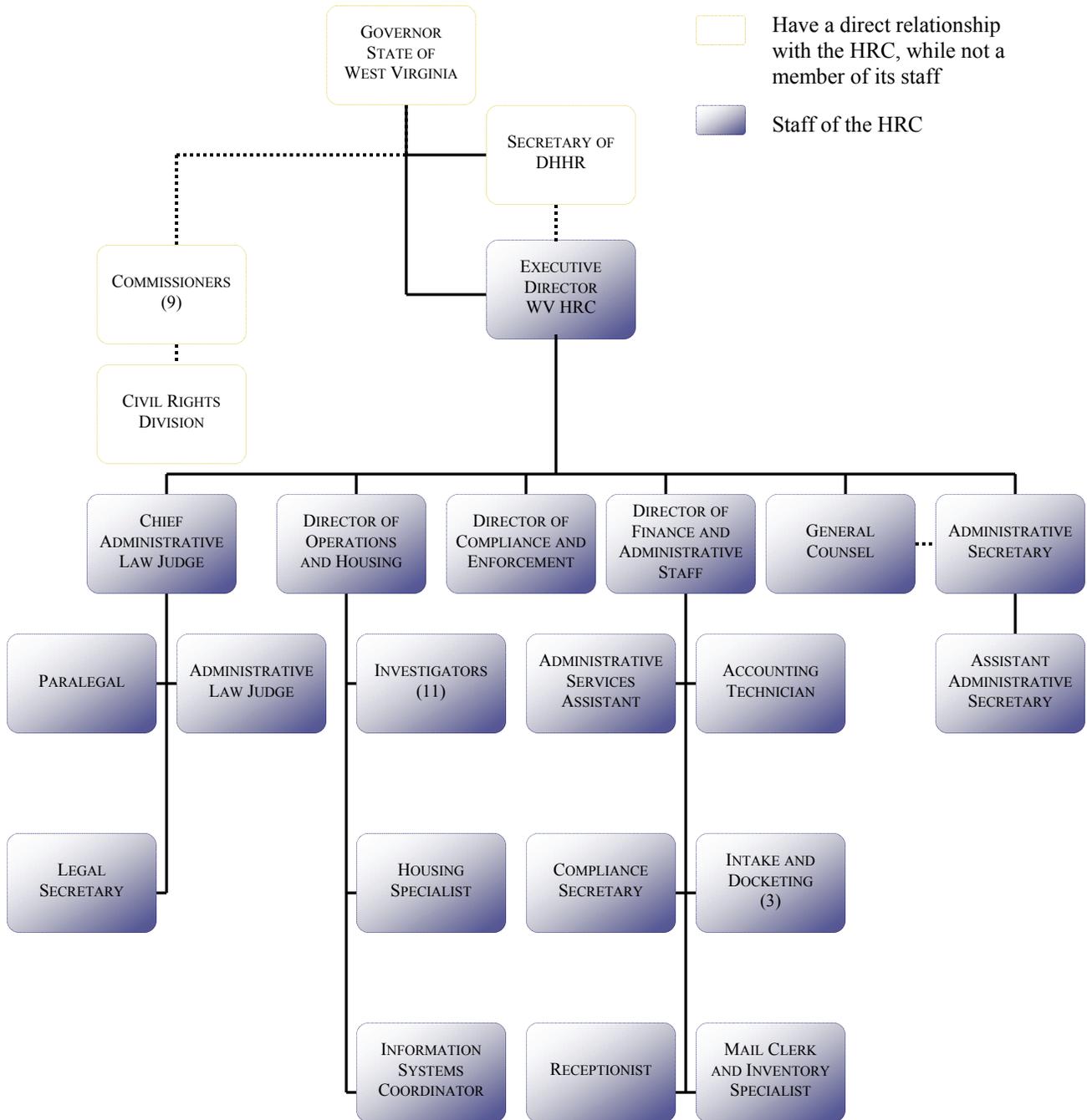
First, I am committed to hiring more experienced investigators who can conduct more efficient and effective investigations. My goal is to process cases in a timely manner without jeopardizing the quality of our investigations.

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



Anne Marie Haddy
Paralegal

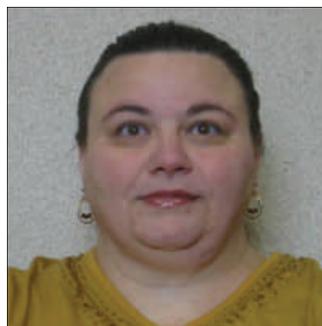


Joyce Knotts
Legal Secretary

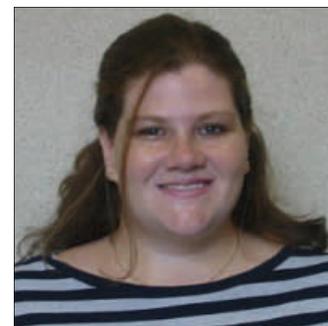
EXECUTIVE DIVISION



Brian W. Wells
General Counsel



Monia Turley
Administrative Secretary



Esther Hupp
Assistant Administrative Secretary

**INVESTIGATIVE AND
COMPLIANCE
ENFORCEMENT
STAFF**



Yodora P. Booth
Director of Operations and Housing



Paul W. Cook
Information Systems Coordinator



Jackie Heath
Director of Compliance and Enforcement



Marshall Moss
Housing Specialist



Sally Brown
Investigator



Arthur Duiguid
Investigator



Danny Gillespie
Investigator



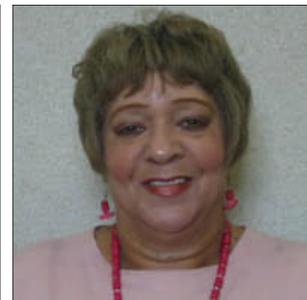
Richard Mangus
Investigator



Tausha Rucker
Investigator

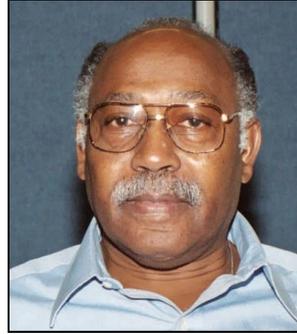


James Slack
Investigator



Carolyn Smith
Investigator

**FINANCE AND
ADMINISTRATIVE
DEPARTMENT**



James L. Johnson
Director of Finance and
Administrative Staff



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



Leola Bateman
Compliance Secretary



Leona Chupick
Intake and Docketing



**Carletha (Lisa)
Gist**
Intake and Docketing



Selena Hammond
Receptionist



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



Deborah McNeal
Administrative Services
Assistant

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

Satellite Office

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



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 2006**

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 for the Final Decision Directory.

Shoshana Johnson Convocation and Reception November 2006

The West Virginia Human Rights Commission teamed up with West Virginia State University, Air National Guard, Charleston Job Corps and Appalachian Power to host Shoshana Johnson, recognized as the first African American female prisoner of war, on November 16, 2007. After visiting a local elementary school, Ms. Johnson was escorted to West Virginia State University where prominent members of the community, including Governor Joe Manchin III, greeted her for a sit-down luncheon.

At 3:00 pm, a Convocation, open to the public, was held during which time Johnson shared her story of survival and her hopes for equality, even answering questions from the audience. She extended her thanks to those who have served and those who are currently serving in the armed forces. She sent a special note of gratitude to the Marines, who rescued her when she was captured and held captive in Iraq for 22 days. She was rescued with four other members of the U.S. Army 507th Maintenance Company, 5/52 ADA BN, 11th ADA Brigade. When asked if she was treated differently by her captors because of her gender, Johnson remarked that she was actually given less brutal treatment once it was discovered she was a woman. Although she felt guilty that the men captured with her were receiving more harsh treatment, she was quick to note, "I'm not complaining!"

Following the Convocation, the public was invited to a Reception where Johnson signed autographs and took pictures. Guests seemed grateful for her service and thanked her with words, hand shakes and even an embrace or two.



Shoshana Johnson shares her experience and life lessons with the public.



Commission staff provided informational material and answered questions.

**West Virginia Civil Rights Day
Luncheon and Awards Ceremony**

February 2007



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 22, 2007*, as:

Civil Rights Day

in the Mountain State.

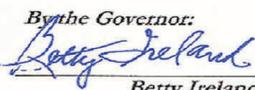
In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

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 Seven and in the One Hundred Forty-fourth year of the State.





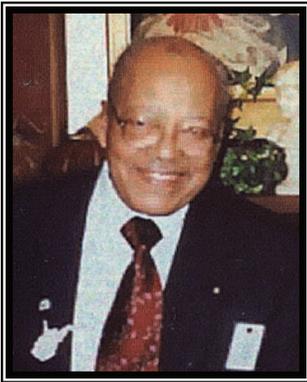
Joe Manchin III
Governor

By the Governor:


Betty Ireland
Secretary of State

2007 Honorees

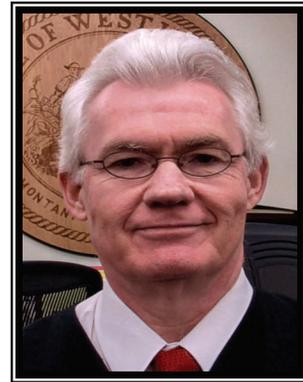
On February 22, 2007, in celebration of the Governor's Civil Rights Day, the Commission and its partners presented awards to honor members of the community who have helped champion the cause for equality throughout the state at the 5th Annual Civil Rights Day Luncheon, hosted by the Charleston Job Corps Center. Governor Joe Manchin III and First Lady Gayle Manchin presented special medallions and plaques to the 14 honorees pictured below.



Dr. Charles R. Byrd*



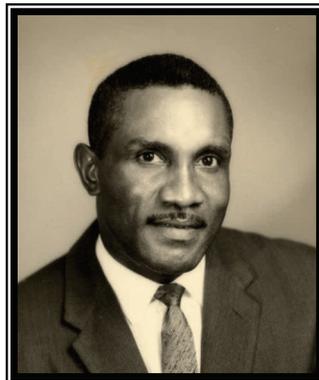
Anna Evans Gilmer



The Honorable
Mike Kelly



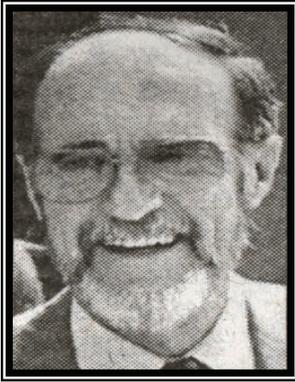
Rashida Khakoo, M.D.



John E. Lynch, Jr.*



The Honorable
Charlene Marshall



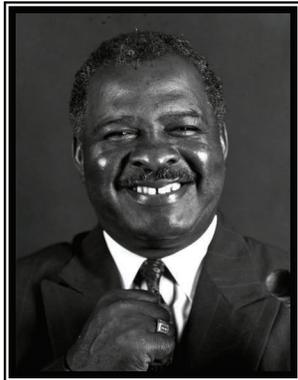
James B. "Jim" McIntyre,
Esquire*



Mary Willene Hairston
Moore



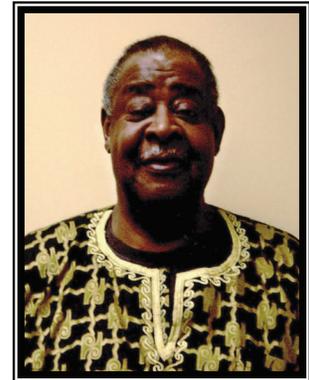
Robert L. "Bob" Morris*



Taylor J. Perry, Ed. D



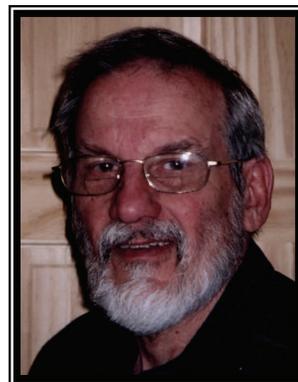
Joseph Cromwell Peters*



Bishop Donald L. Pitts



Martha "Sweet Pea"
Dunlap Sanders*



Carter Zerbe, Esquire



Ms. Lee welcomes honorees and guests.



The Honorable Mike Kelly receives recognition.



Ms. Lee, a Job Corps Student and Ronnie Spudich



Governor Joe Manchin III arrives.

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

Fair Housing Month April 2007



Yodora Booth, Director of Operations, (center) was on hand to answer questions.

Lobby Information Booth

The Commission staff manned an information booth in the lobby of the WorkForce West Virginia Offices on Wednesday, April 14, 2007, where the Commission's Charleston office is located. Staff answered questions, handed out information packets and brochures, and informed the public of their civil rights under the West Virginia Human Rights Act and West Virginia Fair Housing Act.

Housing Accessibility for the Disabled

Following the morning church service on Sunday, April 15, 2007, at Liberty Mission Baptist Church, Gene Godfrey, Housing Specialist, and Yodora Booth, Director of Operations and Housing, gave a presentation on housing accessibility for the disabled. Mr. Godfrey and Ms. Booth discussed the importance of fair housing practices and provided information on inexpensive ways to provide accessibility to everyone.

EEOC Public Forum and Employer Seminar

May 2007

Public Forum

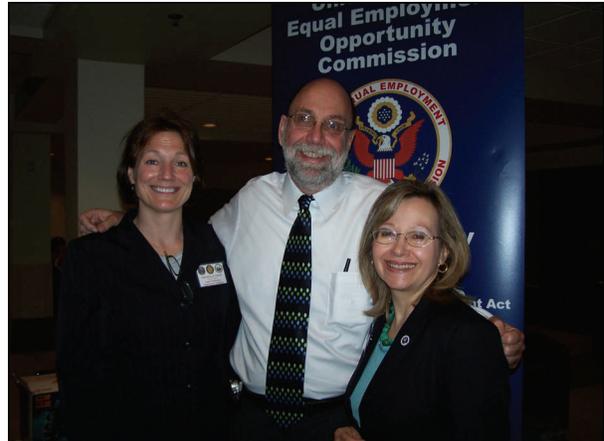
The West Virginia Human Rights Commission, West Virginia State University, and the Equal Employment Opportunity Commission (EEOC) held a two day public forum and employer seminar to educate and inform citizens of West Virginia about their rights. On the evening of Tuesday, May 1, 2007, Commission staff and EEOC representatives, answered questions from the public at a forum hosted by West Virginia State 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

On day two of the program, Wednesday, May 2, 2007, the Commission, West Virginia State University, and the Equal Employment Opportunity Commission (EEOC) addressed 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 Governor Joe Manchin III, representatives from the EEOC, Dr. Hazo W. Carter from West Virginia State 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, and Dr. Hazo W. Carter of West Virginia State University.



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

EEOC Youth Employment Workshop June 2007



On Friday, June 15, 2007, the West Virginia Human Rights Commission, West Virginia State University and the Equal Employment Opportunity Commission (EEOC) sponsored a workshop for Upward Bound students at West Virginia State University focusing on employment discrimination, the rights and responsibilities of management and employees, and filing a discrimination complaint with the EEOC and the West Virginia Human Rights Commission.

African-American Women's Expo

The Commission participated on the June 23, 2007, African-American Women's Expo at the Charleston Civic Center where it provided free informational material and answered questions regarding discrimination and the role of the West Virginia Human Rights Commission.



(Right): Leola Bateman, Secretary for the Commission, and Ivin B. Lee, the Commission's Executive Director, met with guests of the Expo to answer questions, inform them of their rights, and provide informational material.

COMMUNITY RELATIONS

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**

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 training to the youth of the state. With this in mind, the two agencies are working on a outreach program that will inform working youth about their rights under the West Virginia Human Rights Act. More and more young West Virginians, ages 14 to 20, have part-time and full-time jobs. Participants in the program will visit other Job Corps Centers, local schools and surrounding communities to inform young workers about on-the-job discrimination and their right to file a complaint with the Commission if they feel their rights have been violated. The program will also include discussion about fair housing and financial issues.

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 special workshops such as the Youth Employment Workshop and special public events such as the public Convocation and Reception with former POW Shoshanna Johnson. WVSU is a sponsor of the Annual Civil Rights Day luncheon.

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 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, the harm complained of has occurred within the last 365 days, the complainant (person making the complaint) is a member of a protected class, and the complaint is about an employment, public accommodation, or housing issue.

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

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

II. Investigation

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

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

III. Administrative Hearing

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

DISPUTE RESOLUTION PROGRAMS

The following information provides details on the two Dispute Resolution Programs. These programs provide a valuable alternative for 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 a trained conciliator who is 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 parties could benefit from the Pre-Determination Conciliation Program. The Commission then inquires as to the parties interest 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 issues 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.

Requests 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 2006-2007
By Method of Contact, Per Month

	Telephone	Walk-In	Mail	Total
July	150	2	3	155
August	99	1	0	100
September	128	2	1	131
October	122	3	1	126
November	87	1	0	88
December	88	0	0	88
January	116	0	0	116
February	94	3	2	99
March	107	3	3	113
April	106	0	1	107
May	114	2	3	119
June	114	11	5	130
Totals	1325	28	19	1372

Table 2: Complaints Docketed FY 2006-2007
By Type of Complaint, Per Month

	Public Accommodation	Housing	Employment	Total
July	1	4	7	12
August	4	0	54	58
September	11	7	53	71
October	5	2	51	58
November	2	2	35	39
December	2	3	23	28
January	2	5	36	43
February	4	0	31	35
March	2	1	25	28
April	5	2	24	31
May	4	0	23	27
June	2	2	22	26
Totals	44	28	384	456

Table 3: Complaints Closed FY 2006-2007
By Type of Complaint, Per Month

	Public Accommodation	Housing	Employment	Total
July	2	1	32	35
August	6	4	27	37
September	4	5	41	50
October	2	2	55	59
November	5	3	32	40
December	4	2	31	37
January	2	0	19	21
February	2	3	26	31
March	4	5	50	59
April	2	1	34	37
May	2	4	33	39
June	2	4	35	41
Totals	37	34	415	486

Table 4: Pre-Determination Conciliation Outcomes FY 2006-2007

Cases referred to conciliation	67
Cases settled or closed as a result of conciliation	21
Cases returned to investigation	39
Cases transferred to the Office of Judges	7
Amount of monies generated from settlements*	\$ 50,504.87

Table 5: Mediation Outcomes FY 2006-2007

Cases set for Public Hearing	35
Cases settled	32
Amount of monies generated from settlements*	\$ 366,744.76

Grand Total of Monies Collected Through Settlements Resulting From Conciliation and Mediation*
\$ 417,249.63

* Total represents amount awarded to Complainants. This money is not collected by the West Virginia Human Rights Commission, and, therefore, is not 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 **167** requests and collected **\$1,889.20** as a result of FOIA for FY 2006-2007. 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 2006-2007. 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>

IN THE MATTER OF
RAO KHAN V. COLGAN AIRWAYS CORP., CHARLES J. COLGAN AND ASSOCIATES, INC.
dba COLGAN AIR INC.
DOCKET NO. ERRELNOANCSREP-319-02

The Commission adopted the Final Decision of the Administrative Law Judge with certain modifications. The Commission found that Complainant had been subjected to severe and pervasive harassment based upon his religion, ethnicity and national origin by pilots with whom he flew, while employed by the Respondent as a First Officer. The Administrative Law Judge failed to impute to Respondent for purposes of imposing liability; either the actions of the pilots or the failure of the Lead Pilot in Huntington to report Complainant's concerns which had been raised to him regarding that harassment, to the Respondent's Chief Pilot and corporate Vice President for personnel, who were authorized to exercise control over the pilots. When Complainant went to Manassas to report improper and offensive conduct to the Vice President for Personnel and Marketing, that pilot responsible was brought in for retraining on harassment and warned about further conduct resulting in possible termination. Subsequently, a highly offensive hand drawn cartoon was posted at the Huntington Tri-State facility of Respondent disparaging Respondent as hiring Punjabi pilots and that Punjab Airways would not be responsible for loss of life human, animal or otherwise. That pilot and his roommate ultimately admitted to the incident and to subsequent threats made against Complainant and his family members. Although they were in essence forced to resign, those pilots were allowed to resign instead of being terminated. The Commission found that Respondent's Lead Pilot at the Tri-State Airport was middle management. The Commission held that the Lead Pilot should have reported the harassment to the Corporate Officials and imputed liability to the Respondent on that basis. The Commission ordered the Respondent to pay incidental damages of \$5,000.00 and expenses incurred by Complainant in having to travel to Manassas to report the harassment to Respondent's corporate officials. The Commission further modified the Final Decision to award the Complainant's attorney's fees and costs in the amount of \$46,575.00.

The Administrative Law Judge also found that the Complainant had failed an FAA mandated proficiency check ride in October 2001. The Commission modified the Final Decision to hold that the failure of the Respondent to offer to retrain Complainant following the failed FAA check ride was in fact discrimination, as other white males who had failed their check rides were offered to retrain and retained as pilots by the Respondent. The Commission, therefore, ordered that the Complainant be reinstated to the next available non-flying position with retroactive seniority and benefits, along with an opportunity to retrain. The Commission also ordered the Respondent to conduct sensitivity training in the law regarding human rights at the Respondent's local facility in Huntington's Tri-State Airport. Note: The Commission's Final Order was overturned by the West Virginia Supreme Court of Appeals.

IN THE MATTER OF
SHEILA E. HALL V. WAL-MART STORES, INC.
DOCKET NO. EARS-446-02

The Commission adopted the Final Decision of the Chief Administrative Law Judge as its own without modification or amendment. The Administrative Law Judge held that the Respondent had discriminated against the Complainant on the basis of her race and sex when it demoted her from the position of Department Manager to Sales Associate. The Complainant had been employed as a Department Manager for twelve years. She had always been rated as satisfactory or better in all evaluations performed until a new Store Manager was brought into the store. No reevaluation was done after the negative evaluation as required under the Respondent's policies, resulting in Complainant not receiving a raise at that time. The Complainant was later demoted from her position as Department Manager allegedly because of performance problems. The Administrative Law Judge found that there was no documentary evidence that the Complainant's "outs" were any greater than those in any other Departments. Furthermore, the evidence indicated that under the Store Manager, other white male Managers were transferred to other Departments as Managers without being demoted where they had similar and more substantial performance problems, and in other instances had committed misconduct under the Respondent's policy guidelines. Pretext of the decision to demote Complainant was further indicated by the failure of the Store Manager to follow the Respondent's policies in regard to progressive discipline. When given verbal warnings, the verbal warning is to be written down and kept in a separate file. When a written reprimand is given the prior verbal warnings are to be attached. The Store Manager did not have any written verbal warnings attached when he reprimanded Complainant three days after her return from hernia surgery for excessive "outs". The testimony of the Store Manager was not supported by the documentary evidence when he claimed to have given verbal warnings to Complainant during a six week period of time during which she was off from work. The Store Manager never went over the Plan of Action calling for a thirty day improvement period, with Complainant as required by the Respondent's policies; and the Store Manager demoted her prior to the expiration of the period of improvement, without giving Complainant a paid day off

for “Decision Day” under Respondent’s policies for such matters. Respondent’s Store Manager had told other individuals that they had too high of a percentage of blacks and cautioned another individual that she should be careful not to hire any more blacks.

The Administrative Law Judge ordered that Respondent reinstate the Complainant to the next available Department Manager position, restoration of her seniority date and front pay until reinstated to that position. The Respondent was ordered to pay back pay from the date of demotion and prejudgment interest thereon at ten percent per annum; and, incidental damages of \$5,000.00 sum certain. The Human Rights Commission was awarded its costs of \$1,684.45 and travel expenses to the Attorney General’s Office in the amount of \$308.60. A cease and desist order was entered and Respondent was ordered to provide managerial employees in the Beckley Wal-Mart store with training related to race discrimination. Note: The Commission affirmed the administrative law judge’s Final Decision. The West Virginia Supreme Court of Appeals refused Wal-Mart, Inc.’s appeal.

IN THE MATTER OF
DEBORAH L. MILLER V. TOTAL DISTRIBUTION, INC.
DOCKET NOS. ES-289-03 and EREP-406-04

The Commission adopted the Final Decision of the Chief Administrative Law Judge as its own without modification or amendment. These were egregious cases of gender based discrimination. The first involved discrimination against Complainant in her attempts to move into Respondent’s warehouse operations at Nitro and the subsequent gender based disparate treatment in the terms and conditions of her employment once she began her employment in the warehouse operations. The second claim resulted from Respondent’s retaliation against Complainant for filing her discrimination complaint with the West Virginia Human Rights Commission and her indefinite lay-off from her employment with Respondent.

Complainant began her second full time employment with Respondent on November 1, 1998, at its Nitro location in its Administration office processing orders for drum shipments and later moved to a dispatching position. Complainant indicated that she desired to work in the warehouse from the fall of 1998. Complainant completed a forklift training program of Respondent’s on July 8, 2000. The Complainant filed a resume with Respondent in an effort to gain transfer to the warehouse which indicated she had worked in the warehouse for Rite Aid from December 1997 through February 1998. Complainant was not considered for any warehouse position from 1998 through November 2002 although the Respondent filled six positions during that time with males, either through hires or through transfers from other positions within the company. In October 2002, Complainant confronted Respondent’s Vice President for Operations and stated that it was not fair that she was not considered for transfer

to the warehouse and threatened to take legal action. Respondent's Terminal Manager for the Nitro warehouse handed Complainant a letter dated November 7, 2002, containing the following terms: Complainant would be considered on a probationary period of sixty days after beginning in her new position, she would be placed at the bottom of the warehouse seniority list for scheduling and work assignments, she would be subject to a wage freeze from the date she began until the end of 2003, and that her prior position would be filled with no right on her part to bump the new hire if she wanted to transfer back. None of Respondent's male employees were given and required to sign a letter imposing any of these conditions.

In March 2003 after Respondent received a Letter of Determination finding probable cause on a Complainant's Complaint filed in 2003 with the Human Rights Commission, Respondent's in house counsel told her they were going to hold a meeting with her warehouse co-workers to talk about her complaint. Four days after that Complainant was laid off.

The Administrative Law Judge awarded reinstatement to the position from which Complainant was laid off, restoration of her company and warehouse seniority back to November 1, 1998, and front pay until such time as Complainant is reinstated. The Administrative Law Judge awarded back pay and benefits plus prejudgment interest of ten percent per year, \$5,000.00 in incidental damages for humiliation, embarrassment and emotional distress suffered by Complainant for each complaint filed by Complainant. The Administrative Law Judge awarded reimbursement of travel and deposition and hearing costs associated with prosecution of the claims. Respondent was subject to a cease and desist order preventing Respondent from continuing the illegal discrimination and required to have its human resources and supervisory employees who have managerial responsibilities of any kind to undergo training related to discrimination and the requirements of the West Virginia Human Rights Act and its implementing legislative regulations.

IN THE MATTER OF
VICTOR T. PEOPLES V. SUE J. ERPS and WILLIAM G. ERPS, d/b/a IMPROVEMENTS UNLIMITED
DOCKET NO. ER-71-05

The Chief Administrative Law Judge held that Respondent had wrongfully discharged the Complainant as a day laborer when it failed to take swift and decisive action to correct racial slurs and threat of violent bodily harm by a co-worker and fired Complainant for refusing to work until the Respondent's on-site supervisor addressed the situation. Respondents then engaged in reprisal when the Complainant filed a complaint with the West Virginia Human Rights Commission.

On June 16, 2004, Complainant was placing rebar in holes drilled by a co-worker. When Complainant told the co-worker to drill the holes deeper, the co-worker angrily said to Complainant, "You say another word I'll cut your f***ing head off with this shovel, n****r." Complainant and the co-worker were upset and angry when they approached the supervisor. The supervisor separated the two men and told them to go back to work. When Complainant insisted that the supervisor address the situation, the supervisor told him to return to work, when Complainant refused to return to work the supervisor told him, "You're fired, get off the premises." Complainant then had to walk ten miles home from the job site where had had been driven by the supervisor that morning. The Administrative Law Judge found that the threat of imminent violent bodily harm, coupled with the use of the racial slur and the fact the co-worker admitted that he would have followed through with the threat of bodily harm, was so severe as to require action that is swift, decisive, meaningful and reasonably calculated to end the harassment. Respondent's supervisor's response to the situation fell woefully short of this standard. Thus, the co-worker's creation of a hostile work environment resulted in liability on the part of Respondent because he did not take prompt remedial action to end the discrimination and instead chose to fire the Complainant. After the Complainant filed his complaint, the respondent approached Complainant with money to drop the complaint. The Owner would drive by Complainant and give him weird looks. These acts of intimidation occurred after Complainant had complained of discrimination, the Respondents were aware of the complaint and the actions occurred in such proximity in time to the complaint that Respondents' actions were linked to Complainant's protected activity of complaining of the discrimination. Any form of threat or reprisal is prohibited under the Human Rights Act.

The Administrative Law Judge awarded lost wages from the date of termination until the time Complainant became unable to perform the laborer job, interest on lost wages of ten percent per annum prior to January 2007 and 9.75 per cent thereafter. The Administrative Law Judge awarded \$5,000.00 for humiliation, embarrassment and loss of dignity suffered by Complainant as a result of Respondents' discriminatory actions and reimbursement of West Virginia Human Rights Commission hearing transcript costs on \$1,669.60 and the Attorney General's travel expenses of \$4,184.46 associated with the prosecution of the claim. A cease and desist order was issued and Respondents were required to adopt a harassment reporting procedure, a harassment policy, to distribute these policies to all employees and future hires and that all management and supervisory personnel undergo one hour of anti-harassment training.

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 2007-2008 include the following:

- ◆ **Providing continued, ongoing training to the Commissioners;**
- ◆ **Continuing the Civil Rights Day Honorees Awards Luncheon on February 28, 2008;**
- ◆ **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 in cooperation with the Charleston Job Center.**
- ◆ **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 2006-2007.



**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**

Satellite Office

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