

BRIAN SANDOVAL
Governor

FRANK R. WOODBECK
Director

SHELLEY CHINCHILLA
Administrator



COMMISSIONERS
Patricia Cafferata, Chair
Swadeep Nigam
Lee Plotkin
Tiffany Young
James Campos

Minutes
of the
Nevada Equal Rights Commissioners'
Meeting on July 31, 2012

I. Call to Order

Patricia Cafferata, Chair, called the meeting to order at 2:37 p.m.

II. Roll Call and Confirmation of Quorum, and Verification of Posting

Norma Delaney, Administrative Assistant III, called roll and confirmed that a quorum was present, and that the agenda had been posted and the certificates of posting are on file.

Members present: Patricia Cafferata, Chair; Swadeep Nigam; Tiffany Young; James Campos.

Staff present: Shelley Chinchilla, Administrator, Nevada Equal Rights Commission (NERC); Rose Marie Reynolds, Deputy Attorney General (DAG); Sophia Long, DAG; Dennis Perea, Deputy Director, Department of Employment, Training & Rehabilitation (DETR); Michael Baltz, Chief Compliance Investigator, NERC; Dennis Maginot, Compliance Investigator II, NERC; Sean Kirksey, Compliance Investigator I, NERC; and, Norma Delaney, Administrative Assistant III, NERC.

Ms. Chinchilla advised that Mr. Plotkin had a family emergency and is unable to participate.

Public Present: Kathleen England, Esq.; Carlos McDade, Clark County School District; S. Scott Greenberg, Esq., Clark County School District; Dane Claussen, Executive Director, American Civil Liberties Union of Nevada (ACLU); Ande Atkinson; Cayla Witty.

III. Introduction of new NERC Commissioner, James Campos.

Mr. Campos stated that he was appointed by the Governor; that he currently works for the Nevada State College as a Senior Economic Advisor; and that he is happy to be here as a Commissioner.

IV. Public Comment

None.

V. Approval of the minutes of the December 6, 2011 and February 17, 2012 Commission meetings.

Ms. Chinchilla advised that on behalf of Mr. Plotkin, he had no changes to the minutes.

December 6, 2011 meeting - Corrections to be made as follows: page 11, second paragraph, second sentence, to be edited to reflect the following: Ms. Cafferata advised that she would be happy to contact the Nevada State Bar about republication. Ms. Cafferata asked for a motion to approve with changes – Ms. Young made motion to approve with changes; Mr. Nigam seconded; motion carries.

February 17, 2012 meeting – Ms. Chinchilla stated that the minutes are a brief summary of the meeting and that a full transcript is available for reference. Ms. Cafferata stated that she would like to add a reference to the vote in the minutes. She also stated that she would like the two-page declaratory order attached to the minutes. Ms. Cafferata asked if the other Commissioners had any objections. Ms Young made motion to approve as discussed; Mr. Nigam seconded – motion carries.

VI. Discussion to consider conducting a Public Hearing of NERC case no. 12-0573, in which a Probable Cause determination has been issued, and whether to delegate power to conduct the Hearing to a Hearing Officer in the Commission's Employ.

Ms. Reynolds, DAG, stated that for this agenda item, she is **not** (bolded for emphasis) representing the Commission, rather she is representing Ms. Chinchilla as the NERC Administrator, and that Sophia Long, DAG, will be representing the Commission.

Ms. Chinchilla advised that the background information she is able to provide on this case is limited, as the Commissioners need to be impartial for the actual hearing, and provided the following: The case is an employment case; basis is gender identity or expression; that NERC found the evidence was

sufficient to issue a cause finding, which NERC did; that a conciliation was held but unsuccessful; and that all of the criteria voted on in the December 2011 meeting was met which is why the matter is being presented for the Commissioners to consider the matter for a public hearing.

Ms. Chinchilla added that Mr. Plotkin had informed the Commission that he will support or defer to the Chair's position in this matter.

Ms. Long advised the Commissioners that the first question they need to ask themselves is whether the Commissioners want to take this to a hearing; second question is whether the Commissioners want to hear it or a hearing officer. She stated that Ms. Chinchilla is correct in that if she provides more facts and the Commissioners decide to hear the matter, some of the facts that come out as evidence may not be correct or may be disputed, so that is why the information provided is limited.

Ms. Cafferata made a motion that the Commissioners accept this case for public hearing - motion carries.

Ms. Cafferata asked for a motion that the Commissioners hear the public hearing rather than a hearings officer; Mr. Nigam made the motion; Mr. Campos seconded – motion carries.

Ms. Chinchilla added that in regards to research, there is guidance under NRS 233B with regards to conducting a public hearing and that handouts have been provided to all Commissioners.

VII. Discussion regarding Administrator's report

A. Personnel – Staffing

Ms. Chinchilla introduced Sean Kirksey, new Compliance Investigator, and Patricia Gonzalez, new Administrative Assistant II, and provided background information on both.

B. Federal Fiscal Year 2012 (FFY12) Equal Employment Opportunity Commission (EEOC) work sharing agreement

Ms. Chinchilla advised that NERC received its 2012 contract in May 2012, which indicates how much NERC will receive for each case brought to resolution. She acknowledged that the contract was received more than half-way through the federal contract, and that the contract was for 697 cases at \$650.00 each. She indicated that in not knowing what the contract would be,

NERC's budget was built for 600 case closures at \$600.00 each. Ms. Chinchilla advised that a modification to the contract was requested due to the loss of an investigator and their production, to 660 closures at \$650.00, which is \$429,000.00, and more than what NERC was expecting.

Ms. Chinchilla added that with EEOC awarding NERC a contract of 697, it shows the confidence EEOC has with NERC, as they used a calculation period of 1-1/2 years prior to the contract starting where NERC closed 550-560 cases during the calculation period. She added that she believes EEOC sees the quality in NERC's work and NERC's potential, adding that if NERC gets fully staffed, the 697 would be within NERC's reach.

In regards to intake credit, Ms. Chinchilla stated this is when NERC receives a complaint, performs the intake interview, drafts a formal Charge of Discrimination for the Charging Party to sign, notice is sent to the Respondent and Charging Party that the case is transferred to the EEOC. Ms. Chinchilla advised that these cases are non-jurisdictional for NERC. She added that EEOC pays NERC \$50.00 per intake that NERC transfers to EEOC and that the contract references 26 cases and NERC is currently at 39 intakes transferred – she is expecting and asked for an upward modification to 46 intakes, but has not heard back yet.

Mr. Nigam commented that the current contract references that it expires in September 2012 and that he recalls Ms. Chinchilla stating she was going to ask for 800 case closures if NERC was fully staffed.

Ms. Chinchilla responded that the 2012 federal contract was just received in May 2012 and that the contract ends September 30, 2012; that it is difficult to budget as NERC never knows how much it will receive or when a contract will be awarded; that initially she had asked for 800 if NERC was fully staffed but that NERC has not been fully staffed, trained, and everyone up to speed for quite some time. Ms. Chinchilla advised that Mr. Kirksey just started in June 2012 and that interviews are currently scheduled for the vacant Compliance Investigator position.

Ms. Chinchilla also advised that in block 11 of the EEOC contract, it references Dallas District Office – NERC reports to the Los Angeles District Office and the contract has been corrected to reflect the same.

C. Budget – State Fiscal Year 2012 (SFY12)

Ms. Chinchilla advised there were issues in regards to printing the budget report for June 2012, copy in packet is most current, May 2012, and advised of an error under **Revenues 3435 - Fed EEOC Contract** – shows that NERC has fully withdrawn \$361,400.00 – this is incorrect, NERC has not drawn any monies from the federal contract and column 9, same line, should be zero – no way to explain this error on the budget report. Ms. Chinchilla advised that the \$361,950.00 was based on \$600.00 per case closure and 39 intakes at \$50.00 each.

Ms. Chinchilla advised that when the Legislative Council Bureau (LCB) had requested the Las Vegas NERC's office space in the Grant Sawyer Building, they put money into **Category 04 - Operating Expenses** (\$85,665.00) to pay for moving expenses; that the only exception is **Category 05 – Equipment** where the LCB put \$15,600.00 for office furniture. She added that during the move, there were some computer issues that arose such as data wiring that had to occur and an expansion module to be purchased to add telephone lines, billed out of **Category 26 – Information Services**, which is correct, but the monies were in **Category 04 – Operating Expenses**; therefore, a work program was done to move monies from **04 to 26**, which will show up on the June 2012 budget report.

Ms. Chinchilla also advised that \$1,400.00 was moved from **04 to 26** to help purchase 4 additional Microsoft Office 2010 licenses, explaining that only 14 were initially purchased due to NERC having no additional funds to purchase the other 4, which was approved.

In regards to **Category 03 – In State Travel**, Ms. Chinchilla stated that it is a benefit for either Michael Baltz or her to travel to Northern Nevada every quarter, but with the hiring/training and move of the Las Vegas office, they were unable to travel as much as they would like.

In regards to **Category 02 – Out of State Travel**, Ms. Chinchilla advised that this money is to attend the federal EEOC/FEPA Conference held annually, and that NERC is required to attend per the work sharing agreement; that she likes to have both the Chief Investigator, Michael Baltz, and herself participate as it is a training seminar. She advised that due to this being a training seminar, the funds come out of **Category 30 – Training**, and that the funds in **Category 02 – Out of State Travel** for this seminar will be reverted back to the general fund. Ms. Chinchilla added that NERC has an equal

training budget for SFY13 and is hoping to send the investigative staff for training in regards to mediation or dispute resolution.

D. Performance Indicators/Statistics

Ms. Chinchilla advised that NERC has been rebuilding Performance Indicators (PI) 1 and 2, and that PI-1 has only been reached once for a two-month period back in 2008. She advised that the intake process has been changed due to NERC having only one intake officer and the wait time from when a complaint was filed to meet with the intake officer was approximately 7-1/2 weeks, and if a person is waiting that long, NERC cannot process/formalize a charge within 22 days.

Ms. Chinchilla advised that in late February/early March 2012, the intake process was changed, training provided to the investigative staff, and currently each investigator conducts their own intake appointments and the wait time has been reduced to 4 weeks, which is still not within the 22 days. Ms. Chinchilla added that in speaking with DETR's auditor and Deputy Director, Dennis Perea, NERC will be proposing to the Legislative Counsel Bureau (LCB) to change PI-1 to 75% of charges framed within 35 days – the 82% in 22 days is not doable. She added that PI-1 has been in place for about 5 years and the only change she is aware of is when it went from 75% to 82% and no one knows how/why it was changed.

In regards to PI-2, percent of cases open 180 days or less, Ms. Chinchilla advised that this means from the time a complaint is filed to when it is closed, and is an EEOC guideline/national bench mark and NERC does not want to change it, but strive to meet it. She added that it is sometimes difficult to achieve, but NERC is making progress; that 2 years ago NERC had a backlog of over 400 cases; that within a year that number was down to 200, and the following year the backlog was in the upper 90s, which is where NERC is currently, which will reduce the length of time a case is open to when it closes.

Ms. Chinchilla stated that in the packet is a document titled Proposed Monthly Performance Indicators and that in regards to PI-1, she has been monitoring the percentage of cases open 280 days or less, and the percentage has been reduced to 67% as the older cases are being closed. She added that she will be asking for PI-2 to be changed to 65% (instead of 82%) of cases open 180 days or less and added that while the new proposal is reachable though not easy, it is a good benchmark for NERC.

In regards to PI-4, Ms. Chinchilla introduced Dennis Maginot as NERC's mediator being present at the meeting; that Mr. Maginot has been NERC's mediator for 2 years and has established a good rapport with individuals during mediation; that he has a great success rate in resolving 66% of cases during mediation, and; that with his success rate in reaching resolution during mediation, she is hoping to establish a reputation that NERC is fair and unbiased and helps parties reach resolution.

In regards to PI-5, EEOC Contract Obligation, Ms. Chinchilla advised that while the report references 600 cases, once she received the 2012 contract, she added the 697 to show how far NERC is in regards to meeting contract.

Ms. Chinchilla advised that included in the packet is a year-over-year chart for comparison which indicates NERC's inventory is shrinking and she is hoping it is a sign that discrimination is not occurring, possibly due to the economy too. Also included in the packet is the Commissioners' Report which is basically a snapshot of NERC's performance broken down each month. She added that Mr. Plotkin had asked her about cases in which sexual orientation is the basis and she provided a breakdown of statistics:

- State Law Total – broken down per month, which includes employment complaints based on sexual orientation/gender identity or expression, housing, and public accommodation
- State and Federal – employment discrimination cases in which there is a state basis also (example provided was sexual orientation and sex (gender) which is covered under Title VII
- SO Employment – cases that are covered by state law only

Ms. Chinchilla stated that she did an average for each category, and the averages were:

- State law total – average of 67 cases a year
- State and federal combined – average of 24 cases a year
- State only employment cases – average of 19 cases a year
- Public Accommodation cases – average of 21 cases a year
- Housing cases – average of 3 cases a year

In referencing the Commissioners' Report, Ms. Chinchilla advised that total closures for SFY12 shows 730 cases; that this total includes state only cases that do not count towards the federal contract. She advised that this is a lot of

production and at a quality where NERC has not had a single rejection from EEOC in over 2 years.

E. Outreach – SFY12

Ms. Chinchilla advised that for the most part she is the person who does the outreach training, but that both Mr. Maginot and Mr. Baltz also have provided training, and Lila Vizcarra, Supervisory Compliance Investigator, is bi-lingual (Spanish) and will also be providing training as there have been requests, especially from the Spanish community. She added that NERC has reached over 1,386 individuals. The spreadsheet references community groups and businesses and the type of training/number of sessions provided in addition to participating in creating a training video for an employer to use at their work site.

Ms. Chinchilla added that she has upcoming training scheduled in August – small business seminar; employer seminar; and with the Mexican Consulate. She added that she has submitted NERC's brochures with updated address changes/changes in the law to be printed, which is being paid for out of the gift fund designated for outreach.

Ms. Chinchilla asked the Commissioners that if they become aware of outreach activities that would be appropriate for NERC, even if the employer has less than 15 employees, the information NERC provides is good knowledge for new businesses, and to please contact her.

F. Bill Draft Requests (BDR)

Ms. Chinchilla advised that she has submitted five BDRs:

- Housekeeping issue – clarifies that the Administrator submits the biennial report to the Governor instead of the Commission;
- Increase the remedies available in district court for employment discrimination cases;
- Increase the remedies available in public accommodation cases in district court;
- Give the Commission more authority and power to include levying penalties and provide remedies in cases where NERC finds cause in public hearing;
- Clarification of gender identity or expression – the language was borrowed from Connecticut and NERC wants to make a distinction so complaints are not being received for an improper purpose. (handout provided of language being proposed)

Ms. Chinchilla explained the purpose for NERC asking for clarification as proposed, is that she has been providing outreach over the past year with Jane Heenan, who is with Gender Justice and who used to be with Equality Nevada, and that in each presentation, there is someone who says "so you're saying I can claim my gender identity is male to use the male rest room?" Ms. Chinchilla stated that NERC is hoping to clarify the law so that it will not be used for an improper purpose or something similar. She advised that she has spoken to various individuals and working with Ms. Heenan, about the idea of "sincerely held" which is a standard being used for religion cases under Title VII. Ms. Chinchilla stated that of all the BDRs submitted by NERC, she is hoping this one gets through for clarification and she will keep the Commissioners updated regarding the BDRs .

VIII. Discussion regarding location and time of next meeting and agenda items

Ms. Cafferata stated that the Commissioners have agreed to hold a public hearing and asked if there was a specific time frame in which the hearing must be held.

Ms. Reynolds, DAG, advised that 30 days is the minimal time frame to provide notice of the hearing and that she is looking at October due to scheduling issues, but that the posting information is still the same. She reminded the Commissioners that she (Ms. Reynolds) will be representing Ms. Chinchilla as the Administrator for NERC, and that it would be more convenient to have the Commissioners in Northern Nevada be in Las Vegas to participate in-person.

Ms. Chinchilla commented that Ms. Delaney, AAIII, will be in contact with the Commissioners regarding availability.

In discussing items for the next Commissioners' Meeting, the issue of having a set date every quarter was requested to be placed on the agenda.

IX. Public Comment

Dane Claussen, Executive Director, (ACLU), introduced himself and advised he had a comment regarding the definition of gender identity and the words "improper purpose" in the BDR. His suggestion would be to encourage NERC to define what "improper purposes" are, possible fraud/frivolousness; that this is a politically charged topic and the phrase "improper purposes" is extremely vague; that while staff/legislators can imagine

what "improper purposes" are, it is better to have the statute be more specific. He advised Ms. Chinchilla that the rest, at first glance, is quite good.

X. Adjournment

Ms. Cafferata adjourned the meeting at 3:38 p.m.

Respectfully Submitted

Secretary/Commissioner

Date