



WEST VIRGINIA HUMAN RIGHTS COMMISSION

**Annual Report
FY 2013**



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

Phyllis H. Carter
Acting Executive Director

December 1, 2013

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:

I am pleased to present to you and members of the West Virginia Legislature, the Commission's Annual Report for Fiscal Year July 1, 2012, through June 30, 2013. 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, as amended.

During Fiscal Year July 1, 2012, through June 30, 2013, the Commission has accomplished many goals in addition to continuing to investigate and litigate cases of discrimination. The Commissioners and staff received 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.

Please visit our new website which was launched, at www.hrc.wv.gov. Thank you for the opportunity to be of service to the people of this great State.

Respectfully submitted,

Phyllis H. Carter
Acting Executive Director

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 race, religion, color, national origin, ancestry, sex, age (40 or above), blindness, disability, familial status and persons with disabilities who utilize service assistance animals.

The Commission administers and enforces 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 accommodation.

DECLARATION OF POLICY

It is the public policy of the State of West Virginia to provide all citizens equal opportunity for employment, equal access to places of public accommodation and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public 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.

HIGHLIGHTS OF THE WEST VIRGINIA HUMAN RIGHTS ACT

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

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

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

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

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

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

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

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

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

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



Dr. Darrell Cummings
Chair
Ohio County



Wesley Dobbs
Marion County



Karl Gattlieb
Kanawha County



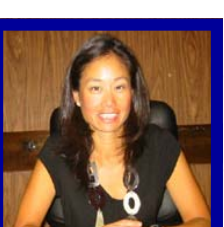
Timothy Hairston
Vice Chair
Monongalia County



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.)



**PHYLLIS H. CARTER
ACTING EXECUTIVE DIRECTOR**

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

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

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

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

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

COMMUNITY PARTNERSHIPS, RELATIONS AND OUTREACH

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 Branch of the WV Chapter of NAACP
- ★ Beckley Human Rights Commission
- ★ CECDC (Charleston Economic Community Development Corporation)
- ★ Charleston Black Ministerial Alliance
- ★ Charleston Housing Authority
- ★ Charleston Job Corps
- ★ Church Women United of Charleston, West Virginia
- ★ City of Charleston, Mayor's Office of Economic 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
- ★ One Kanawha
- ★ 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 House of Delegates, WV Legislature
- ★ 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 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 **

West Virginia Human Rights Commission Community Workshops — Charleston, WV

July 9 and 30, 2012 – The West Virginia Human Rights Commission conducted “Workplace Harassment” Workshops for the staff of the Charleston Kanawha Housing Authority, Charleston, WV. The workshops were their annual mandatory in-service as a means of keeping all their staff updated on workplace policy as pertains to harassment and discrimination issues.

July 11 and July 23, 2012 - The West Virginia Human Rights Commission conducted “Workplace Harassment” Workshops for the staff of TAM-ARACK Inc., of Beckley, WV. The workshops were provided in conjunction with their annual mandatory in-service programs and as a means of keeping all their staff updated on workplace policy as pertains to harassment and discrimination issues.

September 27, 2012 - “The West Virginia Human Rights Commission participated in a community awareness meeting with the members of “One Kanawha” - a variety of organizations who have partnered to assess and respond to potential “hate motivated groups who spread intents of racism or discrimination throughout the community. The emphasis of the Charleston affiliate is to project a firm, peaceful message to such groups, that ‘hate motivated’ actions are not only illegal in nature but will not be tolerated, “*Not In Our Town.*” The discussion was led by Paul R. Sheridan, (*former*) Deputy Attorney General for West Virginia and a long-time supporter of the “*Not In Our Town* organization.”

October 18, 2012 – The West Virginia Human Rights Commission sponsored a Motivational Staff training day for its staff. The Governor’s Herbert Henderson Office of Minority Affairs attended and participated in this event.

November 9, 2012 - The West Virginia Human Rights Commission hosted a “Community Forum” and invited various agencies (*listed below*) to participate and access the needs of the community with regard to discrimination in employment, racism, housing, and places of public accommodation; as well as other growing needs in the surrounding communities and adjacent counties.

The Charleston Police Department; Charleston Job Corp; Various Churches Groups; West Virginia State University; KISRA (Kanawha Institute for Social Research & Action, Inc.) WV House of Delegates-representation; The Governor’s Herbert Henderson Office of Minority Affairs

February 2013

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 22, 2013 - West Virginia Office of the Governor, Division of Culture and History and the West Virginia Human Rights Commission—

**Advancing Civil
Rights Through Advocacy**



**10th Annual
West Virginia Civil Rights Day
Tuesday, February 26, 2012, 11:00 AM
Norman L. Fagan West Virginia State Theater
The WV Division of Cultural and History
State Capitol Complex
1900 Kanawha Blvd. E.
Charleston, WV 25305**

2013 HONOREES



Carol A. Beattie



**The Honorable
Irene C. Berger**



Randall Byrnsie



Walter H. Chamberlain



Jan Derry



Katherine L. Dooley, Esq.



Rev. Ronald W. English



Timothy L. Hairston



Robert L. Harrison, Ph.D.



Cheryl L. Henderson, Esq.



**The Honorable
Tal Hutchins**



Christopher D. Jackson



**Rev. Dr.
Skyler K. Kershner**



**Rev. William Howard Law
Posthumously**



**NFB
National Federation
of the Blind
Of West Virginia
National Federation
of the Blind**



Curtis E. Price



**The Honorable
Marie E. Redd**



**Major General (Ret.)
Allen E. Tackett**



**First Lady
Joanne Jaeger Tomblin**



**Frank Veltri
Posthumously**



Rev. Matthew J. Watts



Dr. Rozelle Jenee Walker



Chief Brent L. Webster



**The Honorable
Patricia H. White**

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.

March 6, 2013 - The Commissioners of the West Virginia Human Rights Commission, by unanimous vote on February 21, 2013, adopted a Resolution of the Commission to Prohibit Discrimination based on Sexual Orientation. A letter was sent from the Commissioners to Honorable Governor Earl Ray Tomblin with the Resolution to amend the West Virginia Human Rights Act and the West Virginia Fair Housing Act to include Sexual Orientation and Gender Identity as protected classes.

March 28, 2013 – The West Virginia Human Rights Commission conducted an Awareness Workshop on basic discrimination issues, workplace harassment and the process of how to file a complaint, for the faculty and staff of RESA V (Regional Education Services Agencies), in Parkersburg, WV.

April 13, 2013 - The West Virginia Human Rights Commission attended and represented at the regional meeting of the NAACP in Clarksburg, WV.

April 28, 2013 - The West Virginia Human Rights Commission represented at the local annual “Stand Against Racism Event, which was held at Asbury United Methodist Church.

April 29 - 30, 2013 - Celebrating April as Fair Housing Month

The Commission's Fair Housing Conference, “**Our Work Today Defines Our Tomorrow**” earmarked the 45th anniversary of the 1968 landmark Fair Housing Act. 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 30, 2013 - Fair Housing Poster Contest

In an effort to celebrate and 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 "A Place Called Home: Fair Housing is the Law!". Middle school students (grades 6-8) from Wood, Mercer, Monongalia, Kanawha, Putnam, Hampshire, Raleigh, Boone, Preston and Mineral Counties participated in the Contest which was held at noon on April 30, 2013. There were 323 entries submitted from participating 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. South Charleston Middle School received \$275.00 as the school the First place winner attended. The money was award to the Art department at the school for additional art supplies.



First Place
 Mishelle Smith
 South Charleston
 Middle School
 8th Grade - \$100



Second Place
 Kaylee Affolter
 Edison Middle School
 8th Grade - \$75



Third Place
 Hannah O'Brien
 Hurricane Middle School
 8th Grade - \$50

**Please visit our website's events section for more information on this event.*

June 20, 2013 - The West Virginia Human Rights Commission represented at the West Virginia Bar Association Dinner, honoring the retirement of Justice Franklin Cleckley. Judge Robert Wilson, Deputy Chief Administrative Law Judge for gave a verbal presentation and Deputy Director, Marykaye Jacquet presented a plaque to Justice Cleckley from the Commissioners and Commission staff.

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.

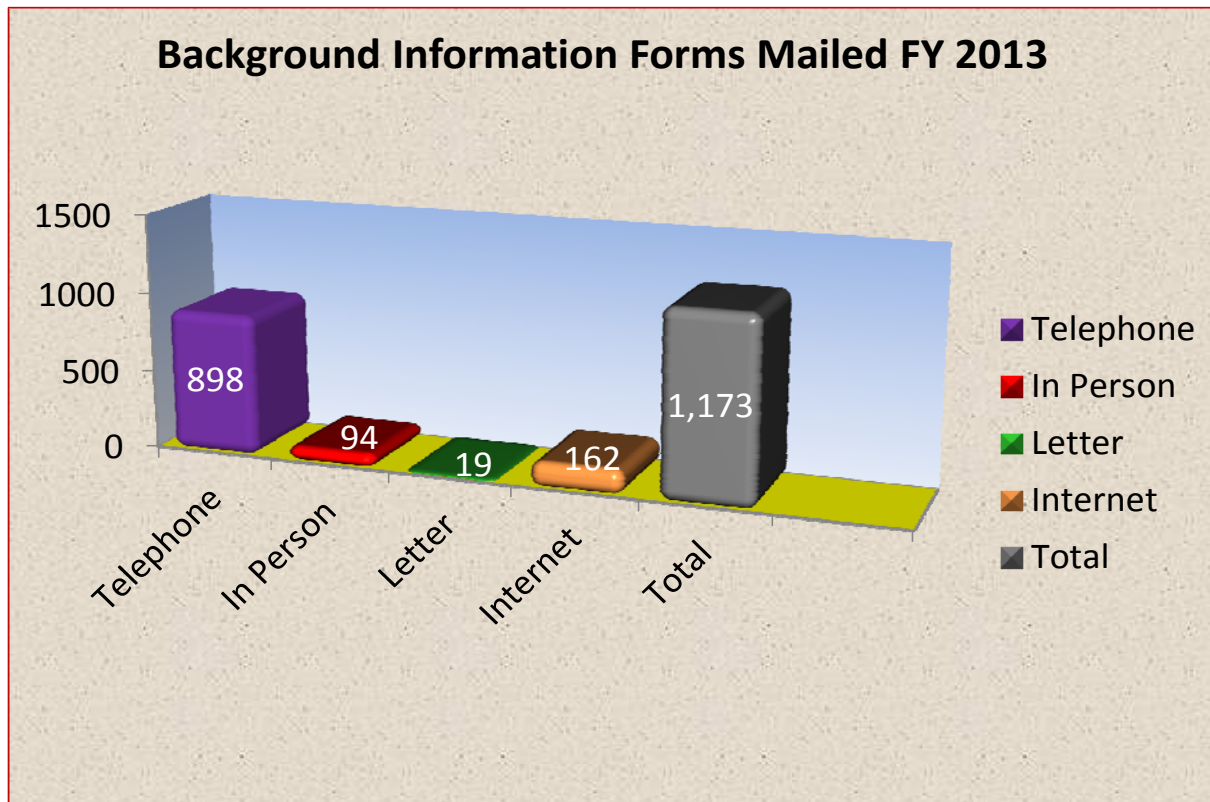
II. Investigation — Investigators analyze the information provided by the complainant and respondent and can request more information, as needed, to determine whether there is probable cause to believe that the respondent has engaged in unlawful discrimination under either the West Virginia Human Rights 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, 2012 TO JUNE 30, 2013**

The Agency mailed a total of **1,173** Background Information Forms to West Virginia citizens. Of that total,

898 were telephone inquiries;
94 were in person inquiries;
19 were letter inquiries; and
162 were internet inquiries

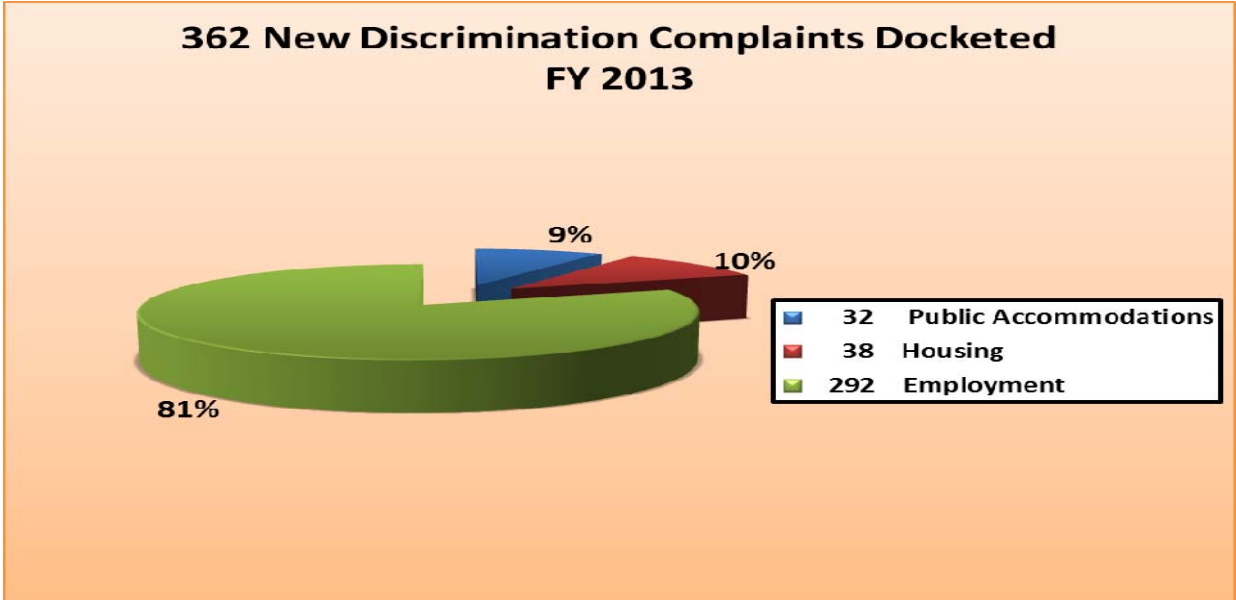


362 new cases were docketed and added to the current case load.

32 were public accommodation

38 were housing cases

292 were employment

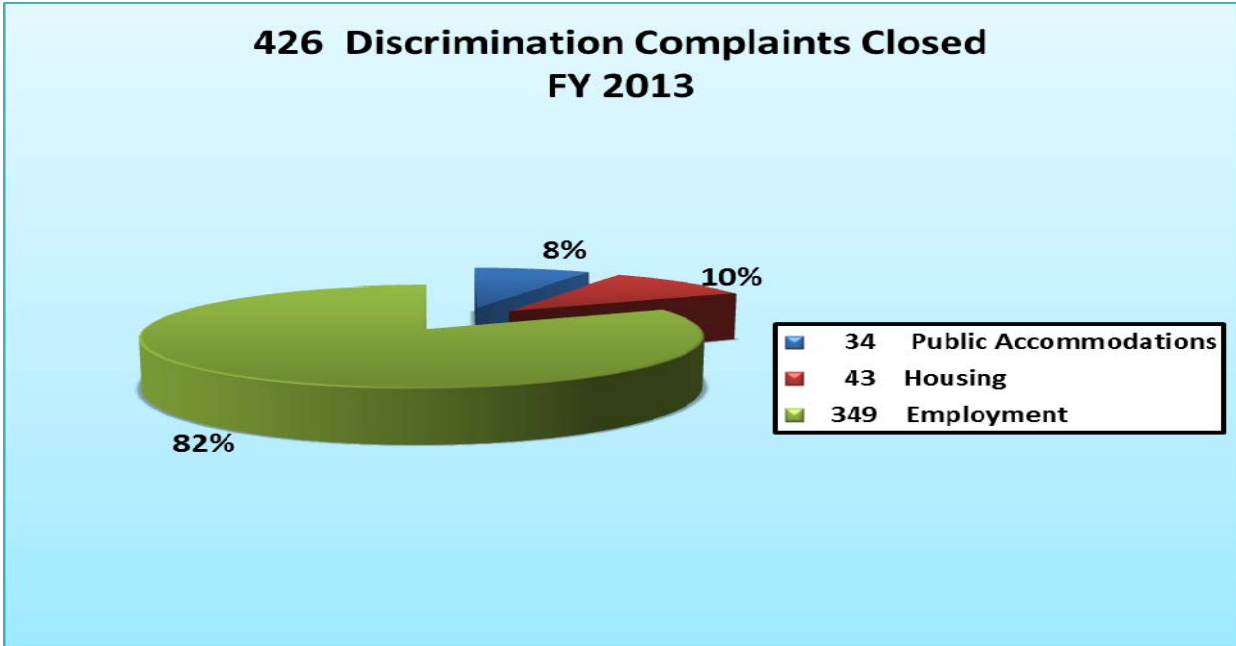


A total of **426** cases were closed.

34 were public accommodation

43 were housing cases

349 were employment cases



ALTERNATE DISPUTE RESOLUTION PROGRAMS

Pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, 6 W. Va. C.S.R. § 77-2-4-.15, the following information provides details on the two main Alternate Dispute Resolution Programs. These programs provide a valuable outlet for 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.

Public Hearing and Mediation Outcomes for FY 2013	
Active Cases on Judges' Docket Carried Over from FY 2012	30
New Cases Assigned and Set for Public Hearing during FY 2013	39
	69 Total Active Cases
Cases Stayed due to Bankruptcy	1
Cases Withdrawn to Circuit Court and Closed	12
Administrative Closure—Death of Complainant	1
Cases Settled at Mediation and Closed	25
Active Cases on Judges' Docket Carried over to FY 2014	31 Remaining Active Cases
Amount of Monies generated from Mediation awarded to complainants directly.	\$643,412.36

**OFFICE OF JUDGES
SELECTED CASE SUMMARIES**

The following is a selected decision of the West Virginia Supreme Court of Appeals for the Fiscal Year 2013. 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
DECISION OF THE WEST VIRGINIA SUPREME COURT OF APPEALS
FROM A MATTER
BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
FOR THE FISCAL YEAR 2012 - 2013**

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**STATE EX REL. TEN SOUTH MANAGEMENT COMPANY, LLC, d/b/a
VISTA VIEW, Petitioners v. HONORABLE ROBERT B. WILSON, ACTING
CHIEF ADMINISTRATIVE LAW JUDGE, OF THE WEST VIRGINIA HUMAN
RIGHTS COMMISSION and MONICA ROBINSON, Respondents
745 S.E.2d 263 (June 19, 2013)**

The State of West Virginia Supreme Court of Appeals issued its PETITION FOR WRIT OF MANDAMUS WRIT GRANTED AS MOULDED in Chief Justice Benjamin's Decision of June 19, 2013. Justice Workman filed a concurring opinion in the case.

The Petitioner at the Supreme Court, Respondent, Ten South Management Company, LLC, filed a writ of mandamus seeking to compel the Acting Chief Administrative Law Judge of the West Virginia Human Rights Commission to issue an order dismissing the Complainant's case before the Human Rights Commission; or, in the alternative, a written order, detailing findings upon which the Commission based its determination to reverse its earlier decision to dismiss Ms. Robinson's claim, as well as a subpoena for all documents reviewed in the course of that administrative review. Respondent further sought to compel the Commission to disqualify the Assistant Attorney General now representing Robinson from further representation because he acted as a review hearing officer when the Commission reconsidered its initial dismissal of Ms. Robinson's claim.

The West Virginia Supreme Court of Appeals declined to issue a writ ordering that the case be dismissed, and demands that the Commission be required to state what facts upon which it reversed its earlier decision. The Supreme Court declined to order a subpoena be issued to allow Ten South access to any documents that were received in the course of the administrative review. The Court issued a writ to clarify that an attorney who acted as a review hearing officer for the Commission when claimant requested reconsideration of a “no probable cause” finding may not later represent that claimant in proceedings before the Commission on the claim.

Ten South operated an apartment complex in Charleston. Ms. Robinson was employed as a leasing agent from August 2009, to January 4, 2010. After a performance review in December 2009, Ms. Robinson was demoted to a position as recertification clerk. She was terminated on January 4, 2010.

Ms. Robinson filed her complaint with the Human Rights Commission on January 11, 2011, alleging she was unlawfully discriminated against, which Ten South denied. On June 9, 2011, the Commission issued a finding of no probable cause (NPC) and ordered her complaint before the Commission dismissed. Contained in the order were instructions for requesting a reconsideration of the initial determination. Those instructions provided that Complainant must make the request within ten days of receipt of the letter of determination in writing. The certificate of service indicated the order was mailed June 10, 2011, to Ms. Robinson at her St. Albans address. On June 24, 2011, Ms. Robinson appeared at the Commission’s office and filed a two page handwritten request for reconsideration of the NPC finding. The NPC review was held at the Attorney General’s Civil Rights Division. Assistant Attorney General, Paul R. Sheridan conducted the review. The stated purpose was for the presentation of objections to the NPC finding and the provision of any additional evidence. Vista View (Ten South) was given the opportunity to respond and appeared at the proceeding. On October 19, 2011, the Commission reversed its earlier NPC finding and informed the complainant the case would proceed to hearing before an administrative law judge and that she would be represented by the Attorney General’s Civil Rights Division. An Amended Complaint was filed by Ms. Robinson on October 13, 2011, alleging Vista View engaged in pay disparity between her and similarly situated white co-workers and again alleged her termination on January 4, 2010, was due to her race. On October 31, 2011, Mr. Sheridan filed a Notice of Appearance on behalf of Ms. Robinson. On the same day Ten South filed an answer to the Amended Complaint of Ms. Robinson denying her allegations. On March 29, 2012, Ten South filed a motion to disqualify Mr. Sheridan from representing Ms. Robinson in the proceedings before the Commission arguing he had acted in a judicial capacity while conducting the administrative review hearing.

ALJ Wilson denied the motion finding the NPC review hearing was not adjudicatory in nature and that Mr. Sheridan was not therefore disqualified from later representing Ms. Robinson. ALJ Wilson found that Ten South had not objected to Mr. Sheridan serving as hearing officer for the administrative review hearing and that Ten South had not been prejudiced by Mr. Sheridan's service in that capacity.

The Supreme Court noted that the writ of mandamus would not issue unless there was a clear legal right of petitioner to the relief sought, a legal duty on the part of the respondent to do the thing which petitioner seeks to compel and the absence of another adequate remedy. The Court addressed the three grounds upon which petitioner Ten South sought relief separately. First, that Ms. Robinson's request for administrative review was untimely filed; second, that the Commission failed to issue sufficient findings or explanation as to why the Commission reversed its initial NPC finding; and third, that Mr. Sheridan should be disqualified from representing Ms. Robinson before the Commission because he acted in an adjudicatory fashion at the NPC review hearing.

Ten South had argued that Ms. Robinson was required to file her written request for reconsideration with the Human Rights Commission by June 21, 2011, within ten days from when the notice of determination was placed in the U.S. mail on June 11, 2011. Ms. Robinson did not file until June 24, 2011. W.Va. Code § 5-11-10 states that ". . . complainant or his attorney may, within ten days after such service, file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint." The Commission's procedural regulations define "service" as Rule 4 of the W. Va. R. Civ. P. which includes ". . . by regular mail addressed to the party . . ." The West Virginia Supreme Court found Ten South's interpretation of the deadline unduly restrictive. The Supreme Court found Ms. Robinson's interpretation of the filing deadline was the correct one.

The Supreme Court held that the deadline for filing a request for reconsideration runs from the date of the receipt of the notice of determination. In determining this outcome, the Court relied upon the procedural regulations of the Commission found in W. Va. Code R. § 77-2-4.14.a (1999):

A complainant may apply to the Commission, through its compliance director or other such person as the executive director may designate, for an administrative review of the dismissal of her/his complaint. Requests for review shall be in writing, shall state specifically the grounds relief on, may contain new evidence not previously considered by the Commission and shall be filed at the Commission office within ten (10) days from the receipt of such copy.

Further, the Court noted the language in the document the Commission sent her, indicated the request for administrative review is due “within ten (10) days of receipt of this letter.”

The Supreme Court next held that there was no basis in law for requiring the Commission to provide findings of fact in support of its decision to reconsider the initial NPC finding; or, that it was entitled to any documents or evidence submitted by Ms. Robinson and any written report or recommendation by Mr. Sheridan, in his role as hearing officer for administrative review, to determine whether and how Ms. Robinson met her burden to show that the NPC determination was arbitrary, capricious or not in accordance with law. The Court analyzed the procedure for the review hearing, refined in W. Va. Code R. § 77-2-4.4.14.f.1 et seq. (1999). The rules allow for the Commission’s attorney or other designated person to preside at the administrative review. The rules allow for the person to be provided with the entire Commission file pertaining to the complaint under review. The person is authorized to take any testimony under oath or to transcribe the testimony, but the rules do not require that this happen. The rules further state that the complainant has the burden of showing that the dismissal of the complaint is arbitrary, capricious or not in accordance with law. The presiding person after considering the evidence, files a report and recommendation with the executive director which recommends that the dismissal be upheld, reversed, or modified, or that the complaint be remanded for further investigation. Those rules specify that if it is determined after administrative review of an initial NPC that probable cause exists to credit the allegations the chairperson or executive director may reopen the case or make such other disposition as deemed appropriate. The rules specify that the determination of the Commission or the executive director regarding an administrative review is not a determination on the merits of the case. The Court stated that nowhere in the rules does the administrative review contemplate the issuance of an order with the types of findings being sought by Ten South. The Court reiterated its prior holding that a “no probable cause” determination by the West Virginia Human Rights Commission is not an adjudication on the merits of a discrimination complaint. An expansive order at this stage is not contemplated by the rules or statute. No authority was cited in statute or rules for the subpoena of records related to the review requested by Ten South.

Next the Supreme Court addressed Ten South’s contention that Mr. Sheridan’s appearance as counsel violated Rule 1.12(a) of the West Virginia Rules of Professional Conduct because Mr. Sheridan acted as judge and lawyer in the same matter. Although the Court was aware that between the time the petition was filed and the issuance of their opinion, Mr. Sheridan was no longer employed as Assistant Attorney General; the Court felt that the likelihood of future recurrence of the issue warranted discussion of the issue by the Court.

The Court held that an attorney who acts as a hearing officer for the West Virginia Human Rights Commission for the purpose of an administrative review of a “no probable cause” determination may not later represent the complaining party in proceedings before the Commission on the claim.

The Supreme Court stated that Mr. Sheridan’s disqualification in this case was not the result of any improper or unethical conduct on Mr. Sheridan’s part. The Court in an earlier case held that the statute contemplates the Commission reviewing the initial recommendation “along with any new information submitted by the parties and the initial ‘no probable cause’ determination is either affirmed, reversed and set for hearing, or remanded within the Commission for further investigation.” *Jones v. Glenville State College*, 189 W.Va. 546, 551, 433 S.E.2d 49, 54 (1993). The Court deemed the issue to turn on the validity of W. Va. C. R. § 77-2-4.14.f.2, which describes what the Court deemed to be a judicial review that is not necessarily contemplated by the statute. In determining whether the complainant has demonstrated probable cause at the statutory second chance meeting, the Commission is exercising a purely executive function. However, the regulation describes the meeting as one in which “the Complainant shall have the burden of showing that the dismissal of the complaint is arbitrary, capricious or not in accordance with law.” This requirement is clearly a judicial review standard that is completely disconnected from the statute and, indeed, makes no sense in this context, according to the Court. Nothing in the statute, states, suggests or even permits an inference that the purpose of the meeting is to determine the validity of the initial NPC determination. Rather the meeting is one in which the complainant gets a second chance to demonstrate probable cause. Since the statute contemplates the review of additional evidence by the Commission, the regulation creates a quasi-judicial proceeding in which Mr. Sheridan was clearly performing judicial tasks. The regulations included duties including listening to the evidence presented, being entitled to determine if the hearing would be transcribed, authorizing administration of oaths, evaluation of evidence, making recommendations, which the Court found to be adjudication of matters before the Commission similar to a judicial referee or hearing examiner who hears the evidence of the parties, weighs it, and analyzes it and then makes recommendations to the judge who has the ultimate decision-making authority. Although the Court found the validity of the regulation questionable, it declined to rule on that issue because it was not directly before the Court in the petition for mandamus. Petitioner asked that Mr. Sheridan be disqualified from representing Ms. Robinson, not that the regulation be invalidated. Because of the conflicting standards between statute and regulation, Mr. Sheridan was unwittingly placed in a position resulting in his technical violation of Rule 1.12 of the Rules of Professional Conduct.

Justice Workman wrote a nine page concurring opinion in which she clearly describes the legal basis for her belief that the Human Rights Commission regulation, West Virginia Code of State Regulations § 77-2-4.14.f.2 is invalid and that the West Virginia Human Rights Commission should address the issue although the Court cannot in the context of this case. Justice Workman notes the plain language of W. Va. Code § 5-11-10 provides that when the Complainant has been served with a no probable cause letter, he or she may “file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint. If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practices . . .” Justice Workman noted that the statute provides the complainant with a right: a second chance to convince the Commission that probable cause exists. In contrast, the regulation takes away that right and instead imposes on the complainant a burden: to convince the Commission that its initial no-probable-cause determination was “arbitrary, capricious or not in accordance with law.” The statute imposes a duty upon the Commission in contrast to which the regulation imposes a limitation upon that duty. An administrative agency may not issue a regulation which is inconsistent with, or which alters or limits its statutory authority.

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 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 59 requests and collected \$505.00 as result of FOIA requests. These funds were deposited into the state's general fund.

CONCLUSION

The Commission's goals for **Fiscal Year 2014** include the following:

- ◆ Provide a continued, ongoing variety of training to the Commissioners and all staff, i.e., changes in the workplace, creative writing, policy and procedure expectations as required by the Dept. of Health and Human Services, etc.
- ◆ In 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.
- ◆ Reorganize the Commission to better serve the citizens of West Virginia.
- ◆ 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.
- ◆ Expand the Outreach program by completing the series of "My Rights" Coloring Books as an early childhood education introduction to Human Rights and the Human Rights Commission services and procedures.
- ◆ Continue to hire experienced investigators who will conduct more efficient and effective investigations.
- ◆ 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.
- ◆ Research and implement a new case tracking system that will differentiate additional statistical categories in response to our constituents.
- ◆ Continue and organize an upgraded Civil Rights Day for February 2014.
- ◆ Plan and implement the annual Fair Housing Summit/Seminar of 2014.
- ◆ Continue to collaborate with the Governor's Herbert Henderson Office of Minority Affairs conducting Outreach and Education seminars to community.



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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](#)