

Washington State Human Rights Commission

December 15, 2006

Minutes

Conference Call

Olympia, WA

ATTENDANCE

Commissioners: Kathy Baros Friedt, Commission Chair; Deborah Sioux Cano-Lee; Jerry Hebert; and by telephone, Ellis Casson and Shawn Murinko. A quorum was present.

Staff: Marc Brenman, Executive Director; Tanya Calahan, Executive Assistant to the Commissioners; and Dixie Shaw, Operations Manager.

OPENING AND WELCOME

Commissioner Baros Friedt called the meeting to order at 10:11 a.m.

APPROVAL OF MINUTES

The Commissioners considered the minutes of the November 30, 2006 special meeting. Commissioner Casson made a motion to approve the minutes. Commissioner Cano-Lee seconded the motion. MOTION CARRIED.

Tanya Calahan reviewed action items from the November 16-17, 2006 meeting and older outstanding action items.

CASE CLOSURES

The Commissioners discussed cases impacted by the recent *McClarty v. Totem Electric* case and evaluating cases under the “regarding as” prong of the definition of disability. Civil Rights Investigator Laura Lindstrand may need to provide some training and do additional research on the “regarded as” evaluation.

Commissioner Hebert asked about the no reasonable cause finding in the *Thiebold v. ABC Dental* case. He commented about community concerns that ABC Dental is known for discriminating against people living with HIV/AIDS. The local Health District would probably have information regarding the issue. He wants the case to be pulled from the agenda so staff

can contact the Health District. Operations Manager Dixie Shaw commented that the deciding factor in the case was the continuing treatment of HIV/AIDS patients before and after the complaint was filed. Commissioner Hebert commented that HIV/AIDS patients have limited options for dental care because of insurance; ABC Dental is one of the few options. The Commissioners agreed to pull the case. Commissioner Hebert will get in contact with Dixie Shaw to provide witness information at the Health District.

Commissioner Hebert agreed that the Commissioners should approve the withdrawal finding for Rudy v. WA State Department of Agriculture case but he requested additional information about why the case took so long and whether or not the delay influenced the complainant's decision to withdraw the complaint.

The Commissioners discussed the Hanson v. Cabinets NW no reasonable cause finding. Complainant was dismissed after three days. She alleged that she was asked to give neck rubs. The Commissioners agreed to approve the finding in this case because of the lack of evidence but commented that the facts are troublesome.

The Commissioners next discussed the Pena v. Valley Roz Orchards no reasonable cause finding. Because of the *McClarty v. Totem Electric* decision, the case wasn't strong. Commissioner Baros Friedt asked about keeping track of good compelling stories to provide to Washington Protection and Advocacy System as they relate to the recent *McClarty* decision. WSHRC has closed some disability complaints as no reasonable cause because of the *McClarty* decision.

Commissioner Baros Friedt commented that boilerplate language in some of the withdrawal with settlement cases still referred to ability to pursue private investigation. This may be confusing to parties who have settled.. Staff will look into this issue.

She then mentioned some notable settlement agreements negotiated by Investigators Gary Lewis and Rudy Chavez.

Also, Complainant Janet Coglin sent a positive letter to staff regarding her case.

Commissioner Hebert made a motion to approve case closures with the exception of Thiebold v. ABC Dental. Commissioner Murinko seconded the motion. MOTION CARRIED.

REPORT OF THE CHAIR

Commissioner Baros Friedt shared that she met with three women who are interested in participating in a joint women's forum with WSHRC. One was the coordinator for the Women's History Consortium. Marc Brenman met with Kelly Reese of Planned Parenthood regarding the Board of Pharmacy issue. They are interested in coming to a Commission meeting to give a 20 minute presentation on discrimination against women in public accommodations.

MONTHLY BUDGET & CASE PRODUCTION REPORTS

Marc Brenman distributed monthly case production reports. There are a significant percentage of disability complaints. Notably, disability complaints comprise over 50% of the public accommodation discrimination complaints. Commissioner Murinko commented about the issue of lack of access to public buildings like Spokane City Hall. The current Spokane Police Chief hasn't been receptive to disability access issues; she claims to have other higher competing interests.

Commissioner Hebert suggested sending a technical assistance advisory letter to the Spokane Police Chief regarding the Spokane City Hall accessibility issue. Commissioner Murinko commented that the Spokane Police Chief may not have authority to act; instead, the letter should go to the Spokane County Commissioners and Spokane City Council with a copy to the Spokane Police Chief. Commissioner Murinko and Marc Brenman will work on drafting a letter.

EXECUTIVE DIRECTOR'S REPORT

Governor Gregoire is releasing her budget on December 19, 2006. The Office of Financial Management has not requested more information from WSHRC regarding the decision packages and budget supplemental requests.

UNFINISHED BUSINESS - 2007 SCHEDULE

The Commissioners considered the draft 2007 Commission meeting schedule and agreed on the following changes to the draft schedule.

Commissioner Murinko requested that the forum on police issue move to Spokane on June 28-29, 2007.

Commissioner Cano- Lee suggested that the January 19, 2007 Commission meeting be at El Centro de la Raza in Seattle.

Commissioner Casson asked about combining the two "women" forums. Commissioner Baros Friedt commented that the focus and target audience and speakers in each of the forums on women's issues are vastly different, encouraging that they be kept separate.

The February 23, 2007 meeting will be in Fife for one day. There may be presentation on immigration and police issues at this meeting. Pull contact information from the Association of Washington Cities diversity application.

March 30, 2007 will be in Port Angeles for one day. Commissioner Hebert commented that there are race harassment and skin head issues going on in the Port Angeles area.

Discussion continued about whether or not to go to Pasco or Yakima in July 2007. The Commissioners agreed to go to Yakima in July and take a tour of Heritage College on Thursday, July 26, 2007 during the day and then have the Friday meeting, July 27, 2007 in Pasco.

Commissioner Hebert agreed to arrange the presentation on starting a local human rights council for the Everett meeting on November 16, 2007.

UNFINISHED BUSINESS – CHAIR PROTOCOL ISSUE

Kathy Baros Friedt spoke about related items she placed on the agenda about signature and communication protocol. The issue surfaced as the result of the letter that recently went to the Governor's Office documenting the Commissioners' support for Executive Director Marc Brenman's raise. She highlighted the sequence of events. The letter went forward without her review but it still had her signature stamp on it, within two days of when she was back from vacation. The Chair reiterated that she did not have issue with Mr. Brenman deserving the raise, that it was effective December 1, 2006, or even the contents of the letter itself.

When she is gone for an extended period of time, she's notified Commissioner Casson in advance that he would serve as Chair Pro Tem and chair meetings as the next most senior Commissioner. She will be clearer communicating her expectations, in the future, regarding items that need her signature; specifically, whether they should wait for her return, go on without her signature, or if her signature stamp should be used when she's unavailable.

Commissioner Baros Friedt sent an email to the Governor's office on Saturday, November 18, 2006, the day she left town, to advise them that the Commissioners approved the raise for Mr. Brenman, that Commissioner Hebert was drafting the documentation and that it would be finalized upon her return, shortly after December 6, 2006. She copied Mr. Brenman and Commissioner Hebert on the email, as Commissioner Hebert was drafting the documentation letter.

In the email, she detailed that the vote for the raise was four affirmative and one dissension. She explained that her dissenting vote was not a result of non support for the raise for Mr. Brenman. But it reflected that she would have preferred to wait until the June time period, after the performance evaluation, and would have allowed more time to check on a few items. After receiving a copy of the email, Commissioner Hebert raised concern to others about the Chair's communication; revealing the dissenting vote to the Governor's Office. Commissioner Baros Friedt explained that she would have shared any other Commissioners' dissenting vote and the opinion behind the dissenting vote out of respect for the individual opinions of each Commissioner. She assured the Commissioners that she always intends to honor the perspectives of each Commissioner and not hide those opinions. She doesn't believe that the dissenting vote was taken negatively by the Governor's Office and she reserves the right to communicate directly with the Governor's Office.

There were issues of concern regarding the manner in which the letter to the Governor's Office was finalized without awaiting the Chair's return, as she had stipulated. She advised that staff

needs to be more consistent with getting permission of Commissioners before stamping their names on documents. The expectation is proper protocol, courtesy and respect for the absent Commissioner. She stated for the record that it is her presumption is that no rubber stamps should be used for signatures without the express permission of individual Commissioners.

Commissioner Hebert commented that there is need for a policy on using signature stamps. He apologized for the misunderstanding about the intent of the Chair, the Chair's return date and the degree of urgency. He stated he was told by staff that there was urgency. He then made a motion to draft a policy on the use of signature stamps. Commissioner Cano-Lee seconded the motion. Commissioner Casson abstained. MOTION CARRIED. Tanya Calahan will draft the policy.

Commissioner Hebert spoke about the Chairperson's communication with the Governor's office and his concern that the communications may not accurately reflect the views of the Commissioners as a whole. He commented that the email that the Chair recently sent to the Governor's Office was not viewed by the other Commissioners and that the Chair's communications to the Governor's Office and agency heads should be reviewed by the other Commissioners. The other Commissioners should have an opportunity to review those types of communications. He then made a motion to adopt a communication policy. Motion failed 3:2.

Commissioner Murinko relayed that it was his recollection from the November 17, 2006 meeting that the Chair was clear that she would see a draft of the letter to the Governor's office when she returned from vacation. Also, given the circumstances, that this was a proposal for a raise, the Chair was clear with the Governor's Office that her vote was not a reflection of her personal opinion about Marc Brenman's job performance. He doesn't think that anything inappropriately happened when the Chair communicated with the Governor's Office. He commented that by exacting a policy regarding external communication, it unnecessarily bogs down the Chair's authority to act as a point of communication for the Commissioners.

Commissioner Casson commented that he was unaware when the letter to the Governor's office went out until he received a copy. Though he had had an opportunity to review the draft, the issue of urgency in mailing was not discussed. He was unaware that the Chair had not seen the letter prior to it going to the Governor's Office. He reminded the other Commissioners that as Chair ProTem in the Chair's absence, he should have been consulted.

Because the motion to draft a policy governing the Chair's external communications died; Commissioner Hebert also suggested a work study session instead of a policy on chair communications. Commissioner Baros Friedt suggested that the Commissioners first discuss these external communications and the role of the chair and make a determination thereafter if a formal policy was still necessary. There is a great deal of information already available on this topic and perhaps the Governor's Office staff person on Boards and Commissions could come to the February 23, 2007 meeting for this clarification. The Commissioners will discuss this matter no later than the February 23, 2007 Commission meeting. Commissioner Cano-Lee asked that the Commissioners discuss external communications by all Commissioners instead of just the Chair.

NEW BUSINESS

With regard to the Executive Director evaluation, Commissioners will address areas of concern and provide their comments to Commissioner Baros Friedt by January 15, 2006 for the time period of June 2006 through December 2006.

The Executive Director evaluation will from that point forward, be at the end of every year, in December.

Commissioner Baros Friedt stated for the record that if the Commissioners have any concerns regarding Chairperson communications or any other issues with the Chair; that they speak to her directly and not place the Executive Director in the middle.

Commissioner Hebert requested information about lobbying. Tanya Calahan will redistribute advice from the Attorney General's Office regarding lobbying activities by state agencies.

Ms. Calahan then reviewed action items from the day's meeting.

ADJOURN

There being no further business, the meeting adjourned at 1:14 p.m.

Respectfully submitted,

Tanya Y. Calahan
Executive Assistant to the Commissioners

Action Items
December 15, 2006 Commission Meeting

1. Staff will do additional research on the Rude v. WA State Department of Agriculture to determine why the case took so long to investigate and whether or not the length of the investigation influenced complainant's decision to withdraw.

Status: This task is completed. Staff reported on the matter at the January 19, 2007 meeting.

2. Tanya will redistribute lobbying memo from Attorney General's Office to all Commissioners.

Status: This was done on December 20, 2006.

3. Commissioner Murinko and Marc Brenman will work on a draft letter to Spokane County Commissioners and Spokane City Council, with a copy to Spokane Police Chief regarding inaccessibility of Spokane City Hall building.

Status: This task was completed on January 8, 2007.

4. Tanya Calahan will draft a policy on the use of Commissioner signature stamps.

Status: This item is completed. The draft is on the January 19, 2007 agenda for discussion.

5. Tanya will pull together a packet of information on Commissioner roles and responsibilities, specifically the chairperson; and include AAG advice and distribute to all Commissioners.

Status: AAG Traci Friedl will also discuss this item at the January 19, 2007 meeting.

6. Input into ED evaluation is due to the Chair from other Commissioners by January 15, 2007.

Status: Evaluation postponed to the February 23, 2007 meeting in Fife.

Previous

1. Commissioners will conduct an interim evaluation of the Executive Director. (November 06)

Status: Evaluation postponed to the February 23, 2007 meeting in Fife.

2. Marc Brenman will provide the Commissioners with the report written by Seth Kirby that includes statistical information about requests to change gender identity (e.g., on driver's licenses). Commissioner Baros Friedt has not received the document. (November 06)

Status: This task was completed.

3. Marc Brenman will prepare budget extrapolations for worst/best case budget scenarios. (November 06)

Status: Not done yet.

4. Commissioner Casson requested a breakdown of costs to conduct Commission meetings and forums. (November 06)

Status: Tanya Calahan will provide an updated report at the February 23, 2007 Commission meeting.

5. Commissioner Baros-Friedt requested a month to month comparison of HUD cases currently over 100 days old, comparing the last three years. (November 06)

Status: This task was completed.

6. Staff will put the FMLA leave table handed out at the August 24, 2006 public forum on WSHRC's website. (August 06)

Status: This task was completed. The information is on the agency's website under Women's Issues.

7. Jerry Hebert will contact Barbara Yasui of the Study Circles Resource Center and obtain a copy of her Powerpoint presentation. He will also find out whether or not the Study Circles materials are available in other languages and alternative format for persons with disabilities. (September 06)

Status: Not completed yet. Commissioner Hebert is following up with Francine at the Study Circles Resource Center. He left her a message.

8. The Executive Director will outline when in-person investigations are particularly advised. (March 06)

Status: This task was completed. The document was distributed to Commissioners on 1/3/07.

9. Marc Brenman will send the Commissioners the action plan from the climate survey when available. (August 06)

Status: Not available yet.