



**THE WEST VIRGINIA
HUMAN RIGHTS COMMISSION**

**ANNUAL REPORT
FOR**

FISCAL YEAR 2005

(JULY 1, 2004 THROUGH JUNE 30, 2005)

**IVIN B. LEE
EXECUTIVE DIRECTOR**

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STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**1321 Plaza East
Room 108A
Charleston, WV 25301-1400**

**Joe Manchin III
Governor**

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December 1, 2005

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

Members of The West Virginia State Legislature

Dear Governor Manchin and Members:

It is with pleasure that I present to you the 2004-2005 Annual Report which documents a year of the many activities of the West Virginia Human Rights Commission. This report will provide you with information on the past year's activities and outline future programs which are designed to ensure the Commission not only meets, but exceeds its mission.

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

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

Respectfully submitted,

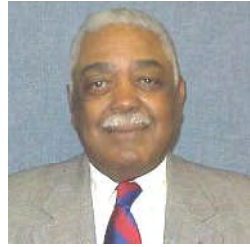
A handwritten signature in blue ink that reads "Ivin B. Lee".

**IVIN B. LEE
Executive Director**

The Commissioners



Charlene Marshall
Chair
Monongalia County



William W. Williams
Vice Chair
Logan County



Joan Browning
Greenbrier County



Marion J. Capehart
McDowell County



Kenneth Gilbert
Wood County



Betsy Haught
Marion County



Lou Tryee
Kanawha County



H. R. Whittington
Kanawha 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.

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 § 5-11A-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



Rick Ashwell
Investigator



William Bailey
Mail Runner



Leola Bateman
Secretary



George Bearfield
Investigator



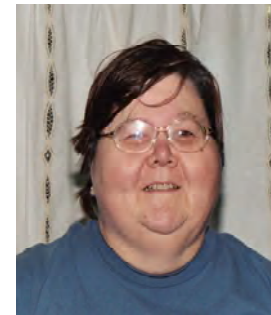
Yodora Booth
Investigator



Linda Bowers
Investigator



Sally Brown
Investigator



Leona Chupick
Office Assistant



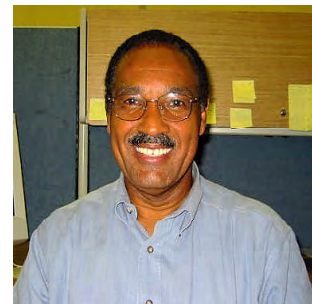
Paul W. Cook
IS Coordinator



Lisa Gist
Office Assistant



Terry Graley
Receptionist



Gene Godfrey
Investigator



Anne Marie Haddy
Paralegal



Paul Hamilton
Investigator



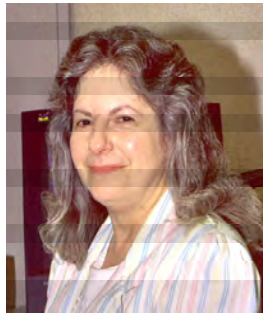
Linville Hawthorne
Investigator



Jackie Heath
Investigator



James L. Johnson
Investigator



Joyce Knotts
Secretary



Wilda McGill
Office Assistant



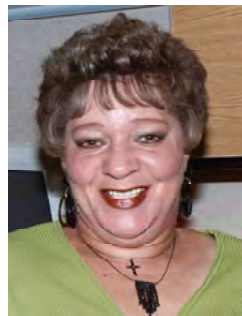
Don Raynes
Director of Operations
Supervisor



Deborah Robinson
Administrative Services
Assistant



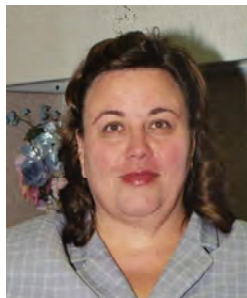
Hope E. Ross
Accounting Technician



Carolyn Smith
Investigator



Tausha Stigall
Investigator



Monia Turley
Secretary

West Virginia Human Rights Commission



Community Outreach

2005 Civil Rights Day Honorees





FROM WHENCE WE CAME

**West Virginia Civil Rights Day
February 24, 2005**



Governor Joe Manchin III

**The 2005 West Virginia
Civil Rights Day Honorees**

PROCLAMATION
by
Governor Joe Manchin III

Whereas, the equality of all members of our society was recognized by our founding fathers and enshrined in our Declaration of Independence as a cornerstone upon whom to build our American Democracy; and,

Whereas, equal rights and opportunities for all citizens is fundamental in the State of West Virginia; denial of such rights strikes at the very foundation of our democracy; and,

Whereas, the struggle to attain the American ideal of equality has been maintained throughout our history and continues today; and,

Whereas, hate and tolerance must be battled in every sector of our society by citizens, institution, and government, with every person having an important role to play; and,

Whereas, key components to the removal of road blocks to equality are dialogue, collaboration and attentive listening to different perspectives; and,

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

Now, Therefore, be it resolved that I, Joe Manchin III, Governor of the State of West Virginia, do hereby proclaim *February 24, 2005*, as:

Civil Rights Day

in West Virginia.

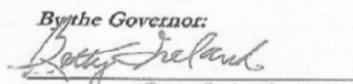
In Witness Whereof, I have here unto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

Done at the Capitol, City of Charleston, State of West Virginia, this the Twenty-eighth day of January, in the year of our Lord, Two Thousand Five and in the One Hundred Forty-second year of the State





Joe Manchin III
Governor

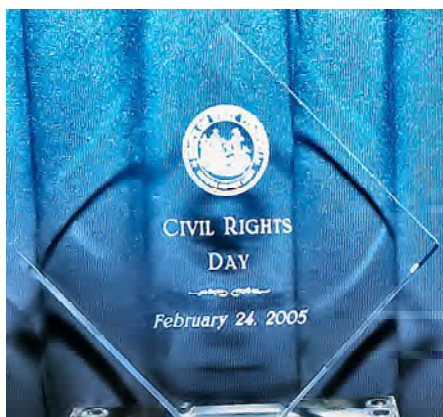
By the Governor:


Betty Ireland
Secretary of State



First Lady Gayle Manchin
reading the
2005 Civil Rights Day Proclamation

On February 24, 2005 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 West Virginia First Lady, Gayle Manchin, 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. This has become an annual event. The 2005 honorees are pictured on the following pages.



**The 2005 Commemorative
Civil Rights Day Plaque
given to each honoree.**

The 2005 West Virginia Civil Rights Day Honorees



**Attorney Willard L. Brown
(Posthumously)**



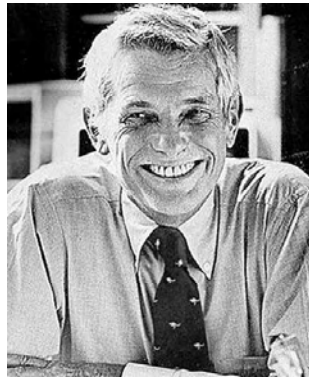
**The Honorable
Herman G. Canady, Jr.**



**Attorney
Harry Jheopart Capehart
(Posthumously)**



Mrs. Elizabeth E. Chilton



**Mr. William E. "Ned" Chilton
(Posthumously)**



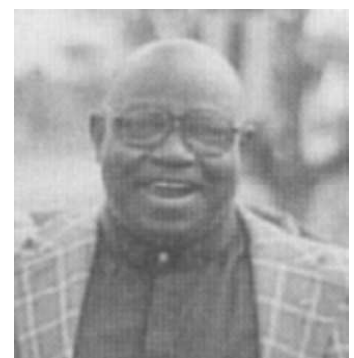
**Mr. Gustavus Werber Cleckley
(Posthumously)**



Mrs. Savannah R. Evans



Ms. Faith Holsaert



Reverend Dr. Idus Jones, Jr.



**Cora Francis Coleman Jones
(Posthumously)**



**The Honorable
A. James Manchin
(Posthumously)**



Dr. Virgil E. Matthews



**Attorney Thomas G. Nutter
(Posthumously)**



**The Reverend
Dr. David Louis Smith
(Posthumously)**



Mrs. Blanche Wade



Dr. John Warner, Jr.



Mr. Richard G. Walker



Mr. William L. Williams, Jr.



**The Reverend
Dr. F. Emerson Wood**

The West Virginia Human Rights Commission



West Virginia Hate Crimes Task Force

The Resolution of the West Virginia Hate Crimes Task Force

The West Virginia Hate Crimes Task Forces is a working group made up of representatives from federal, state, and local law enforcement departments, human rights agencies and other civil rights organizations. The task force is organized under the auspices of the West Virginia Human Rights Commission.

Resolution Creating the Hate Crimes Task Force

I. PREAMBLE

WHEREAS, the West Virginia Legislature, by the enactment of Chapter 61, Article 6, Section 21, has recognized that “all persons within the boundaries of the State of West Virginia have the right to be free from any violence, or intimidation by threat of violence, committed against their persons or property because of their race, color, religion, ancestry, national origin, or sex;” and

WHEREAS, The West Virginia Legislature by the enactment of the West Virginia Human Rights act, Chapter 5, Article 11, Section 3 has recognized that the denial of equal rights to 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, “ and

WHEREAS, The Congress of the United States, in response to growing concern about hate crimes, has enacted Public law 101-275, 28 U.S.C. § 534, which mandates the collection of data “about crimes that manifest evidence of prejudice based on race, religion, or ethnicity;” and

WHEREAS, The West Virginia Human Rights Commission, as one of its powers and duties, is to work cooperatively with other agencies of government, community, and civic organizations and representatives of protected groups “in the promotion and attainment of more harmonious understanding and the equal protection of all laws” of all groups and people;

BE IT RESOLVED THAT the West Virginia Human Rights Commission hereby creates the West Virginia Hate Crimes Task Force.

The Hate Crimes Task Force shall be appointed by the Executive Director of the West Virginia Human Rights Commission. The Task Force shall be comprised of representatives of the West Virginia Human Rights Commission, West Virginia Department of Public Safety, West Virginia Attorney General’s Office/Civil Rights Division, and such other persons and organizations as shall be in a position to assist in carrying out its objectives. The Task Force shall include persons who are members of the groups designated by the state or federal hate crimes legislation, and representatives of organizations who advance the rights of such persons.

The Task Force shall be authorized to meet, work with other groups, individuals and entities, develop strategies, apply for grants on behalf of the Human Rights Commission and other entities, develop and implement programs, produce educational materials, issue reports, and do such other things as shall serve its purposes. The Hate Crimes Task Force shall address itself to hate crimes, defined broadly, including acts of violence or intimidation committed because of race, color, religion, ancestry, national origin, sex, age, blindness, disability, familial status, or ethnicity. The Task Force shall keep the West Virginia Human Rights Commission advised of its activities.

III. Purpose

The purpose of the Task Force shall be:

- a. To assist the West Virginia Department of Public Safety, Uniform Crimes Reporting Division, and other law enforcement agencies, in the implementation of a Hate Crimes Reporting Act;**
- b. To promote and assist in the training of police officers toward improved recognition of, sensitivity to and response to hate crimes;**
- c. To promote public awareness of the problems of hate crimes, to increase public understanding of the devastating impact of hate crimes, both upon its immediate victims and on all others in the community; and to improve public knowledge of the laws, policies and programs designed to combat hate crimes;**
- d. To promote analysis and reporting of the data gathered by the West Virginia Uniform Crime Statistics Reporting Program;**
- e. To make recommendations, if appropriate, to the West Virginia Human Rights Commission, the West Virginia Legislature, the West Virginia Department of Public Safety or other public entities.**

Officers of the West Virginia Hate Crimes Task Force



Ivin B. Lee

**A Message from Executive Director of the
West Virginia Human Rights Commission**

We, at the West Virginia Human Rights Commission, are committed to fighting injustices addressing bias-motivated crimes and other manifestations of intolerance in the State of West Virginia.



**Don Raynes
Chair**



**Brian King
Vice Chair**



**Leola Bateman
Secretary**



WV HATE CRIME TASK FORCE MEMBERS
“A group of many people with a common goal”

WV Human Rights Commission

WV State EEO Office

WV State Police

WV Attorney General

WV Department of Education

WV ADA Coordinator

WV Women’s Commission

**WV Regional Community Policing
Violence**

**WV Coalition Against Domestic
Violence**

Division of Criminal Justice Services

WV Division of Family Services

Child Advocate Office

Charleston Human Rights Commission

Wheeling Human Rights Commission

Federal Bureau of Investigation

U.S. Department of Justice

Department of Administration

Charleston Job Corps

Black Ministerial Alliance

Designated Civil Rights Officers

Division of Juvenile Justice

NAACP

ACLU

Verizon

The West Virginia Hate Crimes Task Force

Mission Statement

The West Virginia Hate Crime Task Force, under the Authority of the West Virginia Human Rights Commission, shall strive to prevent and respond to all forms of biased-motivated crimes. This will be accomplished by responding to incidents, interacting with individuals involved and providing educational issues, to change attitudes.

The Task Force function is to make the State of West Virginia a safer and more tolerant place to live and work.

The West Virginia Hate Crimes Task Force

Remembering the Victims Of Hate Crimes

Who Hears.....We Do

When you look do you turn away?
Do you feel anguish?
Do you feel pain?
Do you feel fear?
Do you feel shame?
Do you ignore what you pretend not to see?
Do you look beyond the face to the problem and seek resolve?
Do you feel the emotions of the victim?
Who is the victim?
The victim that has a face.
A face that has no age.
A face that has no gender.
A face that has no race.
A face that has no religion.
A face that has no lifestyle.
A face that has no ideology.
A face that can be you or me.
The person next door.
The person around the world.
A victim is just that.
A victim is a person.
We all scream.
We all scream in pain.
We all scream for help.
We all scream of injustice or intolerance
We all scream in different voices.
We all scream in different places.
We all scream for different reasons.
We all use our tongues to scream.
We all scream with the same tongue.
But who listens *for* the screams?
Who listens *to* the screams?
Who hears... We do.



**A Sculpture in Remembrance
to the Victims of
Hate Crimes.**

The West Virginia Hate Crimes Task Force

**A Seminar at the Simon Wiesenthal Center
Museum Of Tolerance**

Los Angeles, California

March 2005



The Museum of Tolerance



George Bearfield of the WVHRC, Thomas Lowe, Mt. Hope Police Dept., Larry Nelson, WV Regional Community Policing Insititue, and Wallace Looney, Williamson Police Department.



**The Instructors of the Simon Wiesenthal Center
Museum of Tolerance**

The Purpose of the Conference

Representatives from several agencies involved in monitoring and investigating hate crimes, attended the conference “Strategies Against Hate Crimes and Terrorism: Consensus Building and A Blueprint for Collaborative action,” presented by the National Institutes Against Hate Crimes and Terrorism. The purpose of the National Institutes is: ...to further enhance criminal justice professional’s ability to effectively address hate crimes and the wave of terrorist threats in their communities.

The goal of this conference was to “explore the impact of hate crimes and terrorism on the changing role of modern law enforcement”.

Law Day At The Capitol May 2005



WVHRC staff members, Sally Brown and Leola Bateman helped distribute information at the WVHRC kiosk.

WHRC staff members maintained the West Virginia Human Rights Commission Information Table on Law Day, May 2nd, 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 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 (2004-2005) 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 Job Corps Center has also hosted the Commission in its annual Civil Rights Day and various other activities throughout the year.



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 college bound students (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.

GOODWILL INDUSTRIES OF THE KANAWHA VALLEY

Executive Director Ivin Lee, Director of Operations, Don Raynes and members of the Investigative 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 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. The Commission has translated various documents and literature of the WVHRC into braille.

THE WEST VIRGINIA INDUSTRY LIASON GROUP “WVLIG”

The West Virginia Industry Liason Group, “WVLIG,” is composed of professionals within the Kanawha Valley. The WVILG is modeled after the National Industry Liaison Group which consists of large national companies that reguarly meet and interact with the U.S. Department of Labor, OFCCP and the Equal Employment Opportunity Commission, “EEOC.”

A WVLIG brings together industry and compliance agency representatives to discuss mutual goals. It also provides opportunities for employers to get together two or three times a year to:

- § Network among themselves
- § Compare compliance experiences
- § Share ideas on best practices
- § Deliberate on regulatory changes, new laws, case law developments, and developing trends
- § Gain considerable insight into the enforcement community and the compliance community
- § Enhance the accomplishment of mutual compliance goals.

With the many challenges that confront businesses, their leadership and work force within the State of West Virginia, the concept of “Bringing Together Industry and Compliance Agencies” is not only needed but a concept whose time has come.

The West Virginia Human Rights Commission strongly supports the activities of the WVLIG. Representatives of the WV Human Rights Commission has met with the WLIG to strengthen the concept of “Bringing Together Industry and Compliance Agencies.”

THE WEST VIRGINIA WOMEN'S COMMISSION

Sally Brown, Investigator for the West Virginia Human Rights Commission is the liaison between the Commission and the The West Virginia Women's Commission.



Investigator Sally Brown (center) and WVHRC Commissioners, Charlene Marshall, and Joan Browning, participating at a Women's Commission event.

The West Virginia Women's Commission promotes the status and empowerment of all West Virginia women through advocacy, research, education, and consensus building. The Commission exists to foster women's economic, political, educational, and social development; to ensure their full participation in society; and to recognize their achievements.

The Women's Commission focuses on projects in the broad categories of leadership, legislation, recognition, research, and education. We annually sponsor events for women and girls that teach advocacy, encourage involvement in the legislative process and provide information on educational opportunities for women, including workshops on how to write a grants to secure funding for small businesses. We write and produce literature, pamphlets, booklets and brochures that provide information on such topics as domestic violence, workplace discrimination and eating disorders.

Cultural Diversity Day, Welch Community Hospital Welch, West Virginia

Cultures From Around the Globe



In May 2005, Ivin Lee, Executive Director, and Donald Raynes, Director of Operations of the WVHRC participated in the Cultural Diversity Festival sponsored by Welch Community Hospital, in Welch West Virginia.

The Cultural Diversity Festival gave the participants and the general public a chance to taste food, experience various forms of dress, as well as different arts and crafts of various cultures throughout the world, This festival offered the opportunity for people to experience cultures that normally they would not encounter.



The March At St. Albans, West Virginia August 13, 2005

It has been one year since a cross burning occurred at the residence of a bi-racial couple in St. Albans. This year marks a second annual march to show a community united against racism.

The march was organized and sponsored by St. Paul's Baptist and St. Mark's Episcopal Churches in St. Albans.



Tammy Stollings (center) presented a letter from Governor Manchin memorializing the march. The letter was received by Rev. Michael Poke of St. Timothy's Baptist Church and Father Paul Bresnahan of St. Mark's Episcopal Church.



Members of the WV Hate Crimes Task Force display the march banner just prior to the march.



The end of the march banner affirms "We are one in the Spirit! Uniting Our Community."



The community of St. Albans march to show a community united against racist acts against fellow citizens of the community.

National Crime Night Out At The Tiskelwah Community Center

The City of Charleston sponsored the National Crimes Night Out at the Tiskelwah Community Center. This event was held across the nation in numerous cities. The purpose was to show a united local community as well as a national “community” to work to stop acts of crime. The National Crime Night Out was to emphasize that crime affects the community as a whole and leaves everyone at risk to criminal acts. The West Virginia Human Rights Commission manned a kiosk during the event at the Tiskelwah Community Center.



From the left, Leola Bateman of the WVHRC, State Senator Steve Harrison, Ivin Lee, Executive Director of the WVHRC and Yodora Booth also of the WVHRC.



City of Charleston Police Chief Brent Webster with Executive Director Ivin Lee of the WVHRC.



Executive Director Ivin Lee of the WVHRC with two young citizens of Charleston in front of the WVHRC kiosk.

THE THEATER PROJECT

“Public Agencies and Private Companies Working Together to Make the Arts Accessible to All”

The West Virginia Human Rights Commission has initiated a project with the West Virginia Commission for the Deaf and Hard of Hearing to establish a working relationship with the major theater companies and owners within West Virginia. The WVHRC has worked with Deanna Stone, Executive Director and Roy Foreman, Deputy Director, both of the WV Commission for the Deaf and Hard of Hearing. Ivin Lee, Executive Director of the West Virginia Human Rights Commission and other WVHRC staff members have represented the WVHRC in this project.



Deanna Stone, (left) Executive Director and Roy Foreman, Deputy Director of the West Virginia Commission for the Deaf and Hard of Hearing.

The project found that only about 18-20 copies of Hollywood films are captioned for the deaf for use across the nation. The theater owners stated that by the time they can obtain a copy of the captioned films, the movies are already in the sixth week of running and that hardly anyone attends these movies. Deanna Stone of the WV Commission for the Deaf and Hard of Hearing stated that no one knows that the captioned films are playing, because there has not been a captioned movie for such a long time that no one reads the newspaper movie ads.

With the assistance of the West Virginia Human Rights Commission's Executive Director, Ivin Lee, and her staff, a plan was agreed upon for the theater owners to notify Deanna Stone and Roy Foreman when the captioned films are available in this area. The WV Commission for the Deaf and Hard of Hearing will then inform the deaf community of the scheduled movies. All involved liked this plan and the theater owners stated that theaters owners across the nation have had more success with attendance at the captioned movies when the deaf advocate groups are involved.

During the discussion with the theater owners, it was learned that over the next three years all movie theaters through out the nation will be converting to digital movies recieved by satellite or via a disk, similar to DVD players. The traditional film now used will disappear. Every movie will then be captioned. Those who need to view the captioned movies will use special devices that will allow them to view the caption, but others will not be aware that the movies are captioned.

Althought, no agreement papers were signed and there will not be any decrees to follow, the success is in the establishing of meaningful communications between the West Virginia Human Rights Commission and all of the other parties. The West Virginia Human Rights Commission will stay in touch with all parties in order to provide any assistance and to ensure that all of our citizens have equal access to entertainment in our state.

The West Virginia Human Rights Commission has shown that it is possible and beneficial to have all parties of a particular problem to voluntarily discuss suggestions and plan efforts to solve potential discriminatory problems without costly investigations and litigations.





INFORMATIVE AND EDUCATIONAL PRESENTATIONS

“Taking Preventative Measures to Avoid Discrimination Problems”

Throughout the year the West Virginia Human Rights Commission has been involved in numerous informative speaking engagements at various community organizations, private corporations, public agencies and educational institutions across West Virginia.

The West Virginia Human Rights Commission can be contacted at 304.558.2616 if your organization or company is interested in one of our staff members presenting an educational talk on how to identify and avoid potential discriminatory problems. The West Virginia Human Rights Commission is committed to a proactive stand in the prevention of discrimination in West Virginia.

West Virginia Human Rights Commission



The Complaint & Investigative Process

An Overview Of the Investigative Process

I. The Intake Process

The first contact that the prospective complainants have with the Commission. The contact is made by telephone, mail or by simply visiting the Commission's Office. If the complaint appears to meet the minimal jurisdictional requirements, then a background information form is given or sent to the prospective complainant.

Upon receiving the background information form it is examined for determine if the complaint meets the jurisdictional requirements of the Commission. The complaint must fall into at least one following areas: employment, housing and/or public accommodations. If the complaint does not fall into one or more of these areas, a letter of no jurisdiction is sent to explain why the complaint cannot be processed.

If the complaint does meet the minimal jurisdictional requirement as mentioned above, the next step is to determine if the complaint has met the following criteria: 1) an act of harm to the complainant has occurred within the last 365 days; 2) the complaint is jurisdictional in regards to the complainant being covered by a protected class such as race, sex, age(40 and above), disability, religion, ancestry, national origin, reprisal, and/or blindness. If the complaint does not meet any of the above jurisdictional requirement then a letter of no jurisdiction is sent to the complainant.

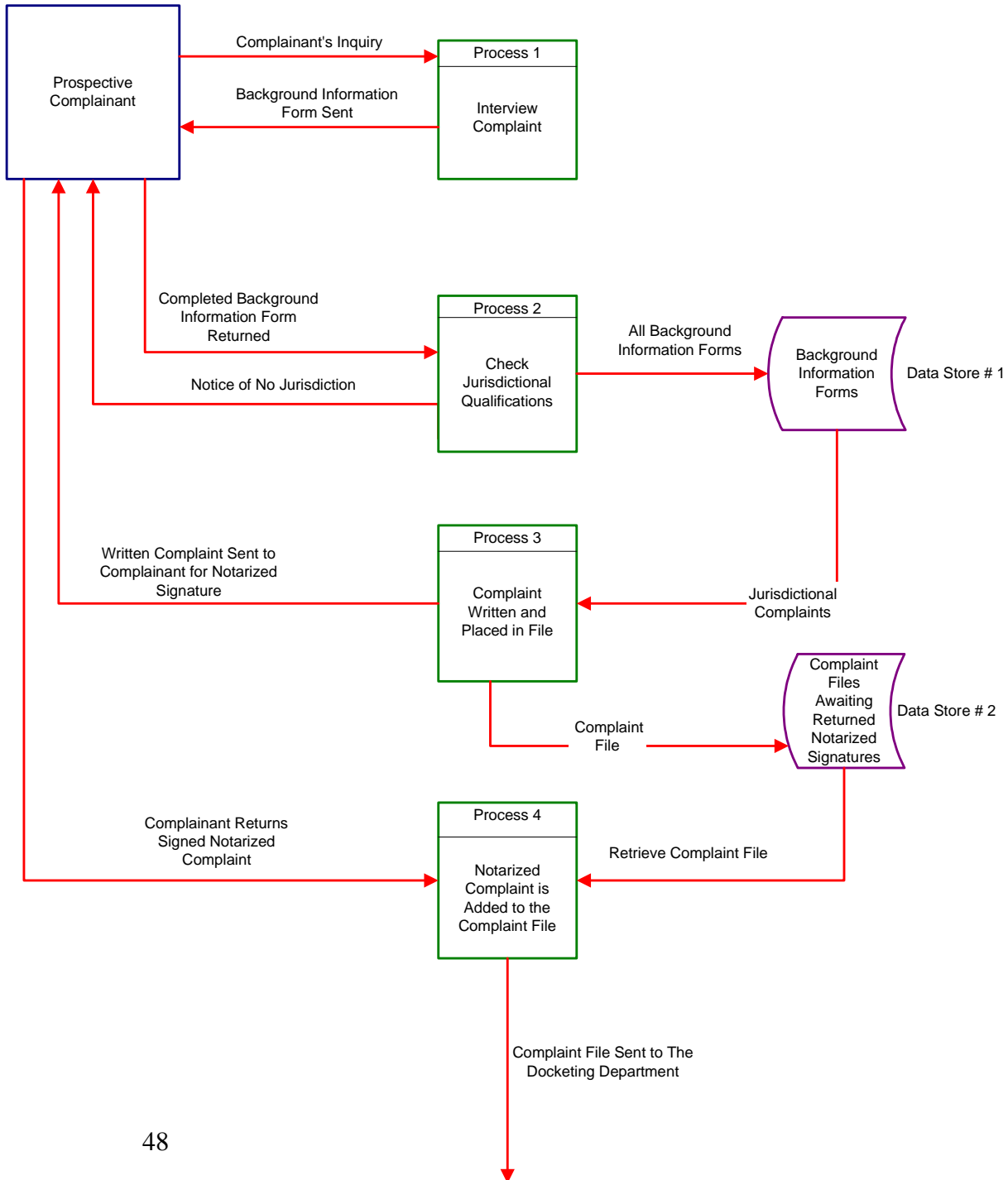
If the complaint is deemed to be jurisdictional, a formal complaint is then written. This complaint must have the following components: 1) a date of incident that relates to an act of harm to the complainant; 2) A statement describing the act of harm that is being charged against the respondent by the complainant; 3) the name and address of the respondent; 4) the name and address of the complainant; and 5) the complainant must sign the complaint in the presence of a notary public.

When a formal notarized complaint is received by the intake department, it is then sent to the docketing department to be formally docketed.

The intake process is illustrated in the Date Flow Diagram #1 on the following page.

The Intake Process of the West Virginia Human Rights Commission

Data Flow Diagram 1



II. The Docketing Process

When the docket clerk receives a notorized complaint from the intake department, the complaint receives a docket number which is entered into docket files. The complaint is deemed to be docketed as of the time dated stamp on the complaint indicating the date it was received.

If the complaint is an employment related complaint, it is also dual docketed with the United States Equal Employment Opportunity Commission (EEOC). If the complaint is housing related, it is then dual docketed with the United States Department of Housing and Urban Development (HUD). The West Virginia Human Rights Commission has a continual work sharing agreement with both the EEOC and HUD. In nearly all of the complaint investigations, the West Virginia Human Rights Commission independently conducts the investigation of the complaint. On very rare occasions the complaint is investigated by the EEOC or HUD.

After the complaint is fully docketed, it is then officially served on the party charged with an alleged violation, the respondent. The respondent is served with a service letter, requesting a position statement (the answer to the charges on the complaint), the docketed complaint, as well as other documentation. The complainant also receives the service letter and the docketed complaint, and other documentation appropriate to the type of complaint.

The docketing procedure is illustrated in the Data Flow Diagram # 2 on the following page.

When the docketing is completed the complaint is then sent to the investigative unit for investigation.

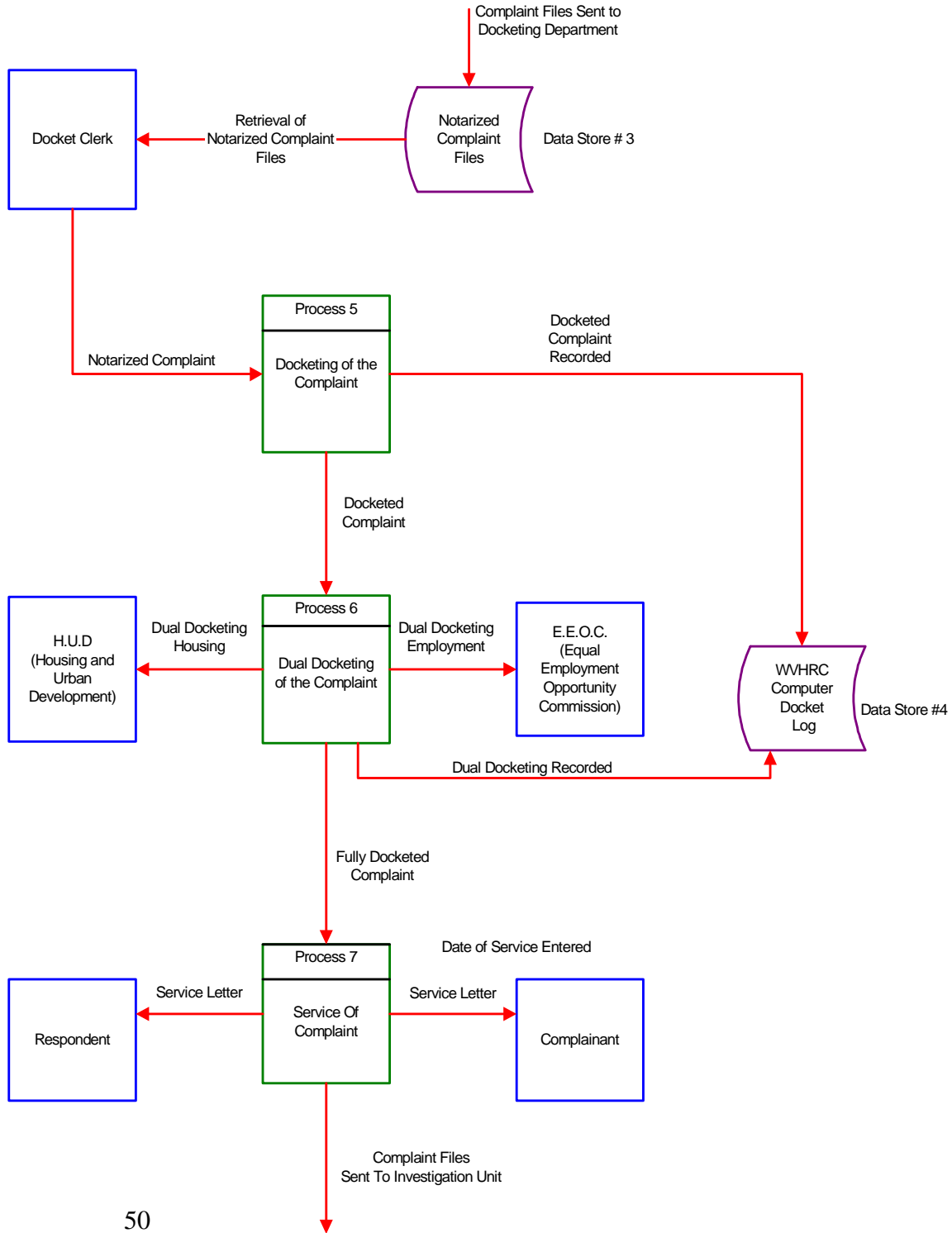
III. The Investigative Process

By the time the complaint reaches the investigative unit the complaint is served and the respondent is required to provide an answer to the alleged charge of discrimination brought by the complainant. The respondent's position statement is usually received within a couple of weeks after the complaint is received by the respondent.

The respondent is required to send a copy of the position statement to the complainant. If the complainant does not receive the position statement the Commission will provide a copy to the complainant. The complainant is asked to provide a rebuttal to the respondent's position statement.

The Docketing Process of The West Virginia Human Rights Commission

Data Flow Diagram 2



After the position statement is received an entrance triage meeting is held with the investigator and supervisory personnel. The purpose of the entrance triage is to discuss the respondent's position and if received, the complainant's rebuttal to the respondent's position. At the conclusion of this meeting the investigator will have a list of questions and information that will be sent to the respondent in the form of an interrogatory. If necessary the complainant will also be asked to provide additional information.

The complaint is investigated not by one investigator, but by the entire investigative team as a whole. This allows input from several investigators during the course of the investigation which results in a more prompt and efficient investigation.

During the investigation all information received from the respondent and the complainant is analyzed. This information may contain information about the respondent's work force, any documentation that may support the respondent's personnel decisions and other relevant information.

Often complainant must play an active role in the investigation. The complainant must provide the investigative team direction in the investigation. This could be in the form of supplying the investigative team with witnesses or other documentation that will refute the respondent's position and strengthen their allegations.

At any stage of the investigation the case may be recommended for conciliation. This process is outlined under the section "The Pre-determination Conciliation Program."

The role of the investigative team is not to "prove the case" for either the respondent or the complainant. During the investigation the Commission acts as an unbiased third party. The role of the investigator is simply to identify, obtain and evaluate evidence which will allow the investigative team to arrive at either a probable cause or a no probable cause finding.

A second triage, the exit triage, is held toward the end of the investigation. An investigator discusses the findings of the investigation with the triage team. Often the investigator will have already reached a recommendation of either probable cause or no probable cause. There are two different types of exit triage, one for probable cause and another for no probable cause.

A probable cause exit triage is held by the Executive Director of the Human Rights Commission. Participants also include a representative from the Attorney General's Office Civil Rights Division, and other members of the designated triage team. At this point the investigator should have the case recommendation written and will discuss the reasons for the recommended finding of probable cause. If the members of the exit triage agree with the investigator, then the case is submitted for an official probable cause finding to be issued by the Commission. If the triage team does not agree with the investigator's recommended finding then the team instructs the investigator to obtain additional information needed to complete the investigation.

The no probable cause triage is held by the members of the triage team. As in the probable cause triage, the investigator presents the reasons for the no probable cause recommendation to the triage team. Again, if the team determines that additional information is needed then the investigator is instructed to obtain the information. If the team agrees with the finding then the case is submitted to supervision for an official no probable cause finding to be issued by the Commission.

Upon the complainant receiving the finding of no probable cause the complainant can request an appeal in writing to the Executive Director. It is the decision of the Executive Director as to whether the complainant has given sufficient reasons for the appeal.

The Data Flow Diagram #3 on the next page outlines the basic investigative process.

The Administrative Hearing

Complaints that have been issued a probable cause finding can either be settled through the Commission's Mediation Process (as explained under the Early Dispute Resolution section of this report), or the case can be argued through an administrative hearing.

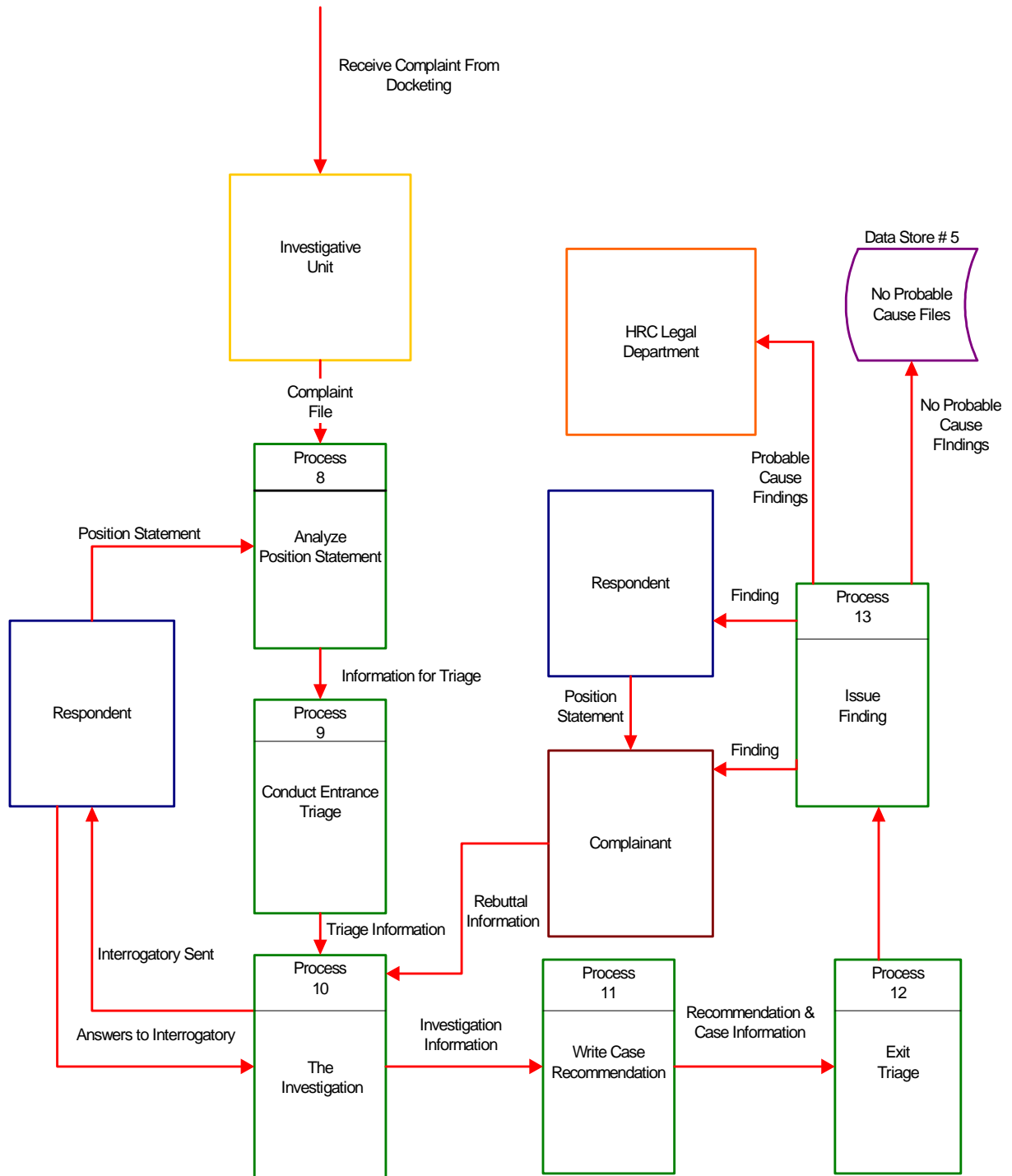
The complainant can retain their own attorney to represent them at the administrative hearing. If the complainant chooses not to retain their own attorney, the Civil Rights Division of the Attorney General's Office will represent the Commission at the hearing with the participation of the complainant. The administrative hearing is similar to a trial, except the hearing is less formal.

The administrative law judge hears the arguments of both the Complainant and the Respondent. Witnesses can be called and evidence can be presented. The administrative law judge can either uphold the finding of probable cause or can reverse the finding to a no probable cause finding.

The judge's decision can be appealed to the West Virginia Supreme Court of Appeals or to the Kanawha County Circuit Court. The Kanawha County Circuit Court can only be utilized if the Commission has awarded damages in excess of \$5000.00 or back pay in excess of \$30,000.00, or by agreement of the involved parties.

**AN OVERVIEW OF THE INVESTIGATIVE PROCESS
OF THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION**

Data Flow Diagram # 3



The West Virginia Human Rights Commission



Early Dispute Resolution Programs

The West Virginia Human Rights Commission

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-Determination Conciliation Program. The Commission would then inquire to determine if the parties would be interested in Conciliation negotiations.

What are the advantages of Pre-Determination conciliation?

The Pre-Determination Conciliation is a fair and confidential procedure during which a mutually acceptable agreement may be reached. Thus, avoiding a process of a costly, time consuming 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

Predetermination Conciliation For Fiscal Year 2005

Complaints Conciliated:	86
Complaints Settled or Closed by Conciliation:	32
Complaints Transferred to Legal Division:	30
Complaints Returned to Investigative Division:	24

Total Monetary Settlements: \$96,906.38

A total of \$96,906.3 in monetary settlements were received by the complainants as a result of 32 case settlements through the West Virginia Pre-Determination Conciliation Program.

As a result of the Pre-Determination Conciliation Process a total of 37% of the complaints that reached the Conciliation process were settled by the Conciliation Process.

Non-monetary Settlements

The Pred-Determination Conciliation Program not only not only results in monetary settlement, but quite often settlements involve non-monetary items. These non-monetary settlements may attached to a monetary settlement or may stand alone as a settlement.

Some examples of non-monetary settlements could be a neutral work reference, a pay raise, the promise of a future job, an accommodation for a disability or simply an apology from the respondent.

The West Virginia Human Rights Pre-Determination Conciliation Program continues to be successful in resolving complaints in a satisfactory and timely manner.

The West Virginia Human Rights Commission Mediation Program

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 the 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 the Mediation Coordinator at the Commission's address and phone numbers:

West Virginia Human Rights Commission

Mediation Coordinator

1321 Plaza East Suite 108A

Charleston, WV 25201

304-558-2616

Toll Free: 1.888.676.5546

TDD: 1.888.676.2976



**Mediation
Fiscal Year 2005
Calendar Year 2004-2005**

Settlements for the Administrative Law Judges
July 1, 2004 through June 30, 2005

Total Settlements for Fiscal Year 2005: \$1,155,898.40

When Settlements Are More Than Money

Monetary settlements are not the only settlements that can be a solution to settling a complaint through the mediation process. The following are examples of non-monetary settlements that were reached through the mediation process during the 2005 Fiscal Year.

Several racial and sex discrimination cases resulted in the respondent being required to attend anti-discrimination training, and in developing an anti-harassment/anti-discrimination policy in the work place.

Another case required the respondent to provide accommodations that would allow a disabled person access to the respondent's premises.

Other cases involved, pay raises, letters of apologies, changes in work shifts and neutral work references.

The West Virginia Human Rights Mediation Program continues to provide satisfactory settlements to all parties, while saving additional expenditure of time and other resources. The West Virginia Human Rights Commission's Mediation Program will continue to be a valuable asset in the future.

West Virginia Human Rights Commission



Intake - FY 2005 Preliminary Inquiries

**Intake - FY 2005 Preliminary Inquiries
From Prospective Complainants
Per Month**

FY 2005	Telephone	Walk-In	Mail	Total
July	184	21	1	206
August	161	26	8	195
September	141	24	6	171
October	120	32	4	156
November	118	31	4	153
December	114	17	1	132
January	149	20	5	174
February	99	27	5	131
March	130	20	2	152
April	120	13	5	138
May	129	7	3	139
June	126	11	1	138
Totals	1591	249	45	
				1885

West Virginia Human Rights Commission



Complaints Filed Fiscal Year 2005 July 1, 2004 - June 30, 2005



**Complaints Filed During Fiscal Year 2005
July 1, 2004 through June 30, 2005**

Employment: 429

Public Accommodations: 46

Housing: 32

Total Complaints Filed: 507

FY 2005 Employment Complaints As Filed by Protected Class Per Month

FY 2005	Disability	Race	Age	Sex	Reprisal	Religion	Blindness	National Origin	Ancestry	Total
July	6	2	3	3	1	0	0	0	0	15
August	16	11	6	3	4	0	0	0	0	42
September	16	13	14	5	7	0	1	1	0	67
October	9	7	5	15	6	1	0	0	0	38
November	4	8	6	10	2	0	0	0	0	23
December	10	3	7	3	5	0	0	0	0	32
January	6	9	9	7	2	0	0	0	0	28
February	14	4	8	11	0	2	0	0	0	39
March	11	14	5	10	2	0	0	0	0	42
April	7	9	6	8	0	0	0	0	0	30
May	8	9	6	4	0	0	0	0	0	27
June	9	12	14	10	0	0	0	0	0	46
Totals	116	101	89	89	29	3	1	1	0	
										429

FY 2005 Housing Complaints Filed by Protected Class Per Month

FY 2005	Handicap	Race	Sex	National Origin	Religion	Reprisal	Ancestry	Blindness	Familial Status	Total
July	0	0	0	0	0	0	0	0	0	0
August	0	0	0	0	0	0	0	0	0	1
September	2	1	0	0	0	0	0	0	0	3
October	3	1	1	0	0	1	0	0	0	6
November	1	1	0	0	0	0	0	0	0	2
December	4	0	0	0	0	0	0	0	0	4
January	0	1	0	0	0	0	0	0	0	1
February	3	0	0	0	0	0	0	0	0	3
March	1	0	1	1	0	0	0	0	0	3
April	0	1	0	0	1	0	0	0	0	2
May	1	2	0	0	0	0	0	0	0	3
June	3	0	1	0	0	0	0	0	0	4
Totals	19	7	3	1	1	1	0	0	0	
										32

FY 2005 Public Accommodation Complaints Filed by Protected Class Per Month

FY 2005	Disability	Race	Sex	National Origin	Blindness	Age	Ancestry	Religion	Reprisal	Total
July	0	0	0	0	0	0	0	0	0	0
August	2	1	0	0	0	0	0	0	0	3
September	2	1	2	0	0	0	0	0	0	5
October	1	2	0	0	0	0	0	0	0	3
November	0	2	0	0	0	0	0	0	0	2
December	5	1	1	0	0	0	0	0	0	7
January	5	1	0	1	0	0	0	0	0	7
February	2	2	1	0	0	0	0	0	0	5
March	0	0	0	0	0	0	0	0	0	0
April	0	1	0	0	0	0	0	0	0	1
May	4	0	0	1	0	0	0	0	0	5
June	5	2	0	0	1	0	0	0	0	8
Totals	26	13	4	2	1	0	0	0	0	
										46

Complaints Filed By County For FY 2005

COUNTY	FY 2003	FY 2004	FY 2005	COUNTY	FY 2003	FY 2004	FY 2005
BARBOUR	0	4	2	MINERAL	1	2	3
BERKELEY	9	15	22	MINGO	6	4	3
BOONE	2	5	5	MONONGALIA	17	16	18
BRAXTON	0	3	2	MONROE	0	0	4
BROOKE	1	2	1	MORGAN	0	2	3
CABELL	46	28	46	NICHOLAS	4	4	1
CALHOUN	0	0	0	OHIO	6	4	6
CLAY	0	1	1	PENDLETON	0	0	0
DODDRIDGE	0	0	0	PLEASANTS	1	0	1
FAYETTE	16	14	17	POCAHONTAS	1	1	2
GILMER	0	0	0	PRESTON	2	3	0
GRANT	2	0	1	PUTNAM	8	17	12
GREENBRIER	8	4	5	RALEIGH	16	28	33
HAMPSHIRE	0	2	5	RANDOLPH	16	3	7
HANCOCK	4	4	1	RITCHIE	0	2	0
HARDY	5	5	19	ROANE	3	4	5
HARRISON	15	12	8	SUMMERS	0	1	2
JACKSON	7	6	3	TAYLOR	1	1	6
JEFFERSON	16	13	4	TUCKER	1	1	1
KANAWHA	175	192	175	TYLER	0	0	0
LEWIS	2	1	0	UPSHUR	4	1	1
LINCOLN	2	2	1	WAYNE	3	4	2
LOGAN	6	8	6	WEBSTER	1	2	0
McDOWELL	4	1	3	WETZEL	3	3	6
MARION	9	10	8	WIRT	0	0	0
MARSHALL	0	3	2	WOOD	17	12	28
MASON	7	3	4	WYOMING	1	0	1
MERCER	23	11	21				
				TOTALS OF ALL COUNTIES FOR EACH FISCAL YEAR	FY 2003 465	FY 2004 464	FY 2005 507

West Virginia Human Rights Commission



Complaints Closed
Fiscal Year 2005
July 1, 2004 - June 30, 2005

FY 2005 Cases Closed Per Month

FY 2005	NPC	Hearing	PDC	WD	ADC	NJ	Total
July	30	4	4	5	1	1	45
August	30	5	7	3	11	0	56
September	29	7	5	0	3	0	44
October	25	2	2	1	1	0	31
November	13	1	3	2	2	0	21
December	21	3	4	4	0	0	32
January	33	5	1	5	1	0	45
February	37	1	6	3	1	1	49
March	40	3	3	1	1	0	48
April	54	2	3	4	1	0	64
May	30	6	0	2	1	0	39
June	29	6	1	5	3	0	44
Totals	371	45	39	35	26	2	
							518

Legend

ADC: Administrative Closure
 NJ: No Jurisdiction
 NPC: No Probable Cause
 PDC: Pre-Determination Conciliation
 WD: Withdrew

West Virginia Human Rights Commission



Selected Case Summaries

SELECTED CASE SUMMARIES OF ORDERS OF THE EXECUTIVE DIRECTOR, FINAL
ORDERS AND
DECISIONS OF THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
AND DECISIONS OF THE WEST VIRGINIA SUPREME COURT OF APPEALS FOR THE
FISCAL YEAR 2004-2005

A FINAL DECISION OF THE ADMINISTRATIVE LAW JUDGE
IN THE MATTER
OF
DYANNA GRAY-TERRY V. CSX HOTELS, INC.,
d/b/a THE GREENBRIER HOTEL
DOCKET NO. EAD-272-01

The Commission alleged that Complainant was a qualified person with a disability as that term is defined by the West Virginia Human Rights Act, and that the Respondent failed to accommodate her disability by placing her in a vacant position which she was able and competent to perform. The Commission also alleged discrimination because of age. The Administrative Law Judge held that Respondent did attempt to accommodate Complainant; that it engaged in an interactive process; that Complainant was in fact placed in an alternative job, but did not successfully perform that job; and, that Complainant was not and never became "able and competent" to perform any other job at Respondent's operations once she became disabled as a waitress.

Complainant began her employment on April 20, 1995 at which time she was 48 years old. She was terminated in August 2000. She began working for the Respondent as a "roll girl." Her job duties and responsibilities consisted of filling up bread baskets, serving bread to customers, occasionally carrying food, and serving mid-afternoon tea in the lobby. The bread baskets are no heavier than 10 pounds. Occasionally she carried heavier food trays. Complainant worked as a roll girl for about one year when she began working as a waitress in 1996, primarily in the Sam Snead Golf Club, then eventually in the main dining room. Waitresses must carry very heavy plates that are lined with a sort of crock plate, and another plate set on top of that.

In February 1998, Complainant was diagnosed with a variety of conditions, which the Administrative Law Judge found adversely affected Complainant in her daily life, including limiting her ability to do yard work, exercise, lift heavy objects, carry heavy trays, silver coffee pots and urns and prevented her from getting a good night sleep. Complainant had a further condition with localized pain in her elbow and forearm severe enough to prevent her from picking up anything with her right arm. In September or October of 1998, Respondent received a customer complaint about poor service from Complainant. Respondent's Golf Club Manager met with Complainant to discuss the matter, at which time he was informed that Complainant was in constant pain and had a sleep disorder which was affecting her interpersonal skills and customer service skills. Respondent later sent a letter indicating she was suspended because she was absent for eight and one half days and that she was expected to return to work on December 30, 1998. Complainant was off on a combination of sick leave, Temporary Total Disability, and seasonal lay-off thereafter through April 20, 1999.

In March 1999 Complainant informed Respondent that she could no longer perform as a waitress because of her medical condition. However, in May 1999 Complainant met with agents of the Respondent and informed them of the medical condition and requested as an accommodation, that she be allowed to work one meal when possible. Although this was agreeable to Respondent's agents, the head waiter at Sam Snead did not agree because of a complicated scheduling system that regulates when and where people can work, and is set up in such a way that it fairly distributes work among all workers. The Administrative Law Judge found that Respondent encouraged Complainant to apply for a number of openings posted in the Human Relations office, on bulletin boards, at the union hall, distribution lists sent throughout the Hotel, an on a voice mail system that recites all the job openings. Complainant was encouraged to take free classes available to its employees to improve her job skills but never availed herself of those opportunities. At one point Complainant took a typing test and was unable to pass, scoring 9.4 words per minute.

Complainant had a physical impairment that substantially limits her major life activity of working. She has a record of such impairment and was regarded by Respondent as having a physical impairment that substantially limits her major life activity of working and she required an accommodation to perform the essential functions of the waitress job. The Administrative Law Judge ruled that if an accommodation is possible and it would allow the Complainant to perform the essential functions of the job, then the respondent must provide the accommodation, unless it would impose an undue hardship upon the respondent's business. W. Va. C.S.R. ' 77-1-4.6. Further, the Commission's 1994 legislative rules regarding accommodation provide that "[r]easonable accommodations include, but are not limited to:...[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position for which the person is able and competent to perform . . . and similar actions[.]" W. Va. C.S.R. ' 77-1-4.5. et seq.

To state a claim for breach of the duty of reasonable accommodation under the West Virginia Human Rights Act, W.Va. Code, 5-11-9 (1992), a plaintiff must allege the following elements: (1) the plaintiff is a qualified person with a disability; (2) the employer was aware of the plaintiff's disability; (3) the plaintiff required an accommodation in order to perform the essential functions of a job; (4) a reasonable accommodation existed that met the plaintiff's needs; (5) the employer knew or should have known of the plaintiff's need for the accommodation; and (6) the employer failed to provide the accommodation.

Skaggs, at Syl. Pt. 2.

Under the West Virginia Human Rights Act, W. Va. Code, 5-11-9 (1992), once a complainant requests a reasonable accommodation, a respondent must assess the extent of a complainant's disability and how it can be accommodated. If the complainant cannot be accommodated in his or her current position, however it is restructured, then the respondent must inform the complainant of potential job opportunities within the company and, if requested, consider transferring the complainant to fill the open position.

“[T]he employer must make a reasonable effort to determine the appropriate accommodation. The appropriate reasonable accommodation is best determined through a flexible interactive process that involves both the employer and the [employee] with a disability.” 479 S.E.2d at 577.

Finally, the Skaggs Court admonished that both sides bear responsibility for the success of the process:

Neither the West Virginia statutes nor the federal law assigns responsibility for when the interactive process is not meaningfully undertaken, but we infer that neither party should be able to cause a breakdown in the process. The trial court should look for signs of failure to participate in good faith or to make reasonable efforts to help the other party determine what specific accommodations are necessary and viable. A party that obstructs or delays the interactive process or fails to communicate, by way of initiation or response, is acting in bad faith.

479 S.E.2d at 577-578.

In addition to the above, and of particular significance here, the fact finder must also scrutinize the process by which accommodations are adopted.” Skaggs, 479 S.E.2d at 577. Such process, said the Skaggs Court, ordinarily should engage both management and the affected employee in a cooperative, problem solving exchange.” Id. Skaggs .

Applying these principles the Administrative Law Judge concluded Complainant applied for approximately 14 transfers. She withdrew her bid on five of the fourteen transfers, namely, a hostess in the Draper Café, May 1999; part-time snack bar attendant, May 1999; part-time beverage cart attendant/ snack bar attendant, April 1999; reservation agent, May 1999 retail assistant manager, August 1999 and Help Desk Administrator, May 1999. She applied for several jobs whose minimum qualifications she did not possess, namely, security guard; retail assistant manager; human resources; receptionist; telephone operator, greeter, concierge, beverage cart attendant, front desk clerk and help desk administrator. Her admitted physical limitations did not permit her to perform the Beverage Cart/Snack Bar Attendant job or the Security Guard job. She lacked the computer and typing skills to qualify her for the positions of Telephone Operator, Front Desk Clerk, Reservation Agent, Greeter and Concierge. She did not qualify for these positions. Moreover, the vocational performance assessment administered by the West Virginia Division of Rehabilitation Services indicated that her clerical skills were poor. Her lack of interpersonal skills disqualified her from many of these positions as well. Even if the Respondent had allowed Complainant to work one meal a day, she would still need to lift “heavy trays.” And she made it clear that she is unable to lift heavy trays or carry heavy plates. The West Virginia Human Rights Act does not require an employer to place an individual in a job for which she is not qualified nor create a make-work job (emphasis added) or retain someone it does not need.” Skaggs at 479 S.E. 2d at 579.

AN ORDER OF THE ADMINISTRATIVE LAW JUDGE
IN THE MATTER
OF
HELEN M.HAPNEY V. PARKERSBURG BEDDING, LLC
DOCKET NO. EAD-482-02

The Administrative Law Judge treated Respondent's Motion for Summary judgment as a Motion to Dismiss pursuant to the Procedural Rules of the West Virginia Human Rights Commission 77 C.S.R. Series 2 § 7.13.a. The Administrative Law Judge dismissed the complaint before the Human Rights Commission after concluding that the Commission lacked jurisdiction to hear the complaint as the doctrine of Res Judicata preclude re-litigation of the claims of discrimination due to disability, age and sex following the voluntary submission of those claims by both the Complainant and Respondent to an arbitrator in the course of grievance hearing governed by the collective bargaining agreement between Respondent and Complainant's union. Article 11 of that agreement prohibits discrimination based upon, inter alia, age, sex and disability in violation of federal, state, and local laws.

In her Amended Complaint filed with the Commission in December 2002, Complainant alleged that Respondent discriminated against her due to her disability, age and sex when Respondent failed to return her to work as a janitor in November 2001. On May 13 and 14, 2003, Complainant voluntarily proceeded with her grievance before Arbitrator Zobrak. During the arbitration hearing both parties presented substantial evidence on, among other points, the essential functions of the janitor position and possible reasonable accommodations for Complainant. However, Complainant failed to present any testimony or evidence that age or sex was a factor in the failure to return Complainant to work. In his decision Arbitrator Zobrak expressly applied both the West Virginia Human Rights Act and the Americans with Disabilities Act and determined that Respondent had not unlawfully discriminated against Complainant and her grievance was accordingly denied.

The Administrative Law Judge found after a hearing on the record, that the parties had been afforded a full and fair opportunity to litigate the matters in dispute; as Arbitrator Zobrak took sworn testimony of 17 witnesses (producing over 500 pages of transcript testimony), ruled upon evidentiary issues, admitted 56 exhibits, allowed post hearing briefs and issued a written decision explaining the basis of his decision. The Administrative Law Judge found that applying preclusive effect was consistent with the express or implied policy which created the body as the National Labor Relations Board routinely defers to the decision of arbitrators in cases of discrimination arising under the National Labor Relations Act. The Administrative Law Judge further concluded that Arbitrator Zobrak had acted in a judicial capacity when he rejected Complainant's claims of discrimination under the West Virginia Human Rights Act because the procedures for conducting the grievance hearing employed by the arbitrator were comparable to that employed by the Commission. The Administrative Law Judge distinguished Vest v. Board of Education of Nicholas County, 193 W.Va. 222, 455 S.E.2d 781 (1995), as the decision of the Grievance Board in that instance involved the application of different legal standards of proof before the Grievance Board and the West Virginia Human Rights Commission as to whether discrimination had occurred.

CLASS ACTION DETERMINATION
BY THE EXECUTIVE DIRECTOR OF THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION
IN THE MATTER

OF

SEE, FERN; CRITES, RODNEY; HANLON, DAVID;
JUDY, PATRICIA; LOWERY, SANDRA; RATLIFF, AUDREY;
WOLF, SANDRA; FLANNAGAN, GLENDA; HARMON, SHIRLEY;
JUDY, WILMA; V. PILGRIM'S PRIDE CORPORATION
DOCKET NO. ED-27-05 DOCKET NO. EAD-70-05
DOCKET NO. EAD-62-05 DOCKET NO. EAD-63-05
DOCKET NO. EAD-38-05 DOCKET NO. EREP-432-04
DOCKET NO. ED-100-05 DOCKET NO. ED-439-04
DOCKET NO. ED-156-05 DOCKET NO. ED-10-05

The Executive Director of the West Virginia Human Rights Commission entered her Class Action Determination March 4, 2005 certifying the above named Complainants' cases as a class action against the Respondent pursuant to the West Virginia Human Rights Commission's Procedural Rules 77 C.S.R. Series 2 § 3.15, after the Complainants alleged that the Respondent had engaged in a pattern and practice of unlawful discrimination, and that such allegations were supported by evidence adduced in the Commission's investigation of the complaints. The Executive director designated a class of potential victims of Respondent's alleged pattern and practice of discrimination as all persons who are current or former employees of Respondent, who worked at Respondent's facility in Hardy County West Virginia, on or after May 27, 2003, who have or had some form of medically imposed work restriction, finding that the alleged pattern or practice of discrimination, if established by proof, would be subject to injunctive relief with respect to the class as a whole; that separate adjudications of the claims of the various members of the class creates a risk of inconsistent or varying results; that there are predominant questions of law and predominant questions of fact which are common to the claims of members of the class; and that a class action is a superior method for the fair and efficient adjudication of the controversy.

In an omnibus response to the position statements of the Respondent, Complainants' counsel requested that the complaints of the numerous employees be treated as a class action, representative of all similarly situated employees, as the alleged actions of Respondent reflected a pattern or practice of discrimination acting on grounds generally applicable to the class, making appropriate final injunctive relief with respect to the class as a whole, citing 77 C.S.R. Series 2 § 3.15. Counsel for Complainants contends that Respondent operates a poultry plant in Moorefield, West Virginia, formerly operated by Con Agra. Counsel for Complainants further contends that Respondent has a corporate practice of removing from its work force employees with disabilities, employees who use medical leave under the Family Medical Leave Act for serious health conditions, employees who make Worker's Compensation claims, and employees who need work accommodations. Complainants allege that seven such employees were required to travel 150 miles to Greensburg, Pennsylvania for ten minute medical evaluations, after which the seven were told that the work restrictions were unjustified and could return to work without restriction. Two other employees with severe health conditions were terminated without an independent medical evaluation as part of a "reduction in force" which Complainants' counsel contends did not involve the loss of the positions from which the two were terminated.

Following the entry of the Class Action Determination by the Executive Director of the West Virginia Human Rights Commission, Respondent sought to file a Petition for Appeal of that decision by the Executive Director with the West Virginia Human Rights Commission. The Commission met in executive session to discuss the matters raised therein and the Response to Respondent's Petition for Appeal, with counsel contracted to address these matters with the Commissioners. Thereafter, the Commission in open session, voted unanimously that it did not have statutory authority or discretion to review the Executive Director's decision on a matter of class certification pursuant to 77 C.S.R. Series 2 § 3.15. Nothing in the West Virginia Human Rights Act itself or governing regulations vests the decision to certify a class action with anyone other than the Executive Director of the West Virginia Human Rights Commission., or authorized an appeal of that decision to the Commission.

A PER CURIAM DECISION OF THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
IN THE MATTER

OF

GENERAL MOTORS CORPORATION, Appellant Below, Appellee,

v.

HUBERT J. SMITH, Appellee, and Complainant Below, Appellant,

And

THE WEST VIRGINIA HUMAN RIGHTS COMMISSION, Appellee Below, Appellant

No. 31425 Decided June 25, 2004 (2004 WL 1432301)

216 W. Va. 78, 602 S.E.2d 521 (2004)

In its per curiam opinion, the West Virginia Supreme Court of Appeals overturned a final order of the Circuit Court of Kanawha County which ruled that Complainant's disability discrimination claim under the West Virginia Human Rights Act was pre-empted by both the federal Labor Management Relations Act and the federal Employee Retirement Income Security Act. The case involved a dispute over a disability retirement, concerning the efforts of Complainant, who was receiving a permanent and total disability retirement from his job for GM, and sought to give up his retirement benefits and go back to work. Early in 1971, Complainant began working for GM at its parts storage warehouse in Martinsburg, West Virginia, where he served as chairman of the workplace Civil Rights Committee. For much of his time at GM, he was a "Power Sweeper Operator," driving a machine up and down the warehouse aisles cleaning the floor. He first injured his back during his service in the United States Marine Corps, and re-injured it several times during the course of his employment. In 1985, he fell down a flight of stairs and suffered a lower back injury that ultimately resulted in three back surgeries. As a result of his condition, Complainant took a total and permanent disability retirement. Given permission by his doctor to return to work, and feeling that his back had improved, Complainant decided that he wanted to return to gainful employment. He began the attempt to get his old job back on May 26, 1995, by submitting an authorization to return to work supplied by his treating physician. Over the next two years, his efforts to give up his retirement and return to work were impeded by a variety of bureaucratic hurdles erected by Respondent. Respondent did not even schedule a physical examination until June 11, 1997, some two years after he contacted the company about returning to work. Finally on July 22, 1997, a manager informed him that, according to the Respondent's doctor, he was still too disabled to perform his old job, and would not be rehired. Responding to Respondent's refusal to re-employ him, Complainant filed a complaint on July 24, 1998 with the West Virginia Human Rights Commission. His complaint alleged that he was able, with or without reasonable accommodation, to perform the essential function of a Power Sweeper Operator, but that Respondent failed to reinstate him because of his disability.

The Supreme Court held that State law actions that are clearly subject to preemption include those where West Virginia law attempts to affect the manner in which pension benefits are calculated under federal law, where the pension plan's existence is a critical element of the state law cause of action, or one in which the West Virginia statute expressly refers to ERISA or ERISA plans. Those state law actions that incidentally involve or refer to ERISA plans, but do not present the risk of conflicting or inconsistent state law concerning pension plan regulation are not preempted under federal law. Citing a Syllabus, in Martin Oil Co. v. Philadelphia Life Ins. Co., 203 W. Va. 266, 507 S. E. 2d 367(1997). In the instant case, Mr. Smith was disputing the manner in which his benefits were calculated, and indeed, he was trying to give up those benefits so that he could go back to work. Mr. Smith was not arguing about some aspect of his pension plan, or a particular term of the contract regarding hours or benefits. He claimed that GM violated the law in a variety of ways as it considered and rejected his request to return to his job.

The Court addressed the application of the LMRA: "An application of state law is pre-empted by § 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185 (1947) (1994 ed.), only if such application requires the interpretation of a collective-bargaining agreement." citing Greenfield v. Schmidt Baking Co., Inc., 199 W.Va. 447, 485 S.E.2d 391 (1997). The Court stated that § 301 did not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law. In extending the pre-emptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to pre-empt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.

The Court undertook a fact specific analysis, analogizing to other cases where it had determined no pre-emption existed: (Bailey v. Norfolk and Western Railway Co., 206 W.Va. 654, 527 S.E.2d 516 (1999), longstanding railroad employees brought State claims for age discrimination in seniority placement following forced promotions; Ash v. Ravens Metal Products, Inc., 190 W.Va. 90, 437 S.E.2d 254 (1993) where former employees filed a suit contending that the defendant refused to pay them the vacation pay they had earned prior to a lengthy strike, during which the employees were terminated from their employment and rejected the defendant's argument that the former employees' Wage Payment and Collection Act claim was preempted; and, Yoho v. Triangle PWC, Inc., 175 W.Va. 556, 336 S.E.2d 204 (1985), in which the plaintiff was seriously injured while working as a utility laborer, was awarded temporary total disability benefits, subsequently filed a Mandolidis action against her employer, was terminated from her employment pursuant to the provisions of a collective bargaining agreement as a result of her unavailability for work over the preceding twelve-month period; and the Court held that her state law claim was not dependent upon analysis of the terms of her collective bargaining agreement and, therefore, fell into that category of cases which Congress did not intend to pre-empt.) The Court concluded that Complainant's independent, state-created, statutory rights were violated by Respondent, and that those rights are "distinct from any right conferred by the collective-bargaining agreement." Therefore, Complainant's claims were not preempted by the Labor Relations Management Act.



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