



# **WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**Annual Report  
FY 2014**



**SERVING ALL OF WEST VIRGINIA**



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**Earl Ray Tomblin**  
Governor

**State of West Virginia**  
**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**  
**HUMAN RIGHTS COMMISSION**  
Room 108A, 1321 Plaza East  
Charleston, WV 25301-1400  
Telephone: (304) 558-2616 Fax: (304) 558-0085  
Toll Free: 1-888-676-5546

**Karen L. Bowling**  
Cabinet Secretary

**Marykaye Jacquet**  
Acting Director

December 1, 2014

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

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

Dear Governor Tomblin and Members:

It is with pleasure that I present to you and members of the West Virginia Legislature, the Commission's Annual Report for Fiscal Year July 1, 2013 through June 30, 2014. The Commission steadfastly continues its mission to eradicate discrimination and to improve its services to the citizens of West Virginia, pursuant to the West Virginia Human Rights Act, the West Virginia Fair Housing Act, and the West Virginia Pregnant Workers Fairness Act, as amended.

During Fiscal Year July 1, 2013, through June 30, 2014, the Commission has accomplished many of its goals in addition to continuing to investigate and litigate cases of discrimination. The Commissioners and staff receive ongoing training from the U. S. Equal Opportunity Commission and the office of the West Virginia Attorney General, Civil Rights Division.

The Commission continues to conduct outreach to community advocacy groups and businesses regarding discrimination laws in housing, public accommodation, and employment. In addition, the Commission strongly supports alternative dispute resolution programs because of their cost effectiveness.

For additional information, feel free to visit our website at [www.hrc.wv.gov](http://www.hrc.wv.gov). Thank you for the opportunity to be of service to the people of this great State.

Respectfully submitted,

**Marykaye Jacquet**  
Acting Director

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## **MISSION STATEMENT**

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The West Virginia Human Rights Commission is a neutral agency which administers and enforces the West Virginia Human Rights Act, as amended and the West Virginia Fair Housing Act, prohibiting discrimination in employment, housing and places of public accommodation for all citizens of West Virginia regardless of race, religion, color, national origin, ancestry, sex, blindness, disability, and age (40 and above); specifically in housing, familial status and persons with disabilities who utilize assistance animals.

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## **DECLARATION OF POLICY**

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It is the public policy of the State of West Virginia to provide all citizens equal opportunity for employment, equal access to places of public accommodation and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodation 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 accommodation 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, (40 and above), blindness, disability, familial status or persons with disabilities who utilize service assistance animals.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, familial status or persons with disabilities who utilize service assistance animals 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 (40 and above), color, national origin, ancestry, blindness, disability and person with disabilities who utilize service assistance animals. 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.

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

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

The West Virginia 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, age (40 and above), blindness, disability, familial status (the presence of children under the age of 18 years of age in the household) and persons with disabilities who utilize service assistance animals. 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 West Virginia Fair Housing Act. It is important that all those covered by the Act know their rights and duties under the Act.

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## **HIGHLIGHTS OF THE WEST VIRGINIA HUMAN RIGHTS ACT**

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

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

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

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

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

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

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

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

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

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



**Dr. Darrell Cummings**  
Chair  
Ohio County



**Wesley Dobbs**  
Marion County



**Karl Gattlieb**  
Kanawha County



**Timothy Hairston**  
Vice Chair  
Monongalia County



**John McFerrin**  
Monongalia County



**William L. Williams**  
Logan County



**Lisa Younis**  
Jefferson County

## THE COMMISSIONERS AND THEIR ROLE

Set policy for the Commission.

Act as an appellate body for cases appealed from a final order of an administrative law judge. All cases on appeal are confidential and Commissioners should not inform anyone about what is discussed during the deliberation of these cases.

Approve modifications and/or amendments to procedural, legislative and interpretive rules and regulations.

Have an awareness of civil rights issues at the local and state level. Develop appropriate strategies to address these issues with the advice of the Executive Director and the community.

Be visible in their communities and throughout the state.

Provide assistance and information to individuals needing the agency's services.

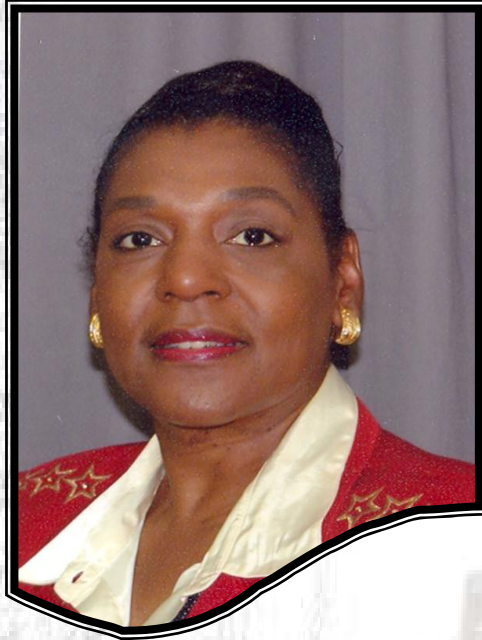
Form advisory committees and hold public hearings, as appropriate.

Attend monthly meetings. Commission meetings are held on the second Thursday of every month, unless otherwise agreed. All meeting times, location and agenda are posted on the Secretary of State's website. Commission meetings, except for executive session, are open to the public.

Receive ongoing training from the staff of the Human Rights Commission, the Attorney General's Civil Rights Division and other invited members of the community and the West Virginia State Bar.

(Note: Please see W. Va. Code § 5-11-8 for complete listing of the Commissioners' powers and functions.)





## **THE DIRECTOR'S VISION**

**The Vision of the West Virginia Human Rights Commission is to provide better quality, more efficiency and effective and consistent professional services to the citizens of the State of West Virginia. by utilizing a proactive approach that will give clarity to who we are and the services we provide.**

**It is our endeavor to be more accessible to the citizens of West Virginia in terms of their knowing who we are, that we are here for them and that we hold ourselves to a higher standard of accountability.**

**We are committed to aggressively targeting those areas of West Virginia that are underserved, by providing ongoing training and outreach to increase the awareness of Human Rights Laws and the efforts of the West Virginia Human Rights Act, as amended to protect the rights and dignity of all persons regardless of race, religion, color, national origin, ancestry, sex, blindness, disability, and age (40 and above).**

**We will allow our faces to be seen and our voices heard with the message of tolerance and equality for all persons in this Great State of West Virginia!**

**WEST VIRGINIA**

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## COMMUNITY PARTNERSHIPS, RELATIONS AND OUTREACH

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The following section represents a list of partnerships the West Virginia Human Rights Commission maintains with community groups, agencies and businesses. This is part of the Commission's effort to educate and serve the community while administering the West Virginia Human Rights Act, as amended, and the West Virginia Fair Housing Act, which prohibits discrimination in employment, housing and places of public accommodations.

It is the responsibility of the Human Rights Commission to bring about mutual understanding, respect, tolerance, and equal protection of the laws. While not all-inclusive, the following list and highlights represent selected outreach events.

- ★ Appalachian Power Company
- ★ Beckley Human Rights Commission
- ★ CECDC (Charleston Economic Community Development Corporation)
- ★ Charleston Black Ministerial Alliance
- ★ Charleston Housing Authority
- ★ Charleston Job Corps
- ★ City of Charleston, Mayor's Office of Economic and Community Development (MOECD)
- ★ City of Charleston Police Department
- ★ Community for Social Justice of Morgantown
- ★ Covenant House
- ★ Fairness West Virginia
- ★ Habitat for Humanity
- ★ HOPE CDC (Hope Community Development Corp.)
- ★ HUD—Local Office
- ★ Huntington Housing Authority
- ★ Kanawha County Schools
- ★ KISRA (Kanawha Institute for Social Research & Action, Inc. )
- ★ Metropolitan Community Development Corporation, Inc. (MCDC, Inc.)

- ★ Morgantown Human Rights Commission
- ★ Northern West Virginia Center for Independent Living
- ★ Ohio Civil Rights Commission, Columbus, Ohio
- ★ Southwestern Pennsylvania Legal Services, Inc.
- ★ TAMARACK Inc., of Beckley, WV
- ★ The Minority Health Advocacy Group of Charleston, WV
- ★ U.S. Equal Employment Opportunity Commission
- ★ U.S. Housing and Urban Development
- ★ U.S. Housing and Urban Development, Pittsburgh Field Office
- ★ Weirton Human Rights Commission
- ★ Wheeling Human Rights Commission
- ★ WV Advocates, Inc.
- ★ WV A Money Follows the Person Initiative
- ★ WV Attorney General's Office, Civil Rights Division
- ★ WV Americans with Disabilities Act Coalition
- ★ WV Association of Realtors (WRA)
- ★ WV Division of Culture and History
- ★ WV Equal Employment Opportunity Office
- ★ WV Federation of the Blind and Visually Impaired
- ★ WV Federation for Deaf and Hearing Impaired
- ★ WV Housing Development Fund
- ★ WV Legislature
- ★ WV Martin Luther King, Jr. Holiday Commission
- ★ WV Office of the Governor
- ★ WV Office of the Governor, Office of Economic Opportunity
- ★ WV Office of the Governor, Herbert Henderson Office of Minority Affairs
- ★ WV State Association of Public Housing
- ★ WV State Bar Association
- ★ WV State University
- ★ WV State University College of Professional Studies
- ★ WV Women's Commission
- ★ YWCA

**Selected Outreach Highlights**  
**\*\* Not all inclusive \*\***

**February 2014**

**WEST VIRGINIA**

**MARTIN LUTHER KING, JR. HOLIDAY COMMISSION**

Each year the West Virginia Human Rights Commission, in partnership with the West Virginia Martin Luther King, Jr. Holiday Commission, participates in the observance of the accomplishments, life, and legacy of the late Rev. Dr. Martin Luther King, Jr.

These ceremonies are held in remembrance of Dr. King's efforts towards the advancement of Civil Rights. The ongoing partnership with the Holiday Commission serves to underscore the goals and objectives of the West Virginia Human Rights Commission in promoting equality and awareness of the rights of all citizens of this great state.

**WEST VIRGINIA**

**HUMAN RIGHTS COMMISSION CELEBRATES**

**BLACK HISTORY MONTH**

**“Honoring the Memory of the Late  
Rev. Dr. Martin Luther King, Jr.”**

During the month of February's commemoration of Black History Month, The West Virginia Human Rights Commission, area Faith-Based Initiatives, along with Charleston's Black Ministerial Alliance, and other surrounding community groups, celebrated the birthday, life, and legacy of the late Rev. Dr. Martin Luther King, Jr. Throughout the year, the West Virginia Human Rights Commission continues to have a presence in various community celebrations, commemorations, and events which emphasize the importance of human rights.

**February 27, 2014 - West Virginia Office of the Governor, and the West Virginia Human Rights Commission—Charleston, WV.**

**Advancing Civil Rights Through Advocacy**



**11h Annual West Virginia Civil Rights Day  
Thursday, February 27, 2014, 10:00 AM**

**2014 HONOREES**



**Jamie S.  
Alley, Esq.**



**Dr. Ethel  
Caffie Austin**



**Edward  
"Eddie"  
Belcher**



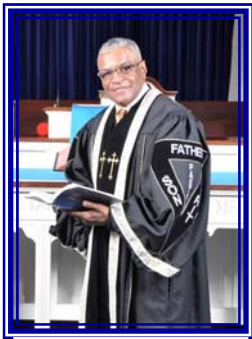
**Beni Kedem  
Shrine Temple**



**Dr. Braxton  
Broady**



**Rabbi Beth  
Jacowitz  
Chottiner**



**Rev. Wesley  
Q. Dobbs**



**Karl S. Gattlieb**



**Paul L.  
Hamilton**



**Rt. Rev.  
Dr. Emanuel A.  
Heyliger**



**Rosalean  
Hibbett**



**Rev. Dr.  
Lloyd A. Hill**



**Norman Lindell**



**Tara N.  
Martinez**



**Dr. Rida  
Mazagri**



**John T.  
McFerrin, Esq.**



**Ralph D. Miller**



**The Honorable  
Sharon M.  
Mullens**



**Pastor Willie  
Nevels**



**Cpl. Errol  
Randle**



**Kathleen P.  
Reid**



**William O.  
Ritchie, Sr.  
Posthumously**



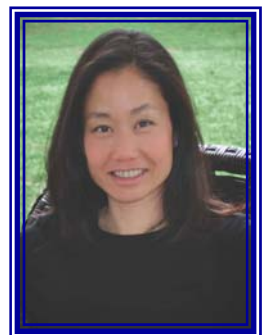
**Monia S. Turley**



**Rabbi Victor  
Urecki**



**WV Commission  
for the Deaf and  
Hard of Hearing**

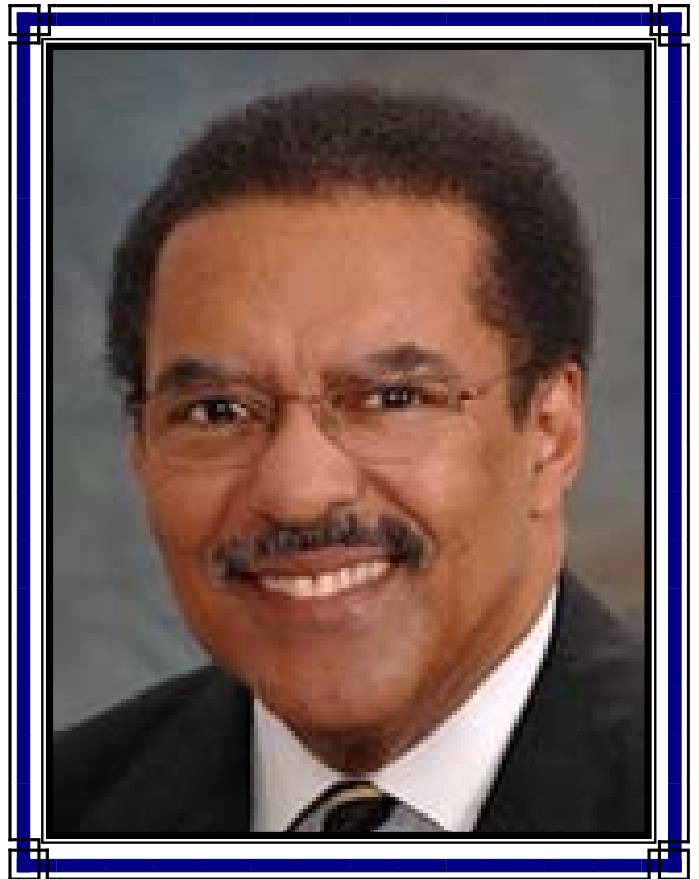


**Lisa K. Younis**

*In Memoriam*

**In Loving Memory of  
The Honorable  
Mrs. Phyllis Harden Carter**

**In Loving Memory of  
Dr. Hazo W. Carter  
Former Civil Rights Day Honoree**



**Acting Executive Director  
West Virginia  
Human Rights Commission  
Deceased January 18, 2014**

**President Emeritus  
West Virginia  
State University  
Deceased February 18, 2014**

**March 6, 2013** - The West Virginia Human Rights Commission represented at the State's Annual Conference of Women's Commissions held at the Charleston Marriott, Charleston, WV.

**May 25, 2014** - The West Virginia Human Rights Commission represented at the local annual "Stand Against Racism" Event, which was held at Asbury United Methodist Church in Charleston's East End. The Event was reported by Education Reporter Samuel Speciale in the Charleston Daily Mail. Reporter Speciale stated, *"The Rev. Marykaye Jacquet, Director of the West Virginia Human Rights Commission, speaks Sunday at the Stand Against Racism service. Jacquet said racism is still a problem and challenged members of the congregation to know where they stand. The special service included a tribute to former West Virginia State University president Hazo Carter and his wife, Judge Phyllis Carter, former Director of the West Virginia Human Rights Commission."*



### **April 7, 2014 - Celebrating April as Fair Housing Month**

The Commission's Fair Housing Conference, Each year REALTORS® recognize the significance of this event and reconfirm their commitment to uphold fair housing laws as well as the commitment to offer equal professional service to all West Virginia citizens, in their search for real property. The West Virginia Human Rights Commission sponsored a **FREE** event to all Realtors, Housing Providers, Rental Property Managers, Housing Authority Staff and the general public. The Fair Housing Initiatives Panelists included: Roberta Hill-Smith—CECDC; Michelle Foster—KISRA; Rev. Matthew Watts—HOPE CDC; Melissa Hill—MECDC; and the Commission's Housing Staff. Businesses participating were: Beckley Human Rights Commission, Beckley, WV; Charleston Housing Authority; Charleston Job Corps.; Community Group Partnerships participation; Covenant House; EEOC Regional Office-Pittsburgh, PA; Governor's Office of Economic Development; HUD-local office – Charleston, WV; Kanawha County Schools; Mayor's Office of Economic Development; Metropolitan Community Development Corp., Inc. (MCDC Inc.); Northwestern Center for Independent Living; Office of The Honorable Earl Ray Tomblin; The City of Charleston - Mayor's Office of Economic Opportunity; The Governor's Herbert Henderson's Office of Minority Affairs; The Minority Health Advocacy Group of Charleston, WV; West Virginia State University; WV A Money Follows the Person Initiative; WV Attorney General's Office Civil Rights Division; WV EEO Office; WV Habitat for Humanity; WV Housing Development Fund; WV HRC Commissioners; and the West Virginia Realty Association.



## April 7, 2014 - Fair Housing Poster Contest and Celebration

In celebration with the Fair Housing Conference and to commemorate the Fair Housing Laws in West Virginia, the West Virginia Human Rights Commission, in association with the West Virginia Housing Development Fund, hosted its second annual Fair Housing Poster Contest. The purpose of the contest is to demonstrate non-discriminatory housing for all people regardless of race, religion, color, national origin, ancestry, sex, age (40 or above) blindness, disability, persons with disabilities who utilize service assistance animals, or familial status.

The contest theme was **“Housing Discrimination Has No Place In Our Nation!”**. Middle school students (grades 6-8) and High School students from: Putnam, Jackson, Kanawha, Lincoln and Mineral Counties participated in the Contest which was celebrated on April 7, 2014. There were 84 entries submitted from the middle schools and four entries from the High Schools. Monetary prizes were awarded by the WV Housing Development Fund to the First, Second and Third place winners of the contest; chosen by our panel of judges.

Due to snow days and the water crisis in Kanawha County, schools were having a hard time working the contest into class schedule. Posters were on display at the Fair Housing Event, and the winners were treated to lunch and received their ribbons and cash prizes.



Makayla McM. - Lenore K-8  
1st Place Winner \$100.00  
\$125.00 to the School  
For Supplies



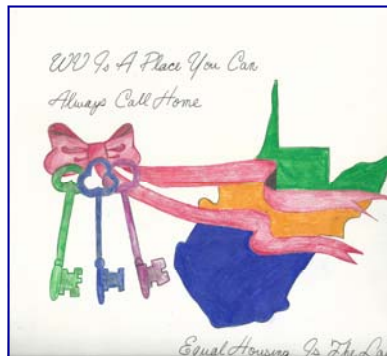
Julia P. - Hurricane Middle School  
2nd Place Winner \$50.00



Emma H. - Edison Middle School  
3rd Place Winner \$25.00



Elizabeth K. - Ripley High School  
1st Place Winner \$100.00  
\$125.00 to the School  
For Supplies



Kiana L. - Ripley High School  
2nd Place Winner \$50.00



Katherine S. - Ripley High School  
3rd Place Winner \$25.00

## THE COMPLAINT PROCESS

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

**I. Intake** — Persons wishing to file a complaint or to obtain information regarding their rights may contact the Commission by telephone, US mail, online, or by visiting the Commission's office. Those wishing to file a complaint are provided a background information form which will provide the Commission with all the necessary information to begin an investigation into the complaint. The complaint is evaluated to ensure it meets the minimal jurisdictional requirements; in that, the harm complained of has occurred within the last 365 days, the complainant (person making the complaint) is a member of a protected class, and the complaint is with regard to employment, public accommodation, or a housing issue. In employment and public accommodation complaints, protected classes include race, sex, age (40 and above), disability, blindness, religion, ancestry, national origin, and/or reprisal, as set forth in the West Virginia Human Rights Act. In housing complaints, familial status and persons with disabilities who utilize service assistance animals are added to the aforementioned list, as set forth in the West Virginia Fair Housing Act. When a complaint meets the minimal jurisdictional requirements, it is docketed as an actual case. A docketed complaint is typed into a formal, legal complaint which is signed by the complainant and notarized by a notary public before being served upon the company/agency/person the complainant alleged caused the harm. This company/agency/person is referred to as the respondent. The respondent is given an opportunity to respond to the allegations set forth in the formal complaint before the case is assigned to an investigator.

**II. Investigation** — Investigators analyze the information provided by the complainant and respondent and can request more information, as needed, to determine whether there is probable cause to believe that the respondent has engaged in unlawful discrimination under either the West Virginia Human Rights Act or the West Virginia Fair Housing Act. Throughout the investigative process, the parties may request a pre-determination conciliation to attempt to settle the dispute before a determination is made in the case. Once a determination is made by the investigative team, either party may request a review of the case, in writing, to the Executive Director. When a determination of no probable cause is made, the complaint is dismissed and the case is closed. The complainant receives a right to sue letter and may file the action directly in Circuit Court. When a determination of probable cause is made, the case must be set for a public hearing before one of the Commission's administrative law judges.

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

**CASE ACTIVITY DURING FISCAL YEAR  
JULY 1, 2013 TO JUNE 30, 2014**

The Commission mailed a total of **835** Background Information Forms to West Virginia citizens. Of that total—

**695** were telephone inquiries;  
**128** were in person inquiries;  
**12** were letter inquiries; and

The Commission docketed a total **215** new cases which were added to the current case load. Of that total—

**14** were public accommodation  
**20** were housing cases  
**181** were employment

The Commission closed a total of **347** cases. Of that total—

**36** were public accommodation  
**38** were housing cases  
**273** were employment cases

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## **ALTERNATE DISPUTE RESOLUTION PROGRAMS**

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

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

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

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

After a charge is filed, either 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, and would then inquire as to their interest in participating in the program.

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

Request for information concerning the Pre-Determination Conciliation Program may be directed to the Director of Operations at (304) 558-2616 or toll-free at 1-888-676-5546.

## **Mediation Program**

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

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

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

### **CONCILIATION 2014**

<b>Cases Referred to Conciliation</b>	<b>5</b>
<b>Successful Settlements</b>	<b>2</b>
<b>TOTAL MONETARY BENEFITS</b>	<b>\$1,109.93 *</b>

### **MEDIATION 2014**

<b>Cases Scheduled for Hearing</b>	<b>30</b>
<b>Cases Mediated and Settled</b>	<b>23</b>
<b>TOTAL MONETARY BENEFITS</b>	<b>\$456,021.73 *</b>

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

**OFFICE OF JUDGES  
SELECTED CASE SUMMARIES**

The following is a selected decision of the West Virginia Supreme Court of Appeals for the Fiscal Year 2014. For a more complete listing of Final Orders and Decisions of the West Virginia Human Rights Commission please refer to the Commission's website at <http://www.hrc.wv.gov> .

**SELECTED  
DECISIONS BEFORE THE WEST VIRGINIA  
HUMAN RIGHTS COMMISSION  
FOR FISCAL YEAR 2014**

**RENEE RICHARDSON-POWERS**

v.

**WEST VIRGINIA DIVISION OF MOTOR VEHICLES  
WEST VIRGINIA DEPARTMENT OF TRANSPORTATION  
DOCKET NO: EDS-94-12**

A Public Hearing, in the above-captioned matter, was convened on December 9, 10, 11, 12 and 13, 2013, in the Berkeley County Council Chambers, Dunn Building, 400 West Stephen Street, Martinsburg, West Virginia, before Robert B. Wilson, Chief Administrative Law Judge. The Public Hearing was reconvened on February 10, 11 and 12, 2014, in the Berkeley County Council Chambers in Martinsburg, West Virginia.

The Complainant, Renee Richardson-Powers, suffered a traumatic brain injury in her childhood, which affects the manner in which she learns. Complainant has proven that she is a person with a disability under the West Virginia Human Rights Act through the evidentiary deposition testimony of James Douglas Petrick, Ph. D. in clinical psychology. Dr. Petrick saw Ms. Powers on August 25, 2010, on a consult for the West Virginia Center for Excellence in Disabilities' Traumatic Brain Injury Program operated by West Virginia University in Morgantown.

Ms. Richardson-Powers was hired by the Respondent, West Virginia Division of Motor Vehicles (DMV), on March 16, 2010, for the position of Customer Service Representative (CSR). It is undisputed that by sometime between March 28, 2010 through April 1, 2010, and again on April 23, 2010, Complainant told her manager that she had a brain injury, which prevented her from retaining information. Notes for the week of May 16 to May 21, 2010, indicate that Complainant complained about the way that each trainer did things and that with the brain injury she could not retain information.

The Complainant was capable of performing the essential CSR job functions when provided with an appropriate reasonable accommodation. The Respondent breached its duty to provide a reasonable accommodation to Complainant. By letter dated September 15, 2010, from Jeff Black, Human Resources Director, West Virginia Department of Transportation, Ms. Richardson-Powers' request for reasonable accommodation was denied. Respondent was aware that Ms. Richardson-Powers required a reasonable accommodation to learn to perform the essential functions of the job. A reasonable accommodation existed to allow her to learn how to perform the essential functions of the CSR position and the Respondent failed to provide the accommodation. Further, Respondent, DMV, failed to engage in the interactive process in an effective manner designed to allow that interaction to take place in order to ascertain the nature of Complainant's learning disability and an appropriate way in which to provide an effective accommodation for that disability.

The weight of the evidence, as discussed elsewhere in this decision, indicate that the duty of reasonable accommodation was not met by Respondent in this instance, which constitute circumstances of unlawful discrimination leading to her termination.

The complete Final Decision can be found on the Human Rights Commission's website.

This decision is currently being appealed before the Commissioners for West Virginia Human Rights Commission.

**IN THE MATTER OF**  
**JOANN L. MEADOWS**  
**v.**  
**PETROLEUM FUELING, INC.,**  
**d/b/a MAXUM PETROLEUM**  
**DOCKET NO: ES-329-11**

The Commission adopted the Final Decision of the Administrative Law Judge as its own without modification. A Public Hearing, in the above-captioned matter, was convened on November 18 and 19, 2013, at the offices of the West Virginia Human Rights Commission in Charleston, West Virginia, before Allison Carroll Anderson, Administrative Law Judge.

The Complainant, Joanne Meadows, was hired by PFI on March 24, 2008, for the position of onsite fueler by the Director of Fleet Maintenance for Petroleum Fueling, Inc. (PFI). Meadows was assigned to the Black Castle Mine site located in Boone County, West Virginia. It is undisputed that Meadows was the only female that had ever applied for or been hired to the position of fueler at the Black Castle Mine site. Ms. Meadows was terminated on December 22, 2010. During her tenure with PFI, Meadows alleged that she was subject to unlawful gender discrimination, hostile work environment and retaliatory discharge.

Upon the completion of Complainant's initial training period, Ms. Meadows began working primarily on the night shift, where she alleges that she was subjected to verbal harassment and malicious pranks. Ms. Meadows reported these incidents to her "lead man" on various occasions, but received no response. Meadows eventually reported her concerns to PFI's Director of Fleet Maintenance, who visited the mine site and determined that Meadows and her co-worker were just "bickering". Director of Fleet Maintenance advised Meadows and the co-worker to "get along" without any further action. Meadows continued to work with those co-workers off and on until October 6, 2008, when she permanently returned to day shift. Complainant testified that after October 6, 2008, she did not experience any further gender-based harassment.

On December 21, 2010, Ms. Meadows refused to fuel a vehicle, which was located in her assigned area of responsibility. Meadows asserted to her "lead man" and her immediate supervisor, that someone else could complete the fuel run because she was taking her unpaid lunch break. As a result, her supervisor completed the fuel run and reported her refusal to fuel.

Complainant had an extensive disciplinary history during her employment with PFI, with five (5) written reprimands and one (1) letter placed in her file prior to her termination, for various instances of insubordination and/or failure to follow the PFI chain of command. Based upon her disciplinary history and the refusal to fuel, the decision was made to terminate Meadows the following day.

Looking at the record as a whole, the totality of the circumstances and the case law, Meadows fails to prove, by a preponderance of the evidence, a claim of gender discrimination against PFI. The evidence of record demonstrated that Meadows' termination on December 22, 2010, was the result of her extensive disciplinary record and her refusal to fuel following a direct order from a supervisor. Therefore, Meadows has failed to demonstrate a *prima facie* case of gender discrimination.

Likewise, Meadows has failed to prove by a preponderance of the evidence that her termination constituted a retaliatory discharge pursuant to W.Va. Code §5-11-9(7)(C). Meadows failed to demonstrate any nexus between her complaints of gender discrimination during the first year of her employment with PFI and her subsequent termination almost two (2) years later. Finally, although Meadows has demonstrated a *prima facie* case of sexual harassment/hostile work environment, the events at issue occurred on or before October 6, 2008. As a result, her claim is time barred by the one (1) year statute of limitations found in W.Va. Code §5-11-10.

The complete Final Decision can be found on the Human Rights Commission's website.

### **Final Decisions Available Online**

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

Visit [www.hrc.wv.gov](http://www.hrc.wv.gov) for the Final Decision Directory.



## FREEDOM OF INFORMATION ACT

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

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

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

If a case withdraws to Circuit Court and/or is closed on the Commission's docket, then the law enforcement exemption previously invoked by the Commission under the Freedom of Information Act in these matters no longer applies. A party is entitled to documents previously exempted, with the exception of documents denied and not provided under the deliberative process exemption of W.Va. Code § 29B-1-4(8) consisting of advice, opinions and/or recommendations that reflect the deliberative, decision making process of the Commission or matters under a protective order.

The Commission charges \$1.00 per page copied for closed files; \$.50 cents per page copied for open files; and \$10.00 per electronic disk. These fees also incorporate file retrieval to and from Archives, research, copying, correspondence and contact with attorneys.

**The Commission processed 48 requests and collected \$932.50 as result of FOIA requests. These funds were deposited into the state's general fund.**

## CONCLUSION

The Commission's goals for **Fiscal Year 2015** include the following:

- ◆ Provide a continued, ongoing variety of training to the Commissioners and all staff,
- ◆ In a collaborative effort with the EEOC and the Civil Rights Division of the Attorney General's office, continue to conduct additional training for investigative staff and Commissioners including City Commissions.
- ◆ Promoting awareness of Human Rights and the Human Rights Commission through the mechanism of infomercials and advertising.
- ◆ Hire in house counsel to advise the Commission in all legal matters.
- ◆ Continue to hire experienced investigators who will conduct more efficient and effective investigations.
- ◆ Provide more extensive and innovative training sessions to educate businesses regarding discrimination law in housing, public accommodation and employment.
- ◆ Continue the Commission's mission to eradicate discrimination and continue to improve its services to the citizens of West Virginia -by expanding Community Outreach to include additional Advocacy Groups.
- ◆ Set up a dialogue of understanding between the Commission and all West Virginians to promote awareness of the goals and objectives of the Commission.
- ◆ Maximize the use of Alternative Dispute Resolution Programs, which includes State Bar Mediation Training.
- ◆ Organize and implement the Civil Rights Day for February 2015.
- ◆ Plan and implement the annual Fair Housing Summit/Seminar of 2015.
- ◆ Continue to collaborate with the Governor's Herbert Henderson Office of Minority Affairs conducting Outreach and Education seminars to community.
- ◆ Work on the new rules and regulations for the Pregnant Workers' Fairness Act.



**WEST VIRGINIA HUMAN RIGHTS COMMISSION  
ROOM 108A  
1321 PLAZA EAST  
CHARLESTON, WV 25301-1400**

**(304) 558-2616  
Toll Free: 1-888-676-5546  
Fax: (304) 558-0085**

**Located on the Web at:  
[www.hrc.wv.gov](http://www.hrc.wv.gov)**

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

**RELATED LINKS AVAILABLE ON OUR WEBSITE:**

[WV Human Rights Act](#)

[WV Fair Housing Act](#)

[Rules and Regulations](#)

[Investigative Process and Procedure](#)

[Annual Reports](#)

[Complaint Forms](#)

[Pre-Determination Conciliation](#)

[Poster for Workplaces and Places of Public Accommodation](#)

[Fair Housing Poster](#)