



# West Virginia Human Rights Commission

**Annual Report**  
**FY July 1, 2010– June 30, 2011**



SERVING ALL OF WEST VIRGINIA



**Earl Ray Tomblin**  
Governor

**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**HUMAN RIGHTS COMMISSION**  
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**Dr. Michael Lewis**  
Cabinet Secretary

**Phyllis H. Carter**  
Acting  
Executive Director

December 1, 2011

The Honorable Earl Ray Tomblin  
Governor, State of West Virginia  
State Capitol Building  
1900 Kanawha Blvd. East  
Charleston, WV 25305

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

Dear Governor Tomblin and Members:

I am pleased to present to you and members of the West Virginia Legislature, the Commission's Annual Report for Fiscal Year July 1, 2010 thru June 30, 2011. This has not only been a productive year for us, but one of transition. With the retirement of former Executive Director Ivin B. Lee on March 7, 2011, and change under the auspices of new management, while challenging, the Commission has steadfastly continued its mission to eradicate discrimination and to continue to improve its services to the citizens of West Virginia. pursuant to the West Virginia Human Rights act, as amended.

With the Commission's state budget of \$1,275,698, the following goals were accomplished: The Commission continued to investigate and litigate cases of discrimination; provided ongoing training to the Commissioners and staff by the U. S. Department of Equal Housing and Urban Development as well as the West Virginia Attorney General's Civil Rights Division; provided extensive and innovative training sessions to educate the business community regarding discrimination laws in housing, public accommodations and employment; considerable research was conducted into all areas of the Commission's process to discern areas for improvement and the formation of plans of action to be undertaken, including consultation with the Department of Personnel in regard to those plans of action; expanded our Community Outreach program to include additional advocacy groups; completed the second phase of the series on "My Rights Information and Activity Book" as an introduction to Children's Rights; continued to set up dialogues of understanding between the Commission and all West Virginia Citizens to promote awareness of the goals and objectives of the Commission; continued to maximize the use of Alternative Dispute Resolution when applicable; and the purchase and implementation of a much needed new telephone system.

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

Respectfully submitted,  
**Phyllis H. Carter**  
Acting Executive Director

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## MISSION STATEMENT

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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.

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## **DECLARATION OF POLICY (CONT.)**

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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 Gattlieb**  
Kanawha County



**Wesley Dobbs**  
Marion County



**Timothy Hairston**  
**Vice Chair**  
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.



# PHYLLIS H. CARTER

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**ACTING EXECUTIVE DIRECTOR**

# MY VISION

Acting Executive Director

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

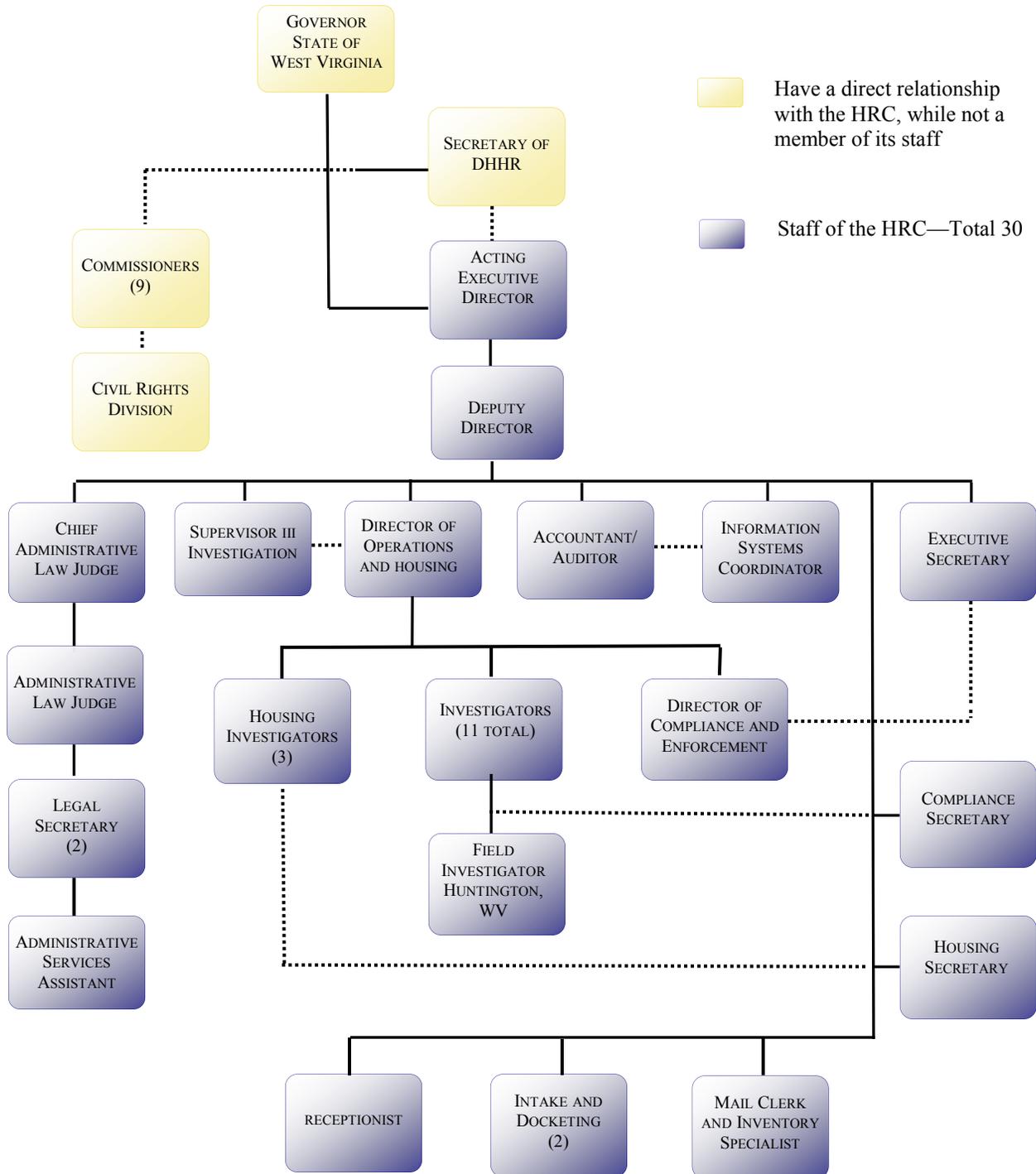
First, I am committed to hiring more experienced investigators who can conduct more efficient and effective investigations. My goal is to process cases in a timely manner without jeopardizing the quality of our investigations.

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

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

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

# HRC ORGANIZATIONAL CHART



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

**OFFICE OF THE JUDGES**



**Robert B. Wilson**  
Acting Chief Administrative  
Law Judge



**Lisa Gist**  
Administrative Services Assistant



**Joyce Knotts**  
Legal Secretary

**EXECUTIVE DIVISION**



**Marykaye Jacquet**  
Deputy Director



**William Bailey**  
Mail Clerk/Inventory Specialist



**Leola Bateman**  
Compliance Secretary



**Chad Beam**  
Intake & Docketing



**Sue Means**  
Information Systems Coordinator

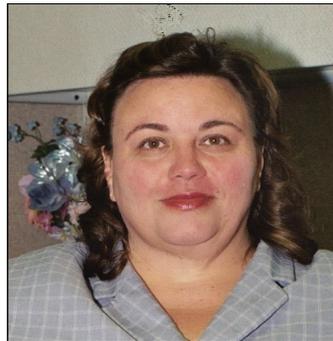


**Rhoda Perez**  
Receptionist

## EXECUTIVE DIVISION CONT.



**Edward A. Teter**  
Accountant/Auditor II

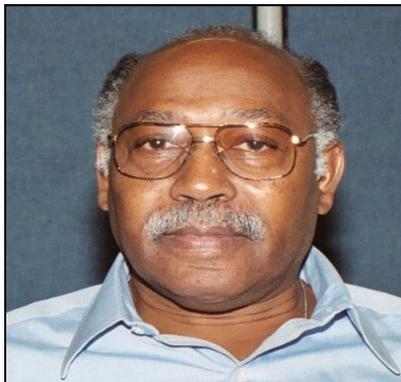


**Monia Turley**  
Executive Secretary



**Cassandra Woods**  
Intake & Docketing

## INVESTIGATIVE DIVISION



**James L. Johnson**  
Supervisor III



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

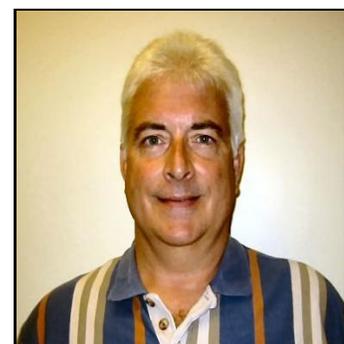
## EMPLOYMENT AND PUBLIC ACCOMMODATIONS UNIT



**Sally Brown**  
Investigator



**Arthur Duiguid**  
Investigator



**David R. Fix**  
Director of Compliance &  
Enforcement

**EMPLOYMENT AND PUBLIC ACCOMMODATIONS CONT.**



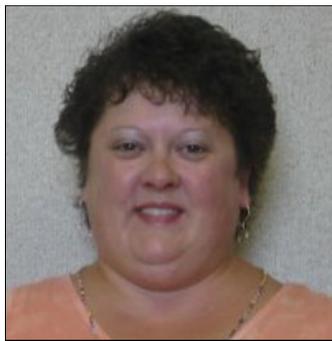
**Paul Hamilton**  
Field Investigator  
Huntington, WV



**Rebecca Lester**  
Investigator



**Richard Mangus**  
Investigator



**Tausha Rucker**  
Investigator



**James Slack**  
Investigator

**HOUSING UNIT**



**Joshua Brown**  
Housing Investigator



**Esther Hupp**  
Housing Investigator



**Marshall Moss**  
Housing Specialist

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## **COMMUNITY PARTNERSHIPS, RELATIONS AND OUTREACH**

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The following section represents the partnerships and relations 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. The Commission will collaborate with each of these entities individually and/or several entities together in these outreach endeavors.

- ◆ **Appalachian Power**
- ◆ **Beckley Branch of the WV Chapter of NAACP**
- ◆ **Charleston Black Ministerial Alliance**
- ◆ **Charleston Job Corps**
- ◆ **Charleston YWCA**
- ◆ **Church Women United of Charleston, West Virginia**
- ◆ **Community Coalition for Social Justice of Morgantown**
  - Local Area Churches*
  - ADAPT*
  - The Northern West Virginia Center for Independent Living*
  - The Center for Excellence in Disabilities*
  - Area Environmental Groups*
  - City of Morgantown Human Rights Commission*
- ◆ **Covenant House**
- ◆ **Health Right of West Virginia, Inc.**
- ◆ **Huntington Housing Authority**
- ◆ **New Destiny Church of Charleston**
- ◆ **Northern West Virginia Center for Independent Living**
- ◆ **Ohio Civil Rights Commission**
- ◆ **Southern Appalachian Labor School**
- ◆ **Tamarack of West Virginia**

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## **COMMUNITY PARTNERSHIPS, RELATIONS AND OUTREACH (CONT.)**

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- ◆ **U.S. Equal Employment Opportunity Commission**
- ◆ **U.S. Housing and Urban Development**
- ◆ **WV Association of Realtors (WRA)**
- ◆ **WV Attorney General's Office and its Civil Rights Division**
- ◆ **WV Commission for Deaf and Hearing Impaired**
- ◆ **WV Dept. of Health & Human Resources**
- ◆ **WV Fair Housing Action Network (a project of the Northern WV Center for Independent Living)**
- ◆ **WV Federation of the Blind and Visually Impaired**
- ◆ **WV Housing Development Fund**
- ◆ **WV Human Rights Commission Black History Month**
- ◆ **WV Human Rights Commission Children's Outreach**
- ◆ **WV Human Rights Commission Spanish Community Outreach**
- ◆ **WV State Association of Housing Agencies**
- ◆ **WV State Bar Association**
- ◆ **WV State University**
- ◆ **WV State University College of Professional Studies**
- ◆ **WV State University National Center for Human Relations**
- ◆ **WV State University Research and Development**
- ◆ **WV State University Social Work Program**
- ◆ **WV Women's Commission**

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

Through its partnership, Appalachian Power supports the many outreach activities conducted by the West Virginia Human Rights Commission and provides valuable resources to events such as “A Fun Day At The Park,” which brings unity to the community and helps to foster wholesome constructive alternative activities targeted toward the youth through the year. The Commission, in turn provides valuable training opportunities to the management and staff of Appalachian Power through invitations to seminars and workshops.

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

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

**Charleston Black Ministerial Alliance, Inc.**  
**Charleston, West Virginia**

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

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

**Charleston Job Corp.**  
**Charleston, West Virginia**

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

**Charleston YWCA**  
**Charleston, West Virginia**

The West Virginia Human Rights Commission partnered with the Young Women's Christian Association (YWCA) who sponsored the Annual "Stand Against Racism" event to eliminate racism in West Virginia. This event included local area businesses and communities in the Charleston, West Virginia area.

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

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

**Community Coalition for Social Justice of Morgantown**  
**Morgantown, West Virginia**

The Community Coalition for Social Justice of Morgantown, created in 1998, is a conglomerate of many agencies and businesses coming together for social issues and causes such as fair housing in the Morgantown, West Virginia area. Those organizations include: local area churches; ADAPT; the Northern West Virginia Center for Independent Living; the Center for Excellence in Disabilities; area environmental groups and the City of Morgantown Human Rights Commission. The Coalition partnered with the State of West Virginia Human Rights Commission in presenting a Fair Housing Seminar—"Time to Act."

**Covenant House—Human Rights and Awareness**  
**April 29, 2011**

The West Virginia Human Rights Commission in partnership with Covenant House of West Virginia, participated in the 2011 "Stand Against Racism" Event sponsored each year, by the local YWCA. Agencies around the world engage in advocating for racial justice through this annual event. The event feature the popular 1968 film "Brown Eyes Blue Eyes/ A Class Divided" by third grade teacher, Jane Elliott. The event was held at First Baptist Church of Charleston, where both private and public citizens were in attendance.



**Health Right of West Virginia, Inc.**  
**New Destiny Church of Charleston, West Virginia**  
**Charleston, West Virginia**

The West Virginia Human Rights Commission in partnership with Health Right of West Virginia, Inc., co-sponsored an awareness day regarding the effects of Breast Cancer within the African American community, male and female alike; as well as citizens knowing their rights as outlined in the West Virginia Human Rights Act.

The Health and Rights Awareness day was in partnership with New Destiny Church of Charleston, FREE glucose and blood pressure checks as well as helpful information on cervical cancer were made available to the public.

The partnership of the Human Rights Commission and Health Right, Inc. of West is ongoing and seek to provide awareness opportunities to the public throughout the year.

**Northern West Virginia Center for Independent Living (NWVCIL)**  
**Morgantown, West Virginia**

The WV Human Rights Commission partners with the NWVCIL which is an advocacy resource center for persons with disabilities. The NWVCIL works with people to be independent ensuring that consumers have the skills and information they need to make informed choices and assists communities to better meet the needs of their citizens with disabilities.

All people have the right to affordable, accessible and integrated housing in the community of their choice. Those with disabilities have the right to request a reasonable accommodation to allow full use and enjoyment of a dwelling.

A reasonable accommodation is a change in policy or practice to allow a service animal to be allowed in a building with a “no pets” policy; a reserved accessible parking space that has first come first served parking; installing a wheelchair ramp; installing grab bars in bathrooms; installing stair lifts, etc.

The NWVCIL also provides institutionalized seniors and high risk persons with disabilities to be able live in their community with assistance under the NWVCIL’s programs of: Community Living Services which provides home modification and purchases durable equipment for people to continue to live independently without being forced into a nursing home against their will; Fair Housing/Hud; Family Support; Transition Navigator Program; Skills Training; and Peer Support.

**Ohio Civil Rights Commission**  
**Columbus, Ohio**

The West Virginia Human Rights Commission and the Ohio Civil Rights Commission share a prosperous symbiotic relationship. Mr. Michael Peyton, Director of the Ohio Civil Rights Commission supported the West Virginia Human Rights Commission for several years in honoring our Civil Rights Day honorees—those who have went above to make a difference in their communities to promote diversity from before the Civil Rights Movement era to the present.

The WV Human Rights Commission’s influence was important enough for Mr. Peyton to approach his authorities to begin a Civil Rights Day in Ohio to honor Ohio citizens who’ve made a difference.

Mr. Peyton was successful, and now the Ohio Civil Rights Commission along with its sponsors has successfully achieved their Civil Rights Day, which is now on its third year. The West Virginia Human Rights Commission attends and is proud to continually support the Ohio Commission.

**Southern Appalachian Labor School (SALS)**  
**Housing Outreach Solidarity Festival**  
**Oak Hill, West Virginia**

On Saturday, June 18, 2011, the West Human Rights Commission participated in the Solidarity Festival 2011, an annual event sponsored by the Southern Appalachian Labor School (SALS). This event was held at the Historic Oak Hill School in Oak Hill, WV from 1:00 to 4:00 pm.

An estimated 75-80 Fayette county area residents visited the festival and had an opportunity to picking up valuable information from exhibitors as well as to enjoy live entertainment and concessions.

SALS’ primary focus is the improvement of housing conditions of low income coal camp communities. As they are the only HUD certified Housing Counseling Agency in the Fayette County area, they also include fair housing pre-purchase education workshops in their services to the community.

**Tamarack of West Virginia**  
**Civil Rights Division of the Attorney General's Office**  
**Beckley, West Virginia**

Wednesday, July 28, 2010 the West Virginia Human Rights Commission in partnership with The West Virginia Attorney General's Office, Civil Rights Division, conducted its second workshop for the staff of Tamarack of West Virginia. Tamarack's HR Division scheduled the training in 2-segments for the benefit of the 42 staff members to participate.

The workshop topics covered included an overview of Human Rights, Public Accommodation in the Workplace and Sexual Harassment in the Workplace.

Jamie Alley, Senior Assistant Attorney General elaborated on the practice and procedure before the Commission as governed by the West Virginia Human Rights Act and the regulations promulgated thereunder.

**U.S. Equal Employment Opportunity Commission**  
**Philadelphia, Pennsylvania District**

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

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

Topics included in the discussions include EEOC initiatives for 2010– 2011; the latest developments in disability law; how to build an effective anti-harassment policy; and information about the WVHRC and EEOC mediation programs, which have been lauded by the business communities and other constituents we serve.

The EEOC provided a FREE 5-day workshop, May 23, through 27, 2011 at West Virginia State University which provided employers with an opportunity to network with other businesses and to compare EEO compliance experiences; learn about regulatory changes, new laws, case law developments and developing trends; and to discuss these issues with state and federal agency representatives. A similar workshop is planned for early spring 2012.

**U.S. Department of Housing and Urban Development**  
**Washington, DC**

The West Virginia Human Rights Commission has a working relationship with the U.S. Housing and Urban Development (HUD). Housing cases filed with the West Virginia Human Rights Commission are dually filed with the HUD. The agencies host joint training sessions and community events to promote fair housing across West Virginia.

**WV Attorney General's Office and it's Civil Rights Division**  
**Charleston, West Virginia**

The Attorney General's Office and its Civil Rights Division provides valuable legal services to the WV Human Rights Commission by providing attorneys to litigate on behalf of the Commission and the complainant before our Administrative Law Judges.

The Civil Rights Division's attorneys assist in rule making policies that affect the Commission before the Legislature; assist in providing training to the Commission's staff and Commissioners; provide assistance to the agency's Commissioners at Commission meetings; assist investigative staff on legal questions; assist with legal documentation; appear on behalf of the agency and complainant at the higher Circuit Courts and the WV Supreme Court of Appeals; and other legal personnel matters of the Commission.

The Commission partners with the Civil Rights Division in various outreach functions and training to businesses and organizations throughout West Virginia.

**West Virginia Association of Realtors (WRA)**  
**Charleston, West Virginia**

The West Virginia Human Rights Commission partners with the WVRA whose purpose is to serve and represent its members in regulatory and legislative matters; to keep the REALTOR® central to the real estate transaction; to promote member integrity, competency and responsible citizenship, and to advocate and protect private property rights and equal housing opportunity.

The WRA promotes regulatory and legislative action favorable to the member's business successes by working closely with the West Virginia Real Estate Commission on the law and rules that impact the real estate industry.

**West Virginia Commission for Deaf and Hearing Impaired**  
**Charleston, West Virginia**

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

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

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

**WV Dept. of Health & Human Resources (DHHR)**  
**Charleston, West Virginia**

The West Virginia Human Rights Commission which administers the WV Human Rights Act, as amended is one of several Boards and Commissions under the authority of the DHHR which administers a multitude of programs that benefit the citizens of West Virginia.

Some of those programs are Behavioral Health; Child Support; Children and Families; Medical Services; and Public Health. The DHHR and Commission along with the Governor’s Office sponsors programs such as KIDS COUNT in celebration of Childcare Providers and Childcare Day.

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

**Celebrating April as Fair Housing Month**

The WV Fair Housing Action Network (a project of the Northern West Virginia Center for Independent Living) and the WV Human Rights Commission joined efforts to sponsor a 1-day fair housing training event on April 11, 2011 at the Auditorium of Columbia Gas Transmission, LLC.

The WV Housing Development Fund (WVHDF) and the WV Association of Realtors, (WRA) were also important partners in this event. Guest trainers for this workshop were Phillip Zook, Architect and Fair Housing Act Accessibility Consultant, and Amy White, Education Director for the National Association of Realtors.

Additional speakers were Chief A L J Phyllis H. Carter, the WVHR Commission's Acting Executive Director; Jan Derry, Executive Director of the Northern WV Center for Independent Living (NWVCIL); and Patti Shamblin, Loan Origination Manager for WV Housing Development Fund.

Mary Kaye Jacquet, Deputy Director, of the Commission welcomed the participants. Also assisting with this event was Claire Chantler (NWVCIL) and Marshall Moss, Joshua Brown and Leola Bateman (all from the WVHR Commission).

The training program included Mr. Zook's "Technical Requirements of the Fair Housing Act" and "Design & Construction and Reasonable Modifications" and was certified for 3 learning units(LU) for AIA members and accepted as Option (in-house trng.) Continuing Education and Professional Development Activity by ICC for Certification Renewal.

Ms. White's "Fair Housing and Housing Opportunities" was approved by the WV Association of Realtors for 3.5 hrs. of WVREC CE credits. Both trainers engaged the participants effectively with their PowerPoint presentations, reference materials and dialogue.

Ms. Shamblin's luncheon presentation included valuable information and materials concerning the WVHDF's single family mortgage loans programs and their overall role in fair housing opportunities in West Virginia.

Judge Carter's luncheon comments included a reminder that the continuing efforts of all the participating agencies and organizations will be needed to provide fair housing opportunities and assure that all those WV citizens covered by the federal and state fair housing laws will have the opportunity to "live free" of housing discrimination.

## **West Virginia Federation of the Blind and Visually Impaired** **Charleston, West Virginia**

The West Virginia Human Rights Commission in support of the National Federation of the Blind of West Virginia, frequently attends and participates in Agency Partnership meetings, the most recent being held on October 18, 2010.

The meetings are designed to discuss various topics of interest to those who are blind or have visual impairments, to assure that their rights have not been violated; i.e., the NFB's recent "Blind Driver Challenge" in which our colleague, Mark Riccobono, successfully demonstrated the ability of a blind person to drive an automobile using a non-visual guidance system.

Each participating agency presents an update on recent activities and achievements; and if time permits, will engage in some discussion of how a blind person might cope with a common situation.

The emphasis of the National Federation of the Blind is to assure that its members are treated fairly, that their rights are protected and that they have a fair opportunity in employment and housing as any other citizens of West Virginia.

## **West Virginia Housing Development Fund** **Charleston, West Virginia**

The West Virginia Human Rights Commission partners with the WV Housing Development Fund which is governed by an 11-member Board of Directors consisting of four ex-officio members and seven members appointed from the private sector by the Governor. The Fund is an Equal Housing Opportunity Lender.

The Fund is a public body, corporate and governmental instrumentality established to increase the supply of residential housing for persons and families of low- and moderate-income, and to provide construction and permanent mortgage financing to public and private sponsors of such housing. To date, the Housing Development Fund has issued more than \$4.5 billion in tax-exempt bonds to finance more than 110,000 housing units since it began operation in 1969.

On June 17, 2008, the Heroes Earnings Assistance and Relief Tax Act was enacted, granting special benefits to veterans of the U.S. Armed Forces. The most significant of the benefits provided for in the act is the exemption of veterans and their spouses from the first-time home buyer requirement under the West Virginia Housing Development Fund's mortgage bond program. The first-time home buyer exemption applies to any qualified veteran who has been discharged or released under conditions other than dishonorable in the past 25 years. The exemption also applies to the spouses of these veterans. Per the new law guidelines, the exemption from the first-time home buyer requirement may only be used once by the veteran and his/her spouse.

## **WEST VIRGINIA HUMAN RIGHTS COMMISSION**

### **HIGHLIGHTING BLACK HISTORY**

**~ January 2010 ~ 2011**

#### **“REMEMBERING DR. KING... Monday January 17, 2011**

January 1, of each year marks the beginning of a period of remembrance. Publications highlight such famous Black History events as:

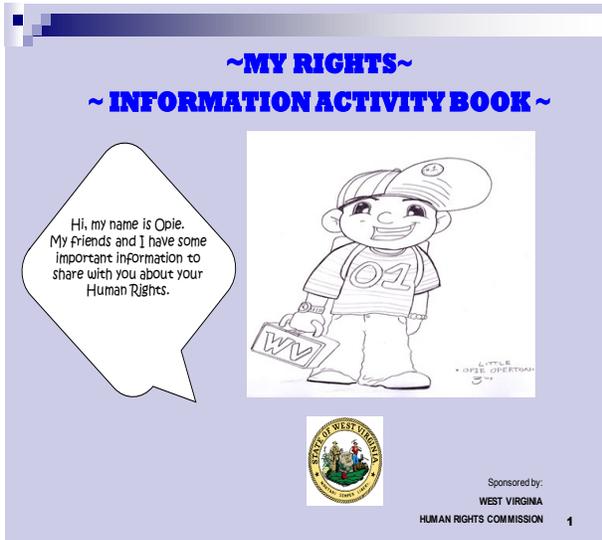
- ◆ ◆ 1808 - The United States bans the importing of slaves.
- ◆ ◆ 1863 - Abraham Lincoln signs the Emancipation Proclamation. President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, as the nation approached its third year of bloody civil war. The proclamation declared "the rebellious states "are, henceforward that all persons held as slaves" within and hence forward shall be free.
- ◆ ◆ Along with other historical events, the West Virginia Human Rights Commission includes a feature article in the Commission Newsletter each year... highlighting the life and accomplishments of the Rev. Dr. Martin Luther King, Jr.

#### **◆ ◆ ~ Remember! Celebrate! Act! A Day On, Not A Day Off ~**

The theme reiterates the importance of remembering Dr. King’s work and legacy, celebrating his birthday as a national holiday and acting on his teachings and principles of nonviolence and human rights. It also serves as a reminder that the holiday is a day on for community service initiatives and programs promoting interracial cooperation, not just a day off from work or school. A Commemorative Service, which is the spiritual hallmark of the King Holiday Observance, features tributes to the life and legacy of Dr. Martin Luther King, Jr. from national and international leaders. Keynote Speaker, for the event this year, was Martin Luther King, Jr., III President and Chief Executive Officer.”

*“Booker T. Washington was a natural Politian who cultivated the good will of whites as well as blacks.”- 1856-1915*

**West Virginia Human Rights Commission**  
**CHILDREN'S RIGHTS AND AWARENESS**  
**2011**



The Commission developed a sequel to the beginner version of the “My Rights Coloring Book,” which was developed to educate children, 4 years through 6 years of age, regarding Human Rights for Children. The newer version of the book entitled, “My Rights Information and Activity Book” is designed to reach a slightly older age group, 6 years through 10 years of age. The book helps to educate young citizens of their rights as hu-

man beings by utilizing games, puzzles and timely information such as the signing of the Lilly Ledbetter Act to emphasize protected class as defined by the Universal Declaration of Human Rights as well as the West Virginia Human Rights Act.

Both books are available for workshop presentations, and to date nearly 2,000 of the beginner version of the My Rights Coloring book has been distributed to of schools throughout the Kanawha County school district: Chamberlain Elementary, Chandler Elementary, West Side Elementary, and Piedmont Elementary.

My Rights Information & Activity Book  
***NEW and now available!***



**WV State Association of Housing Agencies**  
**Charleston, West Virginia**

The West Virginia Human Rights Commission partners with the West Virginia Association of Housing Agencies which fosters, supports and promotes the efforts of Public Housing Agencies and affordable housing organizations in the furthering of affordable housing and community redevelopment in West Virginia through the exchange of ideas, the promotion of inter-agency cooperation, affordable housing legislative and policy development, and education and training in several outreach housing functions in the state.

**WV State Bar Association**  
**Charleston, West Virginia**

The WV State Bar Association provides Mediators that the Commission utilizes for its Alternate Dispute Resolution Program of Mediation. All of the Commission's public hearing cases are sent to mediation for possible settlement before trial.

The Bar provides the rules that the Commission adheres to on matters of Pro Hoc Vice and Rule 8, Service of Process for the processing of complaints and notices of hearing. Additionally, they provide training for staff on mediation techniques for the Commission's Alternate Dispute Resolution Program of Pre-determination Conciliation.

The Commission works with the State Bar on obtaining CLE's for training projects on discrimination matters and the Administrative Law Judge's Committee.

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

West Virginia State University (WVSU) is a historically black university, which has evolved into a fully accessible, racially diverse, and multi-generational institution.

WVSU hosts many of the West Virginia Human Rights Commission's events on its campus including 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.

**West Virginia State University College of Professional Studies,  
West Virginia State University National Center for Human Relations  
Institute, West Virginia**

Sponsored its 4th- Faith-Based & Neighborhood Partnership Fair~ April 19, 2011

The College of Professional Studies, and Interfaith facilitator for the 4th of its very successful Faith Based & Neighborhood Partnership Fairs. The keynote speaker for the event came to us from the Center for Faith Based Initiatives and Neighborhood Partnerships in Washington D.C.

The College of Professional Studies, in partnership with the West Virginia Human Rights Commission has co-sponsored a Community Faith Based Initiative each year since 2008 and this year the WVSU National Center for Human Relations came together at West Virginia State University to help undergird the idea with its efforts in networking the Fair and promoting the idea to its constituents.

Rev. B. J. Douglass, Senior Project Officer of the Center for Faith-Based and Neighborhood Partnerships, began her inspiring words and addressed members of the faith-based community, WVSU faculty, staff and students that were in attendance, will never look at their role the same. It was so refreshing to hear someone of her stature and success remind us of our specific role as “*individuals who are on the front line*”, confirming and affirming the value of hard work. She shared her experience of seeing state Governors from all across our nation, coming together, looking for help for the teen violence epidemic, networking and communicating with one another to attempt to find their solutions in Washington; the reality is all too clear, as she further stated, these things cannot be fixed from Washington alone. “Washington may be able to equip us with some of the tools we may need but; it is “us” who have to fight this battle.”

When Rev. Douglass made those statements, a gleam of encouragement came over the faces of a group of 4 individuals from a non-profit community organization who had previously told me they were not sure that they should be part of the fair, but as Rev Douglass looked directly at them and announced “*Washington needs you.*”

That same spirit of optimism carried into our HUD 101 workshop lead by Ms. Evie Young, a WVSU graduate that is currently the WV’s HUD Field Office Faith-Based Liaison. Evie shared very valuable information that was specific to our area. She was sincere in making herself available to the faith-based non-profit community as a wonderful resource. As we adjourned to the actual networking fair, it was absolutely beautiful. The information was eye catching, interesting and most of all, helpful.

There were 17 existing non-profit programs displayed. Organizations such as KISRA which currently has programs on Fatherhood, Employment re-entry, Economic Empowerment and Behavioral Health. The YWCA Resolve Family Abuse, Alcoholic Anonymous, the WVSU Gus R. Douglass Land Grant Programs, HOPE Community Development and many more were well represented. There were promising displays, positive energy and practical networking between each of the organizations.

The Faith-Based & Neighborhood Partnership Fair 2011 was absolutely wonderful. With faith being the substance of things hoped for, the evidence of things not “yet” seen, it is our hope that the collaboration and networking that took place this year will result in us being able to “see” the manifestation of reaching our goals together in effectively helping others.

**West Virginia State University Research and Development Corp.  
Appalachian Power Company  
Institute, West Virginia**

**“WEST VIRGINIA HUMAN RIGHTS PARTICIPATES IN  
FUN DAY AT THE PARK” 2011!**

The West Virginia Human Rights Commission, participated with the West Virginia State University’s Research and Development Corp. and the Appalachian Power Company in promoting a Fun Day in the Park Activity for area youth. The Human Rights Commission staff assisted with the “FREE Bike-Give-a-Way.”



The bicycles were given in several different size and age groups, i.e., beginner with training wheels, pre-teen and teenage group size.

Carl Lee, and Kisstaman Epps, promote a tremendously successful event each year which normally draws crowds of several thousand; in addition to those who have already come from far and near just to enjoy the accommodations of Shawnee Park, in Dunbar where the event is held.

The West Virginia Human Rights Commission is pleased to partner with community groups in an effort to providing wholesome constructive alternatives for our youth citizens of West Virginia.



**West Virginia State University Social Work Program**  
**Institute, West Virginia**

Deputy Director Marykaye Jacquet presented a work shop at the WV State University's Social Work and Social Justice class on October 4, 2010. Topics discussed were social advocacy; legislation and lobbying; court actions; community education; resource development; and fiscal reallocation in conjunction with the West Virginia Human Rights Act, as amended.

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

Pursuant to W.Va. Code §29-20-1, the West Virginia Human Rights Commission continues to support the West Virginia Women's Commission through its liaison, Deputy Director Marykaye Jacquet.

Ivin B. Lee, Executive Director was an ex officio member of the Women's Commission until her retirement on March 7, 2011, which is now under the auspices of Acting Executive Director Phyllis H. Carter.

Ms. Jacquet, as the Acting Executive Director's designee attends the Women's Commission meetings, specialized functions and events and appears at community outreach functions sponsored by the Women's Commission which also includes Women's Day at the Legislature.



# *In Memoriam*



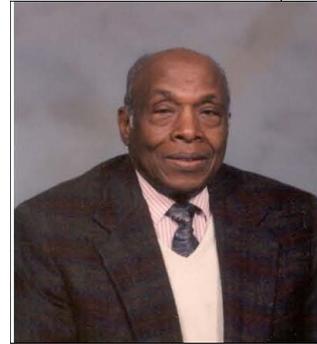
Civil Rights Day Honorees who passed during the fiscal year  
2010-2011.



**Mr. Howard Crump**  
January 2, 2010



Helene Rotgin



**ALLEN EDWARD LEE**  
May 16, 2010.



Ms. Mary Snow—  
January 2011



Savanna R. White-Evans  
April 24, 2010



**Mr. William Anderson,**  
July 15, 2010



Mr. Edward L. Peeks  
September 5, 2010



## **REMARKS**



In summary, the Commission experienced a successful year in moving toward its goal to reach and educate the citizens of West Virginia in their right to equal opportunity in employment, places of public accommodation and fair housing.

The Commission appreciates and thanks all of its sponsors and partners for with whom we would not be able to extend this outreach of education.

Listed in the conclusion of this report, we have established new goals to continue our mission for another successful year.

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# THE COMPLAINT PROCESS

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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.

\* pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-4.15



## **ALTERNATE DISPUTE RESOLUTION PROGRAMS**



Pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-4-.15, the following information provides details on the two main Alternate Dispute Resolution Programs. These programs provide a valuable outlet for both the complainant and respondent to attempt to come to a settlement in order to avoid costly and time-consuming litigation. The Commission is proud to be a leader in utilizing this tool in order to present the parties an opportunity to resolve differences effectively and efficiently.

Conciliations and Mediations may be monetary in nature or may also include non-payment conditions such as: a neutral work reference, a pay raise, the promise of a future job, an accommodation for a disability, anti-discrimination training, development of an anti-harassment/anti-discrimination policy in the work place, change in work shift, or simply an apology from the respondent.

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

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

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

Conciliation is conducted during the investigative process. The investigation does not stop because conciliation occurs. Investigation will only stop if a settlement is reached by the parties. Upon completion of the investigation, the Commission will issue a determination of either no probable cause or probable cause.

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

## **Mediation Program**

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

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

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

### **Pre-Determination Conciliation Outcome FY 2010-2011**

<b>Cases referred to conciliation</b>	<b>27</b>
<b>Cases settled or closed as a result of conciliation</b>	<b>6</b>
<b>Cases continued in investigation</b>	<b>21</b>
<b>Amount of monies generated from Conciliation*</b>	<b>\$81,300.00</b>

### **Mediation Outcome FY 2010-2011**

<b>Cases settled</b>	<b>21</b>
<b>Amount of monies generated from Mediation*</b>	<b>\$ 234,450.00</b>

**\* 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.**

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## **CASE ACTIVITY DURING FISCAL YEAR JULY 1, 2010 TO JUNE 30, 2011**

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The Agency mailed **1,217** Background Information Forms.

Of that number, **510** background information forms were returned to the agency.

Of that number of inquiries, **11** were withdrawn  
**13** were determined to be non-jurisdictional  
**27** are pending for additional information

**379** cases were actually docketed for the FY 2011.

**270** cases were carried over from previous fiscal years

The total number of open cases during FY 2011 was **649** cases.

The number of closures for FY 2011 were **390**

**257** cases were carried over into FY 2012.

## 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 7 requests and collected \$144.00 as result of FOIA requests. These funds were deposited into the state's general fund.

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

The following are selected final decisions of the West Virginia Human Rights Commission and decisions of the West Virginia Supreme Court of Appeals for the Fiscal Year 2010-2011. 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 KANAWHA COUNTY CIRCUIT COURT**  
**AND WEST VIRGINIA SUPREME COURT OF APPEALS**  
**FOR THE FISCAL YEAR 2010 - 2011**

**A FINAL DECISION OF THE CHIEF ADMINISTRATIVE LAW JUDGE**  
**AND**  
**A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COM-**  
**MISSION**  
**IN THE MATTER**  
**OF**  
**JOHN DANIEL JOHNSON v. WAL-MART STORES, INC.,**  
**BOB SMITH, AND JAMES HAUGH**  
**DOCKET NO. ER-104-07**

The West Virginia Human Rights Commission issued its Final Order Affirming in Part and Modifying in Part the Chief Administrative Law Judge's Final Order Entered August 24, 2010 and Affirming the Administrative Law Judge's Final Order Dated November 16, 2010. The Commission upheld the Chief Administrative Law Judge's Final Decision which held that Respondents had taken adverse employment action against the Complainant, John Daniel Johnson, based in part upon an unlawful discriminatory motive and awarded a Cease and Desist Order, training related to race discrimination and requirements of the West Virginia Human Rights Act, back pay, compensation for lost health insurance benefits, reinstatement, incidental damages, and prejudgment interest, together with attorney's fees and costs, determined to be fees of \$134,218.75 and costs of \$20,207.14 in the Order entered November 16, 2010. The Commission modified the

Chief Administrative Law Judge's Final Decision only to the extent that training for all management employees of the Respondent in West Virginia was narrowed to those management employees who worked in Respondent's stores in the Morgantown, West Virginia vicinity. Respondent did not file an appeal from the Final Order of the West Virginia Human Rights Commission.

Mr. Johnson is an African-American male, who worked for the Respondent, Wal-Mart Stores, Inc. at their Morgantown store on Greenbag Road, from May 2000 until he was fired on March 9, 2006. Mr. Johnson worked in a night shift stocker position at the time of the incidents giving rise to the complaint. Respondents Mr. Smith and Mr. Haugh were co-managers of the Store on Greenbag Road in February and March of 2006. Ms. Salisbury worked as an Assistant Manager on the overnight shift. On February 27, 2006, Ms. Salisbury heard loud voices and observed Mr. Johnson, Brian Ellifritz and Peggy Vernon. Mr. Johnson walked away and Ms. Salisbury followed. Mr. Johnson was visibly upset and told her that Mr. Ellifritz had just walked up and attacked him. Mr. Ellifritz had just threatened "to knock his f\*\*\*ing head off." Mr. Johnson was told to go to another department and stay away from the situation, that Ms. Salisbury would take the statement of Ms. Vernon and that she would speak to Mr. Smith, the store manager upon his arrival. Ms. Salisbury did not suspend Mr. Ellifritz at the time or take any other personnel action against him.

When Mr. Smith arrived on February 27<sup>th</sup>, Mr. Johnson told him that Mr. Ellifritz had threatened him. Respondent's work place violence policy calls for an immediate investigation of any complaint. Mr. Smith told Mr. Johnson that he required a written statement from Mr. Johnson before he could begin an investigation. Mr. Smith then told Mr. Johnson that he had to clock out and finish the statement at home and bring it back later. Respondent's policy does not require any written statement to begin an investigation and further provides that if a written statement is being taken that the employee is to be on the clock while it is being done. Mr. Johnson left the partially completed complaint when he left work that morning. On the night of February 28<sup>th</sup>, Mr. Ellifritz laughed at Mr. Johnson and taunted him. Mr. Johnson complained to Ms. Salisbury, who did nothing and required Mr. Johnson to continue working in the presence of Mr. Ellifritz who had threatened to knock his f\*\*\*ing head off. Mr. Johnson had left a handwritten complaint for Mr. Smith and was told Respondent did not have it. Mr. Johnson submitted a typed complaint to Mr. Smith as well, prior to March 2<sup>nd</sup>.

Mr. Ellifritz was not scheduled to work on March 1<sup>st</sup> and 2<sup>nd</sup> and Mr. Johnson was not scheduled to work on March 3<sup>rd</sup> and 4<sup>th</sup>. When Mr. Johnson went into the store on his day off to make a purchase, he was informed by a co-worker that Mr. Ellifritz was working. Mr. Johnson was surprised Mr. Ellifritz had not been suspended for having made the threats of violence against him. Mr. Johnson called in prior to his scheduled work on March 5<sup>th</sup> and asked to speak to Ms. Salisbury. Ms. Salisbury was not there and

Assistant Manager Michelle Pinkney had a conversation with Mr. Johnson who was informed that Mr. Ellifritz would be working that night. Mr. Johnson asked that she inform Ms. Salisbury that she keep Mr. Ellifritz on his side of the store as he did not want to feel threatened by him and that he would have to defend himself if necessary.

Ms. Pinkney claimed that Mr. Johnson had said that if Mr. Ellifritz was going to work that night, "He was coming up to beat his f\*\*\*ing ass." Following the call on March 5<sup>th</sup>, both Mr. Ellifritz and Mr. Johnson were suspended. Ms. Salisbury informed Mr. Johnson that he was suspended that night but did not give a reason and he was not aware that he was being investigated for making threats on the telephone about Mr. Ellifritz. Mr. Smith put Mr. Haugh in charge of investigating the matter. Mr. Johnson called three times to inquire why he was being suspended and was never told about the allegation of threatening remarks during the telephone conversation with Ms. Pinkney. Mr. Johnson went to see a lawyer when he was suspended. His lawyer called and left a message on March 8<sup>th</sup> and asked about the suspension and the reasons for the suspension. The lawyer followed with a fax to that effect on March 9<sup>th</sup>. No response was given to Mr. Johnson's lawyer. Mr. Johnson was told on March 9<sup>th</sup> he was fired for making threats against Mr. Ellifritz, Mr. Johnson denied making the remarks and asked for an opportunity to respond. He was told he was he did not need to make a written response and was told to come in to the store on March 9<sup>th</sup>. Mr. Ellifritz came in the same day and was fired. Mr. Ellifritz put in a written response and had admitted to making the threats to Mr. Johnson.

Just nineteen months prior to this, a Caucasian male cursed at and threatened a female Caucasian employee. That individual was suspended that evening and fired the next day. In contrast to that process, the investigation of Mr. Ellifritz was not initiated until after the call on March 5<sup>th</sup>. The investigation of Mr. Johnson which led to his firing was launched on March 6<sup>th</sup> and no written complaint was required as Mr. Johnson had been told when he complained about Mr. Ellifritz's threats. Ms. Pinkney's written statement was not obtained until March 9<sup>th</sup>. During the investigation of Mr. Ellifritz, he was given an opportunity to respond to statements taken, and he admitted to making threats. No one ever asked Mr. Johnson about the phone call or gave him an opportunity to respond. During the investigation of Mr. Johnson, Mr. Haugh never returned his lawyers call. Mr. Haugh did speak with Donna Westling, an Employment Advisor at Wal-Mart's Employee Assistance Department for advice. He was told not to speak with Mr. Johnson's lawyer. A statement taken from Ms. Vernon indicated that she had been joking with Mr. Ellifritz that Mr. Johnson had rubbed up against her. She did not indicate that this offended Ms. Vernon or that she asked Mr. Johnson to stop. That statement made no mention that Mr. Ellifritz had threatened Mr. Johnson, as contradicted by Mr. Ellifritz's own admission in writing. During Mr. Haugh's conversation with corporate, Ms. Westling indicated her belief that Mr. Johnson was engaging in sexual harassment of female employees. Mr. Haugh did not correct that misimpression. Ms. Westling told Mr. Haugh

that since Mr. Ellifritz had admitted threatening Mr. Johnson, that termination of Mr. Ellifritz was proper.

During his employment Mr. Johnson had been subjected to a racially hostile environment. Testimony indicated that Mr. Johnson was subjected to racially charged names by co-workers including a manager named Michelle such as “Cocoa”, “Cocoa Wheats”, “Chocolate Bunny” and “Little Bill”, a Crosby created Cartoon Character. A Little Bill doll, which was noted to be similar in characteristics to the Sambo character with exaggerated features such as protruding eyes and lips and slouching demeanor, was placed near the time clock. The doll was given corn rows and a noose placed around its neck. The Little Bill doll would have been noticed by managers given its placement near the time clock. There was direct evidence of racially discriminatory stereotyping by Ms. Salisbury. Mr. Johnson stated that when a group of African-American students entered the store, she asked him if he would protect her from them, though they had done nothing to cause her to feel she needed protection from them. Ms. Salisbury had never asked Mr. Johnson the same thing when similar groups of Caucasian students were in the store.

Dr. Goff, a Ph.D. in Social Psychology, testified that Mr. Johnson worked in a very racially hostile environment. Dr. Goff testified that there was good reason for Mr. Johnson to believe that the lack of a direct investigation concerning Mr. Ellifritz’s threats was motivated by racial bias. He testified that Ms. Pinkney was in a situation that was ripe for stereotype consistent memory error and that Ms. Pinkney’s version of Mr. Johnson’s threat was the result of stereotype consistent error when Mr. Johnson was relaying the information concerning Ellifritz’s threat of violence against Mr. Johnson. Given the infrequent consultation on diversity issues by Respondent’s management, the management was not provided tools to recognize the role stereotyped attitudes can play in employment situations. Dr. Goff testified that it was highly probable that race stereotyping played an adverse role in the decisions regarding Mr. Johnson. Mr. Ellifritz’s reaction of sexual jealousy based upon the myth of African-American hyper-sexuality placed Mr. Johnson’s safety all the more at risk and the failure to investigate Mr. Ellifritz’s threats all the more egregious. Working in a racially hostile environment, it was reasonable for Mr. Johnson to fear mental and physical harm. Dr. Goff further testified that it was not uncommon for those working in a racially hostile environment to feel a lack of empowerment to complain out of fear of being stereotyped as “angry” or “complaining”. They do not wish to be seen as playing the race card.

The Chief Administrative Law Judge found that the Complainant had proven by a preponderance of the evidence that Respondent had unlawfully terminated him because of his race in violation of W. Va. Code §5-11-9(1). The Chief Administrative Law Judge noted, “Discriminatory intent in a disparate treatment case may be established by showing that the decision maker acted out of stereotypical thinking such as racial stereotypes,

and need not involve some type of malice or hatred.” Citing Skaggs v. Elk Run Coal, 198 W. Va. 51, 74, 479 S.E.2d 561, 584 (1996). The Respondent’s articulated legitimate non-discriminatory reason for Mr. Johnson’s termination was held to have been proven pretextual, indicating that Mr. Johnson’s complaint about threats of violence were treated differently both from the allegations against him and from other investigations of threats against Caucasian employees. “Pretext may be shown through direct or circumstantial evidence of falsity or discrimination; and, where pretext is shown, discrimination may be inferred.” Skaggs, *Supra*, at Syl. Pt. 5. Alternatively, Mr. Johnson had prevailed under the mixed-motive analysis; showing by a preponderance of the evidence that race was a motivating factor in the decision to terminate him. Having proven that race was a motivating factor in the decision to terminate him, the burden of persuasion shifts to the Respondent to show that the same decision would have been made in the absence of the discriminatory motive. Skaggs, 198 W. Va. at 74-75, 479 S.E.2d at 584-585.

**A FINAL DECISION OF THE CHIEF ADMINISTRATIVE LAW JUDGE**  
**AND**  
**A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COM-**  
**MISSION**  
**IN THE MATTERS**  
**OF**  
**HARRY WALTER ROBINSON v. CHARLESTON ACADEMY OF BEAUTY**  
**CULTURE, INC., d/b/a CHARLESTON SCHOOL OF BEAUTY CULTURE,**  
**INC., JUDY HALL, owner, and CHERIE BISHOP, instructor, in their individual**  
**capacities,**  
**DOCKET NO. PAR-351-04**  
**AND**  
**TYLEEMAH EDWARDS v. CHARLESTON ACADEMY OF BEAUTY CUL-**  
**TURE, INC., d/b/a CHARLESTON SCHOOL OF BEAUTY CULTURE, INC.,**  
**JUDY HALL, owner, and CHERIE BISHOP, instructor, in their individual capac-**  
**ities,**  
**DOCKET NO. PAR-454-04**  
**AND**  
**OPINION AND ORDER AFFIRMING THE FINAL ADMINISTRATIVE OR-**  
**DER OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION**  
**IN THE MATTERS OF**  
**CHARLESTON ACADEMY OF BEAUTY CULTURE, INC., et al.**  
**v.**  
**WVHRC**  
**Civil Action Nos. 09-AA-168 and 09-AA-169**

The Circuit Court of Kanawha County affirmed the consolidated Final Order of the West Virginia Human Rights Commission adopting the Final Decision of the Chief Administrative Law Judge. The Chief Administrative Law Judge concluded that the Charleston Academy of Beauty Culture, Inc. (CABC hereinafter), Judy Hall, owner and Cherie Bishop, instructor, in their individual capacities, subjected two students at the CABC, complainants Harry Walter Robinson and Tyleemah Edwards to racial discrimination, segregation by race and racial harassment. Respondents also were held to have unlawfully expelled Ms. Edwards in reprisal for engaging in the protected activity of complaining about racial discrimination at CACB to the West Virginia Board of Barbers and Cosmetologists.

Respondent, CABC, operates a school of beauty culture. It offers admission to unselected, unselected members of the public. It is approved for participation in federal financial aid programs, including the Pell grant program. Some students have their tuition paid through grants associated with the West Virginia Department of Health and Human Services. CABC's cosmetology program consists of a 2000 hour program over a fourteen month period including both academic type work and practical experience on the clinic floor where students apply what they have learned on customers. Each person must accomplish a minimum designated number of several types of services and procedures. The Chief Administrative Law Judge concluded that because the CABC was a vocational school and providing public services by operating a student clinic performing cosmetology service on members of the public, because it is regulated by the West Virginia Board of Barbers and Cosmetologists (WVBBC hereinafter) with respect to school operation and the licensure of instructors, and because it receives public funding, CABC is a place of public accommodation with respect to its students as well as customers. The West Virginia Supreme Court held the volunteer fire department to be a place of public accommodation; because it was subject to the regulatory control by the government, and it received funding at least in part from public sources. Shepardstown Volunteer Fire Dep't v. West Virginia Human Rights Commission, 172 W. Va. 627, 309 S.E.2d 342, at 351 (1983). The Supreme Court has held that boards of education are places of public accommodation as well as the West Virginia Secondary Schools Activities Commission. See, Board of Education of Lewis County v. West Virginia Human Rights Commission, 182 W. Va. 41, 385 S.E.2d 637 (1989); and, Israel v. West Virginia Secondary Schools Activities Commission, 182 W. Va. 454, 388 S.E. 2d 480 (1989).

Respondent Ms. Hall was a one third owner of CABC, as well as the manager and an instructor. Respondent Ms. Bishop is currently employed by CABC and was employed as an instructor when Complainants were students at CABC. Complainant Ms. Edwards was a student in a class taught by Ms. Bishop. Ms. Bishop interacted with Complainant Mr. Robinson on the clinic floor. The Chief Administrative Law Judge held that Respondent Hall and Respondent Bishop were persons within the meaning of the West Virginia Human Rights Act. They were subject to being sued under the Act as individuals and employees who aided and abetted those engaged in unlawful discriminatory practices under the Act. Citing Holstein v. Norandex, Inc., 194 W. Va. 727, 461 S.E.2d 473, at 478 (1995).

The Chief Administrative Law Judge determined that Mr. Robinson and Ms. Edwards received disparate treatment in educational instruction and opportunities because of race. There are on average physiological differences in the hair of black and white persons including texture, curl pattern, elasticity, porosity and amount of oil in the scalp in the hair. Ethnic hair is very fragile and is typically cut dry. Caucasian hair is typically cut wet. A former instructor testified that students at CABC did not receive adequate instruction in terms of course work or teaching relative to styles and services

typically performed on ethnic hair. Furthermore, equipment and products needed for ethnic services were not always available. The products that white patrons sought were available at the school, but hair products desired by African American patrons were less available and were commonly purchased personally by Ms. Edwards and Mr. Robinson and by other students. Complainants Mr. Robinson and Ms. Edwards experienced unlawful segregation because of race at CABC. CABC engaged in unlawful segregation by steering customers to students of the same race. African American students were expected to work on non-white customers without training and adequate supplies. White students predominantly worked with white customers, and the educational instruction and product availability was readily available for them. The WVBBBC requires that to the extent clinical patrons are available the school will provide equal opportunities for students to work on those patron without regard to race. The CABC made student customer assignments at the front desk where a list of students who were available to provide services to customers was kept. The customers were to be assigned to the next available student on the list, with senior students having priority for chemical services. Mr. Robinson experienced being skipped over by Respondent. White students would get white patrons and black students would get black patrons. Mr. Robinson noticed that sometimes patrons expressed racial preferences with regard to the students assigned to them. Those requests were honored and Mr. Robinson's complaints to Respondents were ignored. Mr. Robinson eventually took his complaints regarding racial steering to the WVBBBC. Ms. Edwards experienced the same race based assignment of customers to students. On one occasion she observed a white customer say she did not want a black student working on her hair. Rather than explain the policy that the school is not allowed to assign students based on race, CABC assigned the customer to a white student. Ms. Edwards heard Respondent Hall direct Ms. Bond to assign the customer to a different student, when Ms. Bond spoke to her about the customer's refusal to be assigned to a black student. Ms. Bond is an African American instructor. During her entire time on the floor Ms. Edwards never was assigned to a white customer. A former instructor testified that black students did not get to do haircuts and hair colors on white patrons and left the cosmetology program with limited experience working on Caucasian patrons.

Mr. Robinson and Ms. Edwards were subjected to a racially hostile environment at CABC which included threats and acts of physical violence. Many of the instances of racially charged threats and negative stereotyping involved Ms. Bishop. In one instance, involving Mr. Robinson, Ms. Bishop told another instructor, "You need to assign this client to Walter." When asked why she responded, "Because I'm not going to assign him anything. I'll take his black ass out on Capitol Street and stomp him." This comment was reported to Ms. Hall. Respondent Bishop was terminated by CABC but not because of racially offensive language and has been subsequently rehired by CABC. On another occasion when Mr. Robinson was passing out forms to fill out regarding whether the students had ever observed racism in school Ms. Bishop declared, "I hate that

n\*\*\*\*r.” When a birthday party was booked for hair styling and manicures, Ms. Edwards was the only black student assigned to work with the party. Ms. Edwards was initially paired to work with a white patron, when a young girl removed her cap it became apparent that the girl was bi-racial, at which point Ms. Bishop aggressively told Ms. Edwards she could “handle” the child with ethnic hair. When Ms. Bishop’s purse went missing one day, in front of the class she was instructing, she asserted that her missing purse was stolen by “a black person cause white people don’t steal.” Ms. Edwards reported the remark to another instructor. Ms. Bishop regularly made comments that all black kids have hair like Don King. Other incidents of racially charged comments were experienced by the Complainants. In one instance someone left a racist note in Mr. Robinson’s station referring to him as a “F\*gg\*t N\*\*\*\*r”. When this was reported to Ms. Hall she claims to have conducted an investigation but she kept no records and did not even keep a copy of the offensive note. When asked to identify every complaint of racial discrimination or harassment the Respondents did not list this incident. At one point during Ms. Edwards tenure at CABC racist graffiti, “hate all n\*\*\*\*rs” was present in the upstairs bathroom at CABC. On one occasion CABC’s financial aid officer and counsel, Stephen Hall, approached Ms. Edwards and two white students who were smoking during their lunch break at a lunch table in the downstairs lounge area. He approached Ms. Edwards telling her that he didn’t want her smoking in the school. When asked why he was singling her out and not the white students also, he responded, “I’m not talking to them. I’m talking to you. Go to class.”

Ms. Edwards was subjected to retaliation, racial harassment and disparate treatment by Respondents when suspending and then expelling Ms. Edwards following her complaints of racial discrimination to the WVBBC. West Virginia Code § 5-11-9(7) makes it unlawful for any person or employer to engage in any form of reprisal or otherwise discriminate against any person because the person has opposed any practices or acts forbidden under the statute. This includes any form of threats or reprisal, committing acts or activities the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss. Both Mr. Robinson and Ms. Edwards complained of racial harassment and discrimination to CABC staff. When that fell on deaf ears, Ms. Edwards complained of racially discriminatory practices to WVBBC and subsequently attended a WVBBC board meeting relating to these concerns among others at CABC. Respondents CABC and Ms. Hall were aware of Ms. Edwards race discrimination complaint no later than mid-April 2004. Subsequent to her complaint, Ms. Edwards was assigned more dispensary time than any other students. Ms. Edwards was suspended for two days after missing a Saturday class even though she called in pursuant to policy. Finally, in an inexplicable outburst, Ms. Hall expelled Ms. Edwards from CABC, telling her that if she thought CABC treated her bad enough to complain to WVBBC, she could tell the WVBBC about her treatment that morning. Ms. Hall physically assaulted Ms. Edwards grabbing her arm leaving bruises and preventing her from collecting her per

sonal items including her book bag and kit (the tools of the profession costing the student \$500.00 which cannot be used by anyone other than the person to whom they are issued) from the storage area. Ms. Hall slammed the lid of the storage container on Ms. Edwards when she tried to collect her personal items. Respondent Hall told Ms. Edwards that she would not release her transcripts even if Ms. Edwards took care of her final bill. Ms. Hall said she would refuse to release her transcript to allow her to transfer to another school. Ms. Edwards was expelled the day she had completed over fifty percent of enrollment hours in the program which required her to pay one hundred percent of the tuition under the CABC's tuition policy. A former instructor at the CABC testified that Ms. Hall had stated that her students could go to the Board (WVBBC), but that it would hurt the students more than it would hurt Ms. Hall. Given these facts the Chief Administrative Law Judge found that the Respondents had engaged in reprisal against Ms. Edwards under the West Virginia Human Rights Act.

**A FINAL DECISION OF THE CHIEF ADMINISTRATIVE LAW JUDGE**  
**AND**  
**A FINAL ORDER OF THE WEST VIRGINIA HUMAN RIGHTS COM-  
MISSION**

**IN THE MATTERS**  
**OF**  
**ANTHONY LEE ARMSTEAD V. FEDERAL EXPRESS CORPORATION**  
**DOCKET NO. ER-375-05**

**AND**  
**FINAL ORDER OF THE CIRCUIT COURT OF KANAWHA COUNTY**  
**(REVERSES THE FINAL ORDER OF THE WEST VIRGINIA HUMAN**  
**RIGHTS COMMISSION)**

**IN THE MATTER OF**  
**FEDERAL EXPRESS CORPORATION**

**v.**  
**ANTHONY ARMSTEAD AND THE WEST VIRGINIA HUMAN RIGHTS COM-  
MISSION**  
**Civil Action Nos. 09-AA-106**

**AND**  
**MEMORANDUM DECISION OF THE STATE OF WEST VIRGINIA SU-  
PREME COURT OF APPEALS**  
**ANTHONY ARMSTEAD v. WEST VIRGINIA HUMAN RIGHTS COMMIS-  
SION and FEDERAL EXPRESS CORPORATION (No. 101590)**

The Supreme Court of Appeals of West Virginia, in its Memorandum Decision overturned on appeal a Circuit Court of Kanawha County Final Order and reinstated the Final Order of the West Virginia Human Rights Commission adopting the Final Decision and Supplemental Final Decision on Damages and Attorney’s Fees of the Chief Administrative Law Judge. The Supreme Court held that the Circuit Judge had abused his discretion in reversing the findings of the Commission that the Respondent had discriminated on the basis of race against Mr. Armstead. The Chief Administrative Law Judge concluded that Federal Express’s decision to terminate Mr. Armstead had been motivated, in whole or in part, by racial animus. The Chief Administrative Law Judge determined that although the Respondent had rehired the Complainant with back pay and benefits, that he was nevertheless entitled to make whole remedies under the West Virginia Human Rights Act, including interest on back pay, incidental damages, economic cost incurred by Mr. Armstead as a result of his early withdrawal of his 501(k) account, and attorney fees and costs totaling \$82,142.10. This is similar to the United States Supreme Court holding in a Title VII case that a retaliation claim is not barred when the employer reinstates an employee with back pay. Burlington Northern & Santa Fe Ry. v. White, 547 U.S. 1053, 126 S. Ct. 2405, 2417-2418 (2006).

Mr. Armstead, an African-American male, works for Federal Express Corporation at the Morgantown Station as a courier. On the morning of September 27, 2004, Mr. Armstead and Mr. Hammerquist, a sorter, had a verbal argument in the sort area. Mr. Hammerquist complained to Mr. Wills, the Station Manager, that Mr. Armstead had used the "F" word several times toward him. After conducting an investigation of the complaints of Mr. Hammerquist against Mr. Armstead and Mr. Armstead against Mr. Hammerquist resulting from their verbal exchange, Mr. Wills made the decision to issue Mr. Armstead a warning letter finding that he was at fault. The decision was based upon the investigation he conducted, a review of Mr. Armstead's work history and after complaints of Mr. Hammerquist against Mr. Armstead and Mr. Armstead against Mr. Hammerquist resulting from their verbal exchange, Mr. Wills made the decision to issue Mr. Armstead a warning letter finding that he was at fault. The decision was based upon the investigation he conducted, a review of Mr. Armstead's work history and after consulting with his supervisor, Mr. Snyder, and Ms. Lis, a Senior Human Resources Representative for Federal Express Corporation. Prior to September 27, 2004 it had been eleven years since Mr. Armstead had received a warning letter for using profanity or engaging in other conduct related behavior.

Mr. Armstead appealed the September 29, 2004 warning letter through the Respondent's internal hearing process and a telephone conference was conducted by Mr. Richard Connolly, the Managing Director for Federal Express Three Rivers District. Mr. Connolly had the authority to uphold, overturn or modify the decision. During the telephone call, Mr. Armstead attempted to explain other things going on in his life at the time; such as health problems both he and his wife were experiencing, that may have contributed to his reaction; but, Mr. Connolly kept interrupting him and requesting that he speak only about the incident with Mr. Hammerquist. On October 18, 2004, Mr. Connolly notified Mr. Snyder by letter that he was "modifying management's decision" and terminating Mr. Armstead's employment. Mr. Armstead was given the letter the following day. Mr. Armstead hired an attorney and filed a complaint with the West Virginia Human Rights Commission. The second level of review under Respondent's hearing procedure is suspended while the EEO complaint is investigated. Respondent's investigation found no evidence to support Mr. Armstead's allegations of race discrimination at the Morgantown Station. Thereafter, on January 31, 2005, the second level of Respondent's review of Mr. Armstead's appeal resulted in Tom Lynch, Vice President, Central Region, Federal Express Corporation reinstating Mr. Armstead with full back pay and benefits for the period of time he was terminated.

The Chief Administrative Law Judge concluded that Mr. Armstead had proven by a preponderance of the evidence that the reasons offered for termination of Mr. Armstead by Mr. Connolly was pretext for racially discriminatory animus toward Mr. Armstead. At Public Hearing Mr. Connolly stated that he terminated Mr. Armstead because he posed a “work place violence threat”. Mr. St. Martin, the manager who investigated Mr. Armstead’s EEO complaint could find no evidence to support Mr. Connolly’s position that Mr. Armstead posed a “work place violence threat”. Mr. Connolly reached his conclusion without contacting anyone at the Morgantown Station to determine if Mr. Armstead posed such a risk. Mr. Wills never stated that he viewed Mr. Armstead as a work place violence threat. None of the witnesses to the September 27, 2004 incident indicated that any threats were made including Mr. Hammerquist, who made the complaint. All of Mr. Armstead’s warning letters were related to his lack of professional behavior toward other employees by use of inappropriate language, and leaving packages in the wrong places, and not because of violent or threatening behavior on the job. There was no evidence in the record that Mr. Armstead ever threatened anyone at the job site with bodily harm and he did not on September 27, 2004. Respondent’s policy suggests that normally an employee will not be terminated with less than three notices of deficiency in a twelve month period. Ms. Lis who had originally recommended the warning letter expressed the concern to Mr. Connolly about the long period of time between warning letters at the time Mr. Connolly decided to terminate Mr. Armstead. Therefore, the Chief Administrative Law Judge determined that Mr. Connolly’s decision that Mr. Armstead posed a “work place violence threat” was not credible.

Further evidence suggesting that racial animus was present in the decision of Mr. Connolly to terminate Mr. Armstead also was enumerated by the Chief Administrative Law Judge. In the Executive Summary in which Mr. Connolly set forth the reasons for his decision, he relied upon counseling in Mr. Armstead’s file, from June 23, 1993, in which he was instructed to be careful about what he said on the job about race and hiring selections performed by Federal Express Corporation. Prior to Mr. Armstead’s case, Mr. Connolly had never increased disciplinary action against an employee within the process from a warning letter to a termination. Mr. Connolly handles 35-40 such appeals per year. As of the date of the Public Hearing, Mr. Wills, who is an African American male and station supervisor at the Morgantown Station, had issued only two disciplinary decisions, each of which Mr. Connolly modified upwards. Finally, the Chief Administrative Law Judge examined other instances of Mr. Connolly referring white employees to Federal Express Corporation’s People Help program for anger management. Ms. Roger’s, a white employee, had a history which included throwing a package, having an accident and striking a fixed object and unprofessional behavior. Mr. Connolly upheld the warning letter in the appeal without terminating Ms. Rogers. Federal Express Corporation had terminated Brooke Heyel, a white employee because of chronic deficiency, the most recent conduct behaving hysterically, using profanity and acting

unprofessionally. Mr. Connolly reversed her termination and referred her to People Help, in part because her behavior was related to the death of her grandmother. The Chief Administrative Law Judge concluded therefore, that Mr. Armstead had been treated disparately from white employees because of his race when Mr. Connolly modified his warning letter to termination. In overturning the Commission's Final Decisions and Orders, the Circuit Court ruled there was no substantial evidence to support the Chief Administrative Law Judge's decision which was clearly wrong. The Opinion stated that that Mr. Armstead had not proven that he was similarly situated to the white employees. The Supreme Court of Appeals of West Virginia, in its Memorandum Decision overturned on appeal the Circuit Court of Kanawha County Final Order and reinstated the Final Order of the West Virginia Human Rights Commission adopting the Final Decision and Supplemental Final Decision on Damages and Attorney's Fees of the Chief Administrative Law Judge.

### **Final Decisions Available Online**

The Judges' Final Decisions are available on the Commission's website. This feature provides an easy way to quickly refer to decisions by date, Complainant's name, and/or Respondent's name.

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

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## GOALS AND CONCLUSION

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

The Commission's goals for **Fiscal Year 2011-2012** include the following:

- ◆ Providing a continued, ongoing variety of training to the Commissioners and all staff, i.e., changes in the workplace, creative writing, policy and procedure expectations as required by the Dept. of Health and Human Services, etc.
- ◆ In collaboration with the EEOC and the Civil Rights Division of the Attorney General's office conduct additional training for investigative staff Commissioners including City Commissions.
- ◆ Reorganize the Commission to better serve the citizens of West Virginia.
- ◆ Providing more extensive and innovative training sessions to educate businesses regarding discrimination law in housing, public accommodations and employment.
- ◆ Continue the Commission's mission to eradicate discrimination and continue to improve its services to the citizens of West Virginia by expanding Community Outreach to include additional Advocacy Groups.
- ◆ Expanding the Outreach program by completing the series of "My Rights" Coloring Books as an early childhood education introduction to Human Rights and the Human Rights Commission services and procedures.
- ◆ 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.

## **Fiscal Year 2011-2012 Goals cont.**

- ◆ **Maximizing the use of Alternative Dispute Resolution Programs, which includes State Bar Mediation Training.**
- ◆ **Creating a new website that will be more professional, effective and user friendly.**
- ◆ **Research and implement a new case tracking system that will differentiate additional statistical categories in response to our constituents.**
- ◆ **In a collaborative effort with the Civil Rights Division of the Attorney General's Office, update the intake forms for employment, public accommodations and housing complaint packets.**
- ◆ **Update and modernize all of the Commission's brochures given out during outreach and mailed in all complaint packets.**
- ◆ **Continue efforts to amend the Promulgated Rules and Regulations governing the Fair Housing Act, by the inclusion of assistance animals in conformity with the U.S. Department of Housing and Urban Development.**
- ◆ **Expand the Housing Investigation Unit by adding an additional investigator and secretary in conformity with the U.S. Department of Housing and Urban Development's guidelines.**
- ◆ **Provide training and outreach to City of Weirton Human Rights Commission's new 12 Member Board.**
- ◆ **Organize and complete the Commission's 50th Year Celebration by December 2011.**
- ◆ **Continue and organize an upgraded Civil Rights Day for February 2012.**
- ◆ **In a collaborative effort, research and develop a new Mission Statement for the West Virginia Human Rights Commission.**
- ◆ **Plan and implement the annual Fair Housing Summit/Seminar of 2012.**
- ◆ **Replace outdated computers, monitors, printers and copiers.**

**This concludes the Annual Report for Fiscal Year 2010-2011.**



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

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

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