



**WEST VIRGINIA HUMAN RIGHTS COMMISSION
FISCAL YEAR 2002-2003
ANNUAL REPORT
1321 PLAZA EAST, 108A
CHARLESTON, WEST VIRGINIA 25301-1400**

**IVIN B. LEE
EXECUTIVE DIRECTOR**



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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**Bob Wise
Governor**

**Ivin B. Lee
Executive Director**

December 2003

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

Members of
The West Virginia Legislature

Dear Governor Wise and Members:

It is with pleasure that I present to you the 2002-2003 Annual Report which documents a year of the many activities of the West Virginia Human Rights Commission. This report will provide you with information on the past year's activities and outline future programs which are designed to ensure the Commission not only meets, but exceeds its mission.

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

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

Respectfully submitted,

A handwritten signature in cursive script that reads "Ivin B. Lee".

**IVIN B. LEE
Executive Director**

West Virginia Human Rights Commission 2002-2003 Annual Report

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THE COMMISSIONERS



Lew Tyree, Chair
Kanawha County



Charlene Marshall, Vice Chair
Monongalia County



Joan Browning
Greenbrier County



Marion J. Capehart
McDowell County



Kenneth Gilbert
Wood County



Betsy Haught
Marion County



Wendy Radcliff
Kanawha County



H.R. Whittington
Kanawha County



William W. Williams
Logan County



Ivin B. Lee
Executive Director
West Virginia Human Rights Commission

MY VISION

THE COMMISSION'S STAFF WILL CONTINUE TO PROCESS AND BRING CASES TO A TIMELY CLOSURE WHILE ENSURING QUALITY INVESTIGATIONS AND THE PROTECTION OF PROCEDURAL AND SUBSTANTIVE DUE PROCESS RIGHTS. IN SO DOING, I BELIEVE THAT THE PEOPLE OF THIS GREAT STATE WILL BE WELL SERVED.

EDUCATION IS THE KEY TO THE ELIMINATION OF ALL FORMS OF DISCRIMINATION BECAUSE EDUCATION PROMOTES BETTER PUBLIC AWARENESS AND TOLERANCE OF THE MANY DIVERSE CULTURES, RACIAL, ETHNIC AND RELIGIOUS GROUPS THAT MAKE UP WEST VIRGINIA. FURTHERMORE, THE VERY FOUNDATION UPON WHICH THIS STATE WAS FOUNDED SUPPORTS THE BELIEF THAT INDIVIDUALS SHOULD NOT BE DISCRIMINATED AGAINST IN EMPLOYMENT, PLACES OF PUBLIC ACCOMMODATIONS OR HOUSING BECAUSE OF THEIR RACE, RELIGION, COLOR, NATIONAL ORIGIN, ANCESTRY SEX, AGE (40 OR ABOVE), BLINDNESS OR DISABILITY, AND IN HOUSING—FAMILIAL STATUS.

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

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

IVIN B. LEE
EXECUTIVE DIRECTOR

THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

MISSION STATEMENT

The West Virginia Human Rights Commission will encourage and endeavor to bring about respect, tolerance and mutual understanding among all citizens of West Virginia, regardless of their race, religious persuasion, color, national origin, ancestry, sex, age (40 or above), blindness or disability. The Commission will administer and ensure adherence to, through education, investigation, mediation and adjudication, the Human Rights Act, which prohibits discrimination in employment, housing and places of public accommodation.



DECLARATION OF POLICY

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

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

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

and fundamental freedom (the right to live where one chooses).

Specifically, the West Virginia Human Rights Act prohibits discrimination by any employer employing 12 or more persons within the state for twenty (20) or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: Provided, That such terms shall not be taken, understood, or construed to include a private club, based on race, color, religion, national origin, ancestry, sex, age (40 and above), blindness or disability in the selection, discharge, discipline or other terms and conditions of employment. The Act also prohibits any advertisement of employment that indicates any preference, limitation, specification or discrimination based on race, religion, color, national origin, ancestry, sex, age, blindness or disability. Lastly, it is unlawful under the Act to retaliate or discriminate in any manner against a person because the person has opposed a practice declared unlawful by this Act or because the person has made or filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing concerning an unlawful practice under the Act.

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

HISTORY OF THE COMMISSION

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

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

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

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

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

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

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

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

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

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

Administrative Law Judges



Phyllis Carter



Robert Wilson



Elizabeth Blair

OUR STAFF



Richard Ashwell
Investigator



Kenneth Bailey
Mail Runner



George Bearfield
Investigator



Yodora Booth
Investigator



Linda Bowers
Investigator



Joyce Brown
Accounting Technician



Sally Brown
Investigator



Leona Chupick
Office Assistant



Paul W. Cook
Information Systems Coordinator



David Gillespie
Investigator



Paul Hamilton
Investigator



Jackie Heath
Investigator

OUR STAFF



James L. Johnson
Investigator



Joyce Knotts
Secretary



William D. Mahan
Supervisor



Wilda McGill
Office Assistant



Robin O'Neal
Secretary



Lisa Gist
Office Assistant



Don Raynes
Supervisor



Deborah Robinson
Administrative Services Assistant



Carolyn Smith
Investigator



Tausha Stigall
Investigator



Lisa Turley
Office Assisnant



Monia Turley
Secretary

West Virginia Human Rights Commission



Community Outreach

Civil Rights Day



The Honorees and Participants of the 2003 Civil Rights Day

In February 2003, the West Virginia Human Rights Commission honored the leaders of the civil rights movement within West Virginia. An awards banquet was held at the Charleston Job Corps Center with Governor Bob Wise as one of the guest speakers. Each of the honorees were presented with a special medallion that commemorated their work and achievements in the early days of the West Virginia civil rights movement.

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

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

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



The Governor's Youth Advisory Board with Ms. Thomaine Troisi, in front of the Native American Burial Mound at Shawnee State Park in InSTITUTE, WV.

In May 2003, the Governor's Youth Advisory Board met in InSTITUTE, WV with Thomasine Troisi, who gave a presentation about Native American Culture. Ms. Troisi, herself a Native American, conducted a seminar to the Youth Board comparing the problems and life-styles of contemporary Native Americans. The Youth Board members then discussed the similarities of the social problems that exist within their own communities with that of the Native American community. The Youth Board Members concluded that while differences exist among various cultures, all suffer from the same basic social problems.

2003 LAW DAY AT THE WV CAPITOL COMPLEX



Investigators James L. Johnson and Carolyn Smith, maintain the West Virginia Human Rights Commission Information Table on Law Day, May 1st, at the Capitol Complex. Law Day at the Capitol Complex is an annual event where state and local agencies are given the opportunity to distribute information about available services to the general public. The West Virginia Human Rights Commission is one of many state and local agencies participating in this annual event.

THE UPWARD BOUND PROGRAM

Ivin Lee, WVHRC Executive Director, Don Raynes, WVHRC Director of Operations, and other members of the WVHRC Investigative Staff, have participated in the Upward Bound Program operated by several colleges and universities throughout West Virginia. The Upward Bound Program is a Federally funded program designed to prepare high school students for college and/or postsecondary education. The Upward Bound Program is a year-round program that specifically targets first generation (meaning that neither parent has a college degree) and/or low-income students. This program conducts tutoring sessions in schools, Saturday Challenge Sessions and a six week summer residential program at colleges and universities throughout the state. The goal of this program is to strengthen the skills and competencies needed to succeed in postsecondary education.

THE CHARLESTON JOB CORPS CENTER

The West Virginia Human Rights Commission has continued its close association with the Charleston Job Corps Center. As in past years, the Commission's Staff has continued its participation in various programs with the students at the Job Corps Center. Over the past year (2002-2003) the Commission has given student interns the opportunity to work at the Commission. The internships last a period of several weeks and allows students to gain valuable experience in a "real world" office working environment.

THE NATIONAL FEDERATION OF THE BLIND

Investigator Tausha Stigall has represented the West Virginia Human Rights Commission as the Commission's liason with the West Virginia Chapter of the National Federation of the Blind. Ms. Stigall attends the meetings of the Federation and offers the Commission's assistance in the various programs of the National Federation of the Blind. Recently the Commission has translated the various documents and literature of the WVHRC into braille.

GOODWILL INDUSTRIES OF THE KANAWHA VALLEY

Executive Director Ivin Lee, Director of Operations, Don Raynes and members of the Invesitgative Staff have presented seminars on the aspects of non-discriminatory practices to the students of Goodwill Industries. Goodwill Industries maintains a work training program with the object of training persons of special needs in various occupations. The ultimate goal of Goodwill Industries is to provide its students with employable skills which will lead to independent living. The West Virginia Human Rights Commission has assisted Goodwill Industries in providing information to the students in the area of discriminatory and non-discriminatory practices in employment.

The West Virginia Alliance of Human Rights Agencies

MISSION STATEMENT

The West Virginia Human Rights Alliance is an interaction of human rights agencies and advocates. The Alliance will network throughout the State of West Virginia to ensure better communications and cooperation in order to further the causes of tolerance, understanding and equality among the citizens of West Virginia.

Members of the Alliance

Human Rights Commissions:

Beckley
Charleston
Huntington
Morgantown
Weirton
Wheeling
*

ADVOCATES:

American Civil Liberties Union
United States Housing & Urban Development
NAACP
The West Virginia Advocates
*

For more information, please contact:

William D. Mahan
(304) 558-2616
Toll Free: 1-888-676-5546
1321 Plaza East Suite 108A
Charleston, West Virginia 23501

West Virginia Human Rights Commission



Investigative and Legal Statistical Information

THE STEPS IN THE COMPLAINT PROCESS

Step 1

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

Step 2

After all the facts have been examined, an investigator makes a recommendation as to a finding. The finding will either be (1) there is not enough evidence to support the allegation(s) of discrimination (no probable cause) or (2) there are reasons to believe that discrimination may have occurred (probable cause).

Step 3

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

Step 4

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

Step 5

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

AN OVERVIEW OF INVESTIGATION AND COMPLIANCE PERFORMANCE

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

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

STEP ONE INTAKE

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

STEP TWO INVESTIGATIVE PROCESS

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

Newly received position statements are

brought to a weekly "triage" meeting, along with the original complaint. At this meeting, the assigned investigator, the investigator's supervisor, the Intake Officer and an attorney from the Civil Rights Division of the Attorney General's Office review the charge, position statement and all relevant materials submitted by all parties. Triage ensures that issues have been properly identified and allows for early disposition of urgent cases and promotes resolution of cases which require minimal investigation.

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

If at this point a rebuttal to the position statement from the complainant has not been received, the investigator must obtain one. It is helpful for the respondent to provide supporting documentation of its position.

To reach a finding of probable cause, evidence must be provided by the complainant or developed by investigation showing the position statement to be a pretext for illegal discrimination. Additionally, in disparate-treatment allegations, the complainant's membership in one of the protected categories must be motivating in the act of harm. Where motive is not present, evidence must establish a disproportionate, adverse impact upon the protected category of an otherwise neutral policy or procedure.

The WV HRC investigative staff is trained in investigative techniques, theories of

discrimination and associated formulas to determine if such evidence exists. The investigator's role is not to "prove the case" for either the complainant or respondent. It is to simply identify, obtain and evaluate evidence which will allow the investigator to write a recommendation of whether probable cause exists to show that a possible violation of the West Virginia Human Rights Act has occurred.

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

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

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

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

First, settlement may be reached.

At the Pre-hearing stage, the cause determination stands, but a settlement agreement between the parties may avert a hearing.

Mediation may be ordered for cases determined to have a likelihood of successful resolution by this process.

If mediation fails, the case continues to a hearing.

Finally, the complainant may choose to withdraw the case to circuit court. This ends the Commission's involvement in the matter.

STEP THREE A HEARING IS HELD.

If a hearing is held, evidence will be presented before an Administrative Law Judge who will render a decision.

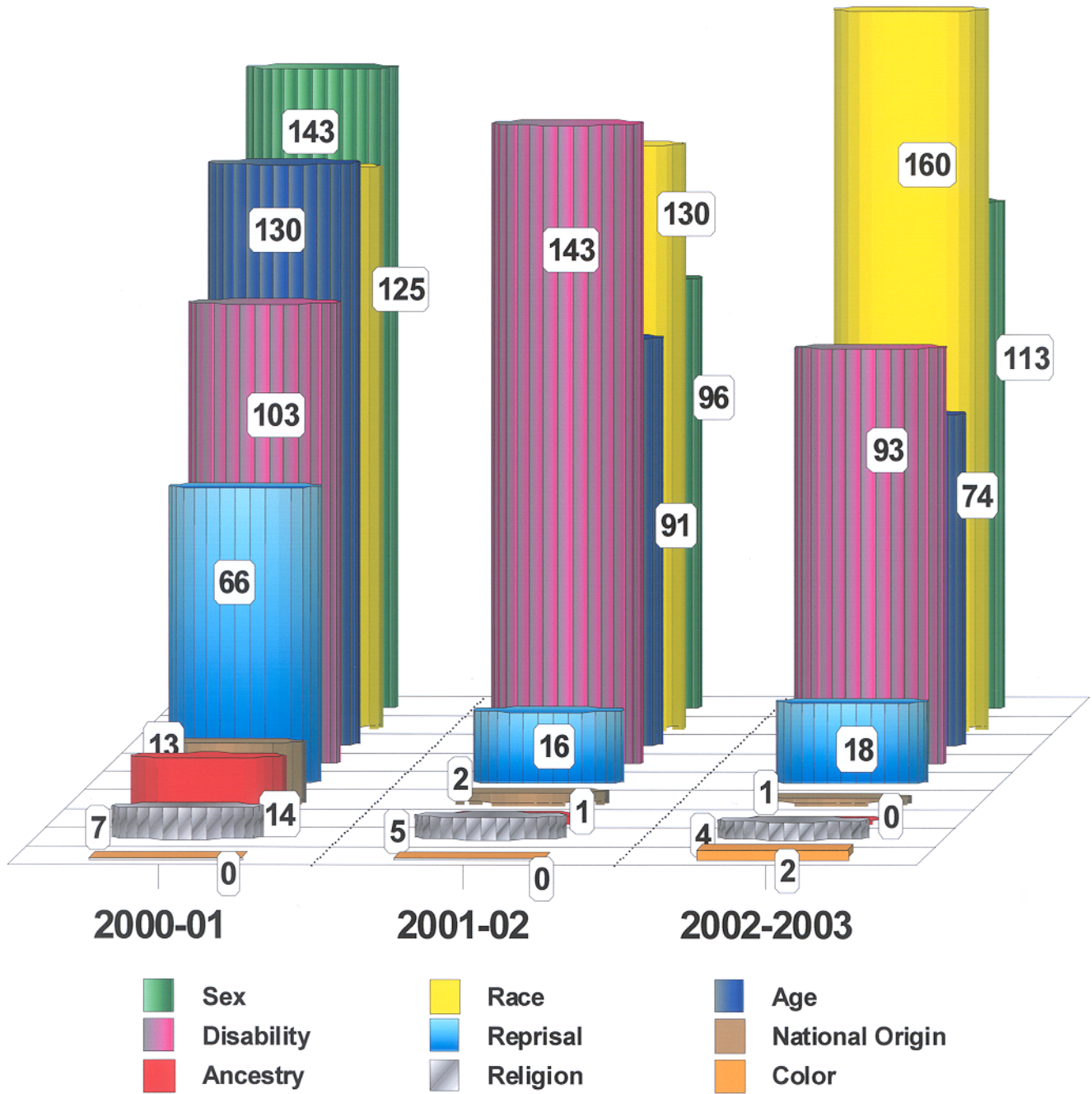
The judge's decision may be appealed to the West Virginia Human Rights Commission Commissioners. In turn, the Commissioners' decision may be appealed to the West Virginia Supreme Court of Appeals or to the Kanawha County Circuit Court. The Kanawha County Circuit Court may be utilized only if the Commission has awarded damages in excess of \$5,000.00 or back pay in excess of \$30,000.00, or by agreement of the parties. Cases on appeal to the courts remain on the active docket until the court issues its determination.



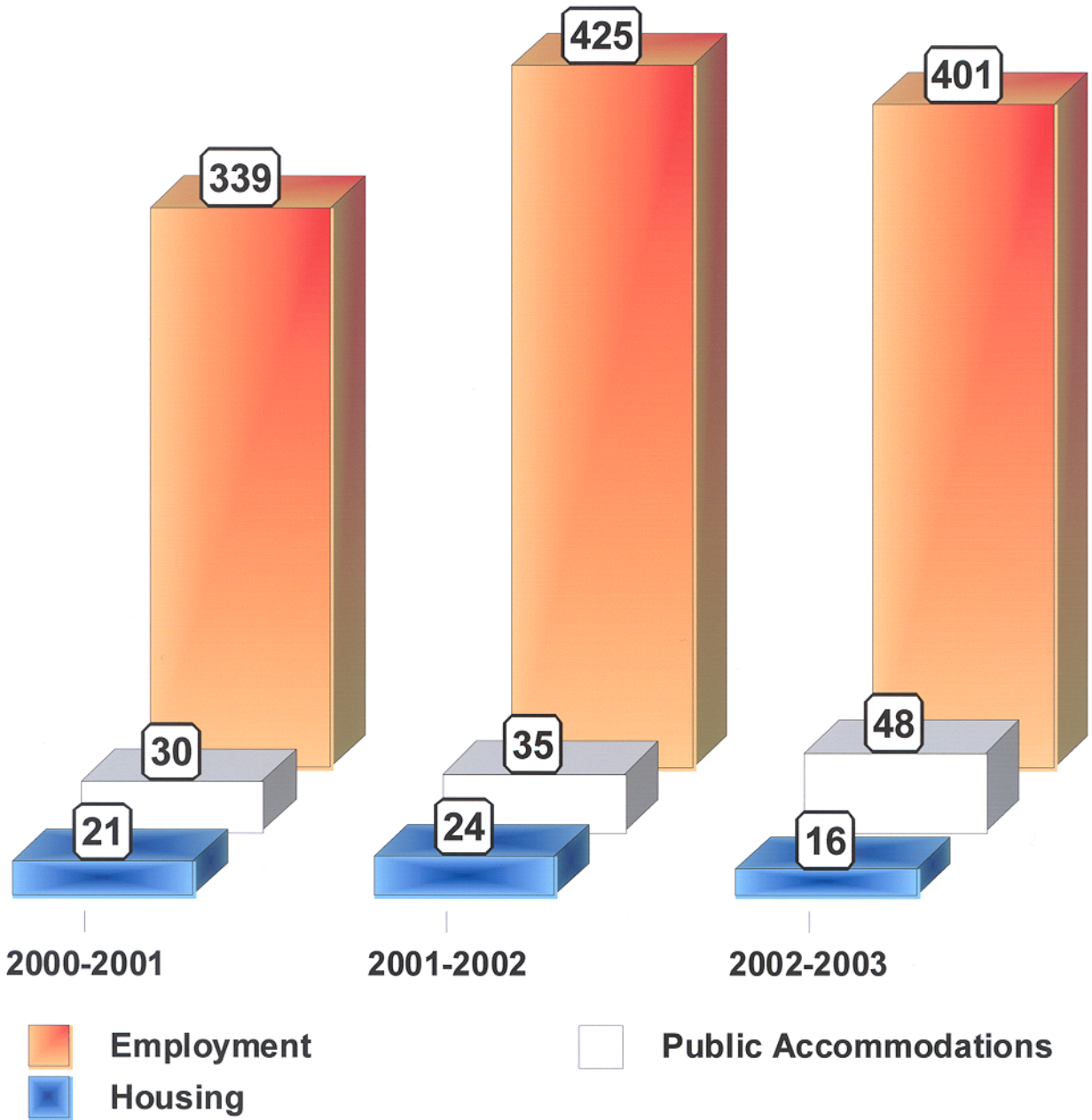
Complaints Filed per County for the Fiscal Year 2002 -2003

COUNTY	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	COUNTY	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Barbour	2	1	0	0	0	Mineral	1	2	5	4	1
Berkeley	27	21	19	9	9	Mingo	6	5	5	7	6
Boone	4	1	2	4	2	Monongalia	16	13	11	25	17
Braxton	2	4	1	2	0	Monroe	0	0	0	1	0
Brooke	0	0	0	2	1	Morgan	0	1	1	2	0
Cabell	24	24	38	37	46	Nicholas	4	5	1	3	4
Calhoun	1	0	0	1	0	Ohio	6	5	11	6	6
Clay	1	0	0	1	0	Pendleton	0	2	0	0	0
Doddridge	0	2	0	0	0	Pleasants	0	0	1	0	1
Fayette	8	11	1	8	16	Pocahontas	0	3	1	1	1
Gilmer	0	1	5	1	0	Preston	1	0	2	2	2
Grant	3	1	1	2	2	Putnam	11	11	9	10	8
Greenbrier	5	11	2	4	8	Raleigh	39	16	21	28	16
Hampshire	0	1	8	1	0	Randolph	8	8	8	8	10
Hancock	8	7	0	7	4	Ritchie	0	0	1	2	0
Hardy	5	7	2	8	5	Roane	0	0	8	3	3
Harrison	14	16	18	9	15	Summers	1	2	0	0	0
Jackson	8	1	5	7	7	Taylor	1	2	1	1	1
Jefferson	4	12	8	11	16	Tucker	0	0	1	1	1
Kanawha	145	152	136	182	175	Tyler	0	1	1	0	0
Lewis	0	2	2	3	2	Upshur	2	1	0	1	4
Lincoln	1	0	0	1	2	Wayne	3	0	3	5	3
Logan	8	7	8	9	6	Webster	0	2	0	0	1
McDowell	3	9	1	4	4	Wetzel	2	0	1	1	3
Marion	10	11	5	11	9	Wirt	0	0	0	1	0
Marshall	2	3	2	2	0	Wood	17	26	13	19	17
Mason	4	5	4	2	7	Wyoming	0	4	0	3	1
Mercer	16	9	10	22	23	TOTALS	423	427	390	484	465

Three Year History of Complaints Filed By Protected Classes

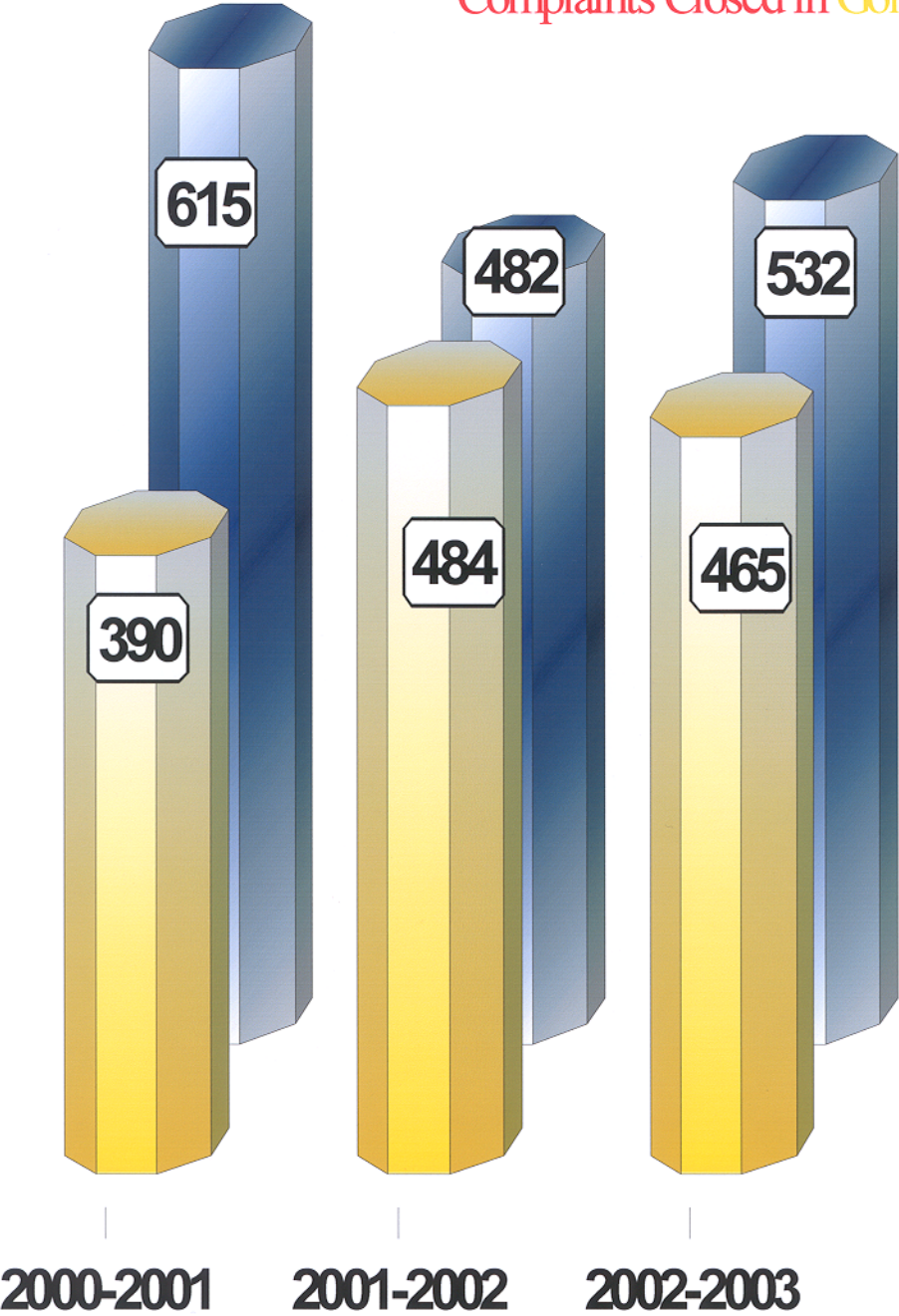


New Cases Filed Over a Three Year Period



Three Year History of Complaints Filed and Closed

Complaints Filed in Blue
Complaints Closed in Gold



Early Dispute Resolution Programs

2002-2003 Mediation Project

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

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

Mediation may be voluntarily requested by the parties, or ordered by an administrative law judge or Executive Director pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-4.15. When a charge is filed and a probable-cause determination is found through investigation, an administrative law judge will set the matter for a public hearing. Previously, it was felt that only those cases set for hearing which could possibly benefit from mediation were so ordered. However, the Commission's project has grown to an extent that its present goal is to schedule every case docketed for public hearing to Mediation.

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

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

Because parties to the cases and mediators do not all reside close to the Commission's locale, many cases are handled at mediators' offices throughout the state. This has saved time and money for the participants because previously all cases were mediated in Charleston. With this new approach, the Commission has been able to utilize more mediators around the state and less travel is involved on the part of the participants.

Requests for information concerning the project may be directed to Lisa Turley, Mediation Coordinator at the Commission's address and phone numbers or by e-mail: lisaturley@wvdhhr.org.



The Pre-determination Conciliation Program

What is the 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 process involves a trained Conciliator who is employed by the West Virginia Human Rights Commission. The Conciliator acts as a facilitator to help the participants arrive at a negotiated settlement resolution. The decision to Conciliate can be voluntarily requested by any party involved in the complaint. The West Virginia Human Rights Commission may also request the parties to participate in a voluntary conciliation.

When does conciliation occur?

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-Conciliation Program and inquire if the parties would be interested in Conciliation negotiations.

What are the advantages of pre-determination conciliation?

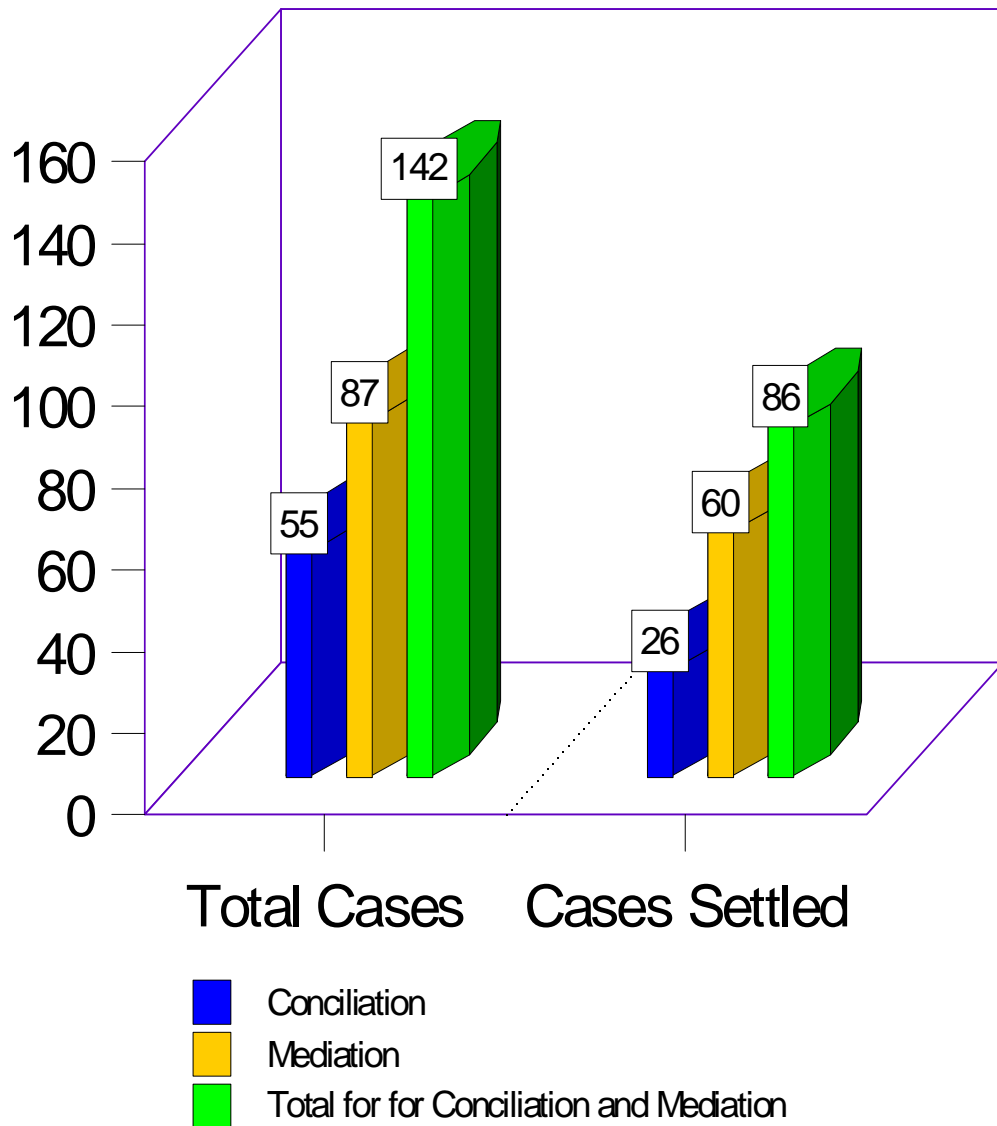
Pre-Determination Conciliation is a fair and confidential process during which a mutually acceptable agreement may be reached, thereby avoiding time consuming, costly investigation and litigation. This program is a free service offered by the Commission.

What happens if a settlement is not reached?

If the charge is not resolved, the case is returned to the Investigative Unit for the completion of the investigation. Upon completion of the investigation, the Commission will issue a determination of either No Probable Cause or Probable Cause.

If the parties are interested in participating in a Pre-Determination Conciliation, please contact the West Virginia Human Rights Commission at (304) 558-2616.

Early Dispute Resolution Activity For 2002-2003



During the Fiscal Year 2002-2003:

A total of \$58,522.45 was received by complainants as a result of case settlements through the Conciliation Program.

*

The Mediation Program yielded a total of \$420,977.45 in case settlements for the complainants.

West Virginia Human Rights Commission



Selected Case Summaries

SELECTED CASE SUMMARIES OF FINAL ORDERS AND DECISIONS
OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
FOR THE FISCAL YEAR 2002-2003

A Final Order of the West Virginia Human Rights Commission in the matter of Elizabeth S. Billups v. Sinclair Communications, Inc. and Bob Franklin, in his individual capacity; Docket No. ES-166-99.

The Commission sustained the Final Decision of the Administrative Law Judge with a minor modification in the calculation of back pay. The Complainant had worked for WVAH television for eight years and was terminated following the acquisition of WVAH television by Sinclair Communications, Inc. The Respondent, Sinclair Communications, Inc., acquired both WCHS television and WVAH television stations in 1998. At that time, Respondent Sinclair Communications, Inc. consolidated operations, hired General Manager Bob Franklin, and terminated the Complainant from her position as Manager of the Business Division. The Commission reasoned that there was sufficient evidence to support the ALJ's finding that the Respondent's shifting explanations for their decision not to place the Complainant in the General Manager position were pretextual, and that the Complainant was not given any consideration for that position. The ALJ noted that Mr. Franklin's consideration of the Complainant's credentials was superficial, and that he also had made a telling reference to her as a "Bookkeeper", when in fact she was an Accountant. The Commission also affirmed the ALJ's finding that, notwithstanding Mr. Franklin's gender bias in failing to consider the Complainant for that position, Mr. Fink, the successful applicant for that position, would have been chosen anyway due to his having an MBA and CPA license. The Commission further upheld the ALJ's factual finding that the Complainant would not have been terminated from her position, but rather would have been offered a position lower down in the Management structure as was done with other male employees of the two stations when only one position was available in the consolidation, had it not been for her gender. The Commission further upheld the decision of the ALJ that the complaint was sufficient to apprise the Respondent that "on or about July 20, 1998, I was informed by Bob Franklin, Sinclair's General Manager over both stations, that my employment as Business Manager was being terminated effective immediately, since only one Business Manager position overseeing business operations for both stations was necessary. I believe I was not chosen as Business Manager because of my sex,

female... I request that I be awarded reinstatement to a position, back pay, incidental damages, and Attorney's fees and costs." Both the ALJ and the Commission agreed that this complaint was sufficient to state a cause of action as a termination case, as well as a failure to hire for the position of Business Manager at the combined stations.

FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE
IN THE MATTER OF
KIMBERLY DOMBROSKI v. WHEELING HOSPITAL;
DOCKET NO. ED-16-01

Complainant was a Registered Nurse with profound sensory neuro hearing loss, and the parties stipulated that she was a qualified individual with a disability due to her hearing impairment, and that Respondent, Wheeling Hospital, terminated Ms. Dombroski on August 11, 2003. The Administrative Law Judge found that Complainant was hired on November 28, 1994, that she worked in the CV Stepdown Unit, and that her Supervisor was informed that Complainant was not answering patient call bells or the telephone and was avoiding Physicians. The Supervisor observed that she could not hear patient bells or the telephone ringing. The Supervisor asked whether Complainant wanted an amplifier for the telephone, and Complainant indicated that she did not want it. When there were only two patients in CV Stepdown, it would be staffed by only one Nurse, and patient care could be compromised if Complainant could not hear the pump alarm, call bell or the telephone ringing. In February, 1995, Complainant was hired as a permanent employee and transferred from CV Stepdown to ICU, where she would not have to work alone. Respondent hospital also installed new phones throughout the hospital with a button that increased the volume. Complainant was discharged after admitting to having disconnected the call button of a 90 year old patient on a ventilator and inserting a dead end plug. The patient was found with vomitus over his face and mouth. Complainant stated that she had unplugged the call button because the patient had rang five times in two minutes. Vomitus could

clog the tubing attached to the ventilator causing oxygen to drop resulting in cardiac arrhythmia or the patient could aspirate the vomitus leading to pneumonia. The patient had a history of vomiting. Despite this, Complainant did not seem to appreciate that what she had done was wrong, and she was subsequently terminated. The Administrative Law Judge held that Wheeling Hospital articulated a legitimate non-discriminatory motive for terminating Ms. Dombroski from her employment, and that the reason was not because of her hearing disability and dismissed the complaint with prejudice. The Administrative Law Judge refused to consider the issue of accommodation as it had nothing to do with the termination, and therefore was not timely raised under the statute.

**A FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE
AND FINAL ORDER OF THE COMMISSION IN THE MATTER
OF
HARRIS v. HARRISON COUNTY BOARD OF EDUCATION
DOCKET NO. ES-223-00**

Complainant, Ms. Harris, is a female French Teacher at Bridgeport High and has been employed by the Respondent, Harrison County Board Of Education since 1980. The Administrative Law Judge found that Complainant was discriminated against on the basis of her gender when she was not selected as Assistant Principal at Lincoln High in October, 1999, and a male former Boys' Basketball Coach was selected in her stead. The evidence indicated that the Board Of Education generally accepts the Principal's and Interview Committee's recommendation. The Interview Committee score sheets indicated that Ms. Harris and Mr. Underwood were tied in points. Complainant had a Masters + 30, while Mr. Underwood only had a Masters. Principal Toth indicated that the S.A.T. test scores were a big concern, and that he was aware of Complainant having served as a Facilitator at the Center For Professional Development in areas including S.A.T. - 9 testing format and remediation. Complainant had served as Faculty Senate

Chair at Bridgeport for two terms, handled discipline well, and took students abroad. Although Principal Toth had hired a female Assistant Principal prior to Complainant's application, that individual had credentials far in excess of any of the other applicants, and Dr. Brisbin testified credibly that Principal Toth had expressed concerns for her physical safety in relation to her duties regarding attendance and discipline. Principal Toth's statements indicating a bias against women's ability to handle discipline, his lack of credibility in explaining his assertion that he viewed Mr. Underwood to be as well qualified concerning S.A.T. testing simply by virtue of his being a Teacher and irregularities in the composition of the Interview Committee led the Administrative Law Judge to conclude that Respondent had discriminated against the Complainant on the basis of her gender and ordered the Respondent to instate Complainant in the next available position as an Administrator at the high school or 6 - 12 level and that she be awarded back pay and front pay until that time. The School Board at the time of the hiring decision was composed of five men, one of whom had commented in relation to another personnel decision, that the more experienced woman was not retained because women are "secondary breadwinners". Harrison County Board Of Education employed 21 Principals and Assistant Principals in Grades 6 - 12, of which 20 are men and only one a woman, who had filed a complaint with the West Virginia Human Rights Commission. Two other women had held Assistant Principal positions in Grades 6 - 12, one was Dr. Brisbin and the other Ms. Collins, who had been hired to handle curriculum at a time when the high schools had two Assistant Principals, one for attendance and discipline and another for curriculum. Both Dr. Brisbin and Ms. Collins subsequently took positions in the central office. The Administrative Law Judge recommended that the Commission collect data on a statewide basis concerning the hiring of male Administrators at the Grade 6 - 12 level and whether former Boys' Football and Basketball Coaches are being hired preferentially to other candidates resulting in disparate impact for female certified Administrators. The Commission affirmed the decision of the Administrative Law Judge without change.

**THE FINAL DECISION OF THE ADMINISTRATIVE LAW
JUDGE,
SUPPLEMENTAL FINAL DECISION, DAMAGES AND
ATTORNEYS' FEES AND COSTS, AND FINAL ORDER
OF THE COMMISSION IN THE MATTER OF
HILL v. EAT'N PARK RESTAURANTS, INC.
DOCKET NO. ER-17-00**

Complainant, Mr. Hill, is an African-American who resides in Cassville, West Virginia, and worked nine years for Respondent, Eat'N Park Restaurants, Inc., in Morgantown, West Virginia, when he was constructively discharged from his employment as a Dishwasher on June 22, 1999. The Complainant had been permitted to leave at 4:00 p.m. each day to catch the bus downtown in time to get the last bus to Cassville ten miles distant for nine years. The Administrative Law Judge concluded that Complainant was a member of a protected class, that Respondent took an adverse employment action when Eat'N Park refused to accommodate his schedule after nine years, but accommodated the work schedule of two white employees, when Eat'N Park allowed a racially hostile work environment to exist, even though Mr. Hill complained several times, when Eat'N Park reinstated several other white employees who had walked off the job by allowing them to return to work; but did not allow Mr. Hill to return to work; when Eat'N Park did not stop white employees from calling Mr. Hill "boy" and "nigger", even after Mr. Hill continuously brought this to the attention of Management. The Administrative Law Judge did not credit Respondent's Manager's claim that an investigation had been conducted of the black action figure hung from a rubber band lynching style above Mr. Hill's work station. The Administrative Law Judge found that the reasons advanced by the Respondent for their actions were pretextual, that Complainant had been subjected to working conditions so intolerable that a reasonable person would be compelled to quit, and that he was, therefore, constructively discharged from his employment. Complainant was awarded back pay and ordered reinstated to his position of Dishwasher and awarded incidental damages for the

embarrassment and humiliation he endured in front of customers and other employees. The Administrative Law Judge determined that the Bureau Of Employment Programs' decision had no preclusive effect under the doctrines of collateral estoppel and res judicata as the issue litigated and procedures employed by the circuit courts and the West Virginia Human Rights Commission under the West Virginia Human Rights Act were not substantially similar to those of the Bureau Of Employment Programs. The Commission affirmed the Final Decision of the Administrative Law Judge and the Supplemental Final Decision On Damages And Attorneys' Fees And Costs in its Final Order of the Commission.



THE FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE
IN THE MATTER OF
FAREYDOON-NEZHAD v. WEST VIRGINIA DIVISION OF
REHABILITATION SERVICES;
EASRANCNOREL-208-99 and ERNORLARP-105-01

Complainant is a female over forty, practices the Baha'i faith, and her national origin is Pakistan. Complainant possessed a Library Science degree and M.A. in Library Science from the University of Karachi, and obtained her Masters in Library Science from the University of Kentucky in 1988. She was Librarian of Pahlavi University in Shiron, Iran from 1964 - 1968, at Education Library, Edmonton, Canada from 1977 - 1979, Librarian Technician I at University of Charleston from 1979 - 1980, Library Clerk, II, Library Technician Assistant I and II, and later Librarian II, Assistant Professor and Head of Circulation Department at the James E. Morrow Library at Marshall University, between 1984 - 1995. Effective January 8, 1997, Complainant was appointed provisional original Intermittent Librarian with Respondent, Division of Rehabilitation Services alternating between that position and contract employment through WVARF Goodwill Industries due to an hours worked limit for Intermittent Librarian. In June, 1998, Complainant applied for the full-time Library Assistant position, but Kellie Booton, a Caucasian woman, under forty, from Wayne County, West Virginia got the position. Ms. Booton had not yet graduated from Marshall University with experience as work study, student assistant and full-time temporary employee in the Morrow Library at Marshall University from August, 1994 through June, 1998. The Administrative Law Judge found that Complainant was discriminated against because of her age, national origin and religion, in failing to obtain the full-time Library Assistant position, and was retaliated against when her contract employment through Goodwill Industries was terminated on December 15, 1999. The Administrative Law Judge awarded incidental damages for humiliation, embarrassment, emotional distress, and loss of personal dignity for each complaint, (i.e. failure to hire and retaliatory discharge), reinstatement to the next position available in the Division of Rehabilitation Services Library, back pay and front pay until rehired.



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