

BRIAN SANDOVAL
Governor

FRANK WOODBECK
Director

KARA M. JENKINS
Administrator



COMMISSIONERS
Patricia Cafferata, Chair
James Campos
Swadeep Nigam
Lauren Scott
Tiffany Young

D R A F T

Minutes

of the

Nevada Equal Rights Commissioners' Meeting

on April 29, 2014

I. Call to Order

Patricia Cafferata, Chair, called the meeting to order at 2:30 p.m.

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

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

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

Staff present: Kara Jenkins, Administrator, Nevada Equal Rights Commission (NERC); Rose Marie Reynolds, Deputy Attorney General (DAG); Javier Fernandez, Administrative Assistant II, NERC; and Norma Delaney, Administrative Assistant III, NERC.

Public Present: Tiger Devore, PHD, Psychologist.

III. Introduction of Kara Jenkins, Administrator, Nevada Equal Rights Commission

Ms. Jenkins advised that Dennis Perea, Deputy Director, was going to introduce her; however, he was not available due to being ill.

Ms. Jenkins advised that she came from the Office of the Ombudsman, under the Real Estate Division of the Business & Industry Division, where she served as mediator for three years for Home Owners' Associations (HOA's) which entailed

outreach programs to educate homeowners and board members on their rights/responsibilities under Nevada Revised Statute (NRS) 116; that prior to that position, she worked for a non-profit; and prior to that she worked for the Schwarzenegger Administration in California.

Ms. Jenkins advised that she was appointed Administrator the beginning of September 2014, and that being at NERC has been a great experience as she has terrific back-up support with the staff; wonderful support from Dennis Perea, Deputy Director, and Frank Woodbeck, Director, Department of Employment, Training & Rehabilitation (DETR), and during her matriculation. She stated she looks forward to working/getting to know the Commissioners.

IV. Public Comment

None.

V. Approval of the minutes of the June 18, 2013 Commission meeting.

Ms. Cafferata, Chair, referred to the bottom paragraph on page 4 and questioned the word Ms. Hendren (prior NERC Administrator) used when describing the success of Dennis Maginot, mediator – the word being “outrageous.” Ms. Cafferata questioned the word or perhaps implied that Ms. Hendren had misspoke, but if it was verified in the typing of the minutes, it will be left.

Ms. Cafferata referred to page 6, referencing AB65, and indicated that Ms. Reynolds (DAG) indicted a person must be delegated on each item of the agenda for discussion and questioned if it applied to the Commissioners' agenda, as there are action items listed but no name.

Ms. Reynolds responded that AB65 states that on an agenda, there must be a contact person who the public can contact to get supporting material – there does not need to be a contact person listed for each agenda item. Ms. Reynolds stated that while it appears to not be listed on the current agenda, the contact information will be provided on future agendas.

Ms. Cafferata referred to page 7, last paragraph, in which Ms. Reynolds is discussing adopting regulations and that they must be done within two years of when first submitted to the Legislative Counsel Bureau (LCB), to which Ms. Reynolds agreed. Ms. Cafferata asked Ms. Reynolds for clarification as to the two year time frame.

Ms. Reynolds stated that when regulations are adopted, the regulations are in draft form and are submitted to the LCB; they are assigned an "R" number which means they have been at the NV Registry; that you have two years from the date the "R" number is assigned to pass final regulations and submit. She stated that it is not two years from the date the regulations are first discussed.

Ms. Cafferata stated she had no further questions in regards to the minutes; no other Commissioners had any questions/comments; Ms. Cafferata asked for a motion to approve minutes as presented. Mr. Nigam made the motion; Ms. Scott and Mr. Campos both seconded at same time – minutes approved.

VI. Discussion regarding Administrator's report

A. Personnel – Staffing

Ms. Jenkins advised that since her appointment, the transition has been very ideal for a new person coming in as she has had excellent support from everyone; that shortly after her appointment, three Compliance Investigators left and her focus was to get the positions filled so NERC could continue with investigating/closing cases. She advised that as of April 28, 2014, the three positions have been filled by Terrance McCarthy, Patricia Gonzalez, and Richard Brown, and provided a short bio on each of the three new staff members.

Ms. Jenkins advised that there are currently two vacant clerical positions in the Las Vegas office, and referenced the organizational chart provided in the packet.

B. Federal Fiscal Year 2013/2014 – Equal Employment Opportunity Commission (EEOC) Work Share Agreement

Ms. Jenkins advised that when she accepted the position, NERC's prior Administrator, Shelley Hendren, had asked the EEOC for an upward modification to the initial contract of 499 case closures, but due to the federal governments' sequestration and other issues, the EEOC was not in the position to grant the upward modification. Ms. Jenkins stated that NERC was able to make up lost money in salary savings, and that NERC exceeded the contracted amount of 499 closures by closing over 600 cases.

Ms. Jenkins stated that for Federal Fiscal Year 2014 (October 1, 2013 through September 30, 2014), NERC has not yet received a contract from the EEOC at this time, but that she did receive an email from the EEOC stating that they were grateful for NERC's patience and they are positive that NERC will be funded close to 738 cases for anticipated contract credit. Ms. Jenkins added that at the

time of the Commissioners' Meeting, NERC had closed 404 cases for contract credit, which is over half of the 738 cases NERC believes the contract will be awarded; and added that NERC is able to invoice EEOC for over \$262,000.00 in regards to case closures.

Ms. Jenkins stated that in regards to settlements, NERC has been able to obtain in excess of \$650,000.00 in settlement claims for the public.

C. Budget – State Fiscal Year 2014 (July 1, 2013 through June 30, 2014)

Ms. Jenkins referred to Tab 4, and advised that NERC's budget looks good and indicated she wanted to address expenditures in categories 1, 2, 3, 4, 26, and 30, as these are the categories that run NERC's budget, and referenced column 1 under each category:

01 – Personnel Services

Ms. Jenkins advised that NERC was approved \$983,402.00; column 8 shows a balance of \$100,681.00 – stated her goal is to spend down to \$0 by end of June 2014; that there is a cushion should NERC lose investigators and need money in that category.

02 – Out of State Travel

Ms. Jenkins advised that columns 1 and 8 both show \$0 balance and that she was advised when appointed that there was no out of state travel budgeted, but referred to category 03 in state travel.

03 – In State Travel

Ms. Jenkins advised that column 1 indicates \$6,774.00 budgeted and column 8 projects a balance of \$3,117.00 – that it is her goal to reduce this balance to \$0. She added that a new investigator, Richard Brown, who is in the Northern Nevada office, while he did receive training upon hire, he is currently in the Las Vegas office and receiving additional training with the two new Las Vegas investigators, in addition to meeting the Las Vegas staff, too.

04 – Operating

Ms. Jenkins advised that column 1 indicated \$153,139.00 approved with a balance reflected in column 8 of \$18,879.00 – she stated that NERC is going to be ordering office supplies, copy paper, letterhead, envelopes, business cards for staff/Commissioners and that it is her goal to reduce this balance significantly.

26 – IT Services

Ms. Jenkins stated that NERC is doing well in this area and did not have much to add.

30 - Training

Ms. Jenkins advised that column 1 shows approval of \$13,963.00 with a projected balance listed in column 8 of \$2,104.00 – she stated that NERC is using this money for investigative training and/or management training. She added that NERC's investigative staff recently received training from the Las Vegas EEOC office in regards to ADA (American's with Disabilities Act) and ADAAA (American's with Disabilities Act as Amended), but that this training was offered at no cost to NERC – her goal is to bring this balance to \$0.

Mr. Campos asked Ms. Jenkins that in regards to out of state travel, if there were work programs that could be done as she is new and there may be outside opportunities for her to travel and train.

Ms. Jenkins indicated that at this time, with Financial Management's approval, should there be a seminar that money could be cost allocated and/or a work program completed. She added that the EEOC is having their annual EEOC/FEPA conference in San Diego this year and she will be attending.

Ms. Jenkins added that the current budget ends June 30, 2014, and that NERC will be receiving a new budget, and that with the Legislative Session coming up, she will be traveling to Carson City.

Mr. Nigam stated that previously NERC was allocated approximately \$13,000.00 for in-state travel and asked if she (Ms. Jenkins) will be increasing this as monies were lost.

Ms. Jenkins stated that she would be in contact with the Financial Management office and get back to him by the next meeting.

D. Performance Indicators (PI)

Ms. Jenkins referred to Tab 5 and advised that **red means did not meet mark;** **green means met/exceeded mark;** and **yellow means she has an explanation.** She referenced that the top row only goes to January 2014 as she has been working with EEOC to obtain additional data and will provide this information at the next meeting.

PI 1 - Percent of discrimination cases formalized for investigative process within 15 working days (22 calendar days)

Ms. Jenkins stated that she has discovered that this PI has not been met in the history of NERC as this entails scheduling the Charging Party (person who filed complaint) to come into the office to meet with the intake officer and go over the paperwork (intake complaint form), approval from supervisor, and to draft a formal Charge of Discrimination for the Charging Party's signature within 22 calendar days.

Ms. Jenkins stated that under **Challenges** – this is currently taking approximately 44 days which is why the entire row is in red. She added that she did not know who created this PI, but a more realistic projection is 30 days. She stated that staff turnover makes this PI difficult to meet.

She stated that shortly after she was appointed, as indicated previously, NERC lost three investigators; that each investigator maintains a caseload of 40-50 cases, and is required to close 8 cases per month; that when an investigator leaves, their open investigation caseload gets reassigned to the other investigators which causes delays as they have to familiarize themselves with the other cases.

Ms. Jenkins stated that this PI is very hard to meet; that she had spoken to NERC's prior Administrator, Shelley Hendren, who indicated NERC has typically been in the red regarding PI 1.

PI 2 – Percent of cases open 180 days or less

Ms. Jenkins stated that in January 2014, NERC met the goal as there were 676 open cases, NERC closed 466 cases within 6 months, and that this averaged out to be 69% of the cases were closed within 180 days. She added that NERC also met the goal in December 2013, but indicated that there for July/August/October/November 2013, NERC was in the red, and for September 2013, NERC was in the yellow.

Ms. Jenkins stated that under **Challenges** – maintain fully staffed and trained investigators.

Ms. Jenkins stated that under **Strategies** – this is where she needs the Commissioners' help with the upcoming legislative session. She stated that she is working on a report to make the NERC investigators their own

series/class and a pay increase; that if NERC can retain investigators and titles similar to the federal EEOC investigators, it will give them more esteem as NERC Compliance Investigators, and with a pay increase it can be an incentive so there may not be such a high turnover rate.

PI 3 – Percent of inquiries received via the internet

Ms. Jenkins stated that NERC receives quite a few complaints via the internet, but currently only employment discrimination complaint applications are offered on-line for the public.

PI 4 – Percent of cases resolved through mediation

Ms. Jenkins stated that as of January 2014, NERC was in the green meaning that 50% of cases assigned to mediation are resolved; that Mr. Maginot is very successful as a mediator.

PI 5 – Percent of EEOC contract met – closure estimates for FFY13 = 660 and for FFY14 = 660

Ms. Jenkins stated that in January 2014, NERC was in the red as NERC had projected closing 660 cases and this is what was legislatively approved, but NERC's contract was for only 499 cases – this should be green. She added that the problem is NERC's budget is based on a number that NERC does not know if EEOC will grant – Ms. Hendren hoped for 660 for the contract but only received 499.

PI 6 - Number of complaints filed

Ms. Jenkins stated that this PI shows the number of complaints planned and actual – that NERC has no control over the number of cases that are received; that the PI planned for 129 but NERC received 49, so NERC is in the red.

Mr. Nigam asked Ms. Jenkins if the PI could reflect planned vs actual, to which Ms. Jenkins indicated that she will work in on this.

Ms. Jenkins agreed and believed NERC would be able to be in the green, more so if staff can be maintained.

E. Legislative Update

Ms. Jenkins advised that on May 6, 2014, she is tentatively scheduled to appear/testify before the LCB Sunset Committee regarding boards and commissions; that the purpose is to determine whether or not the NERC Commission should continue, be terminated/modified or consolidated with another commission. She added that in her presentation, she will emphasize the importance of keeping this statutorily/authorized commission so that it can continue to investigate complaints of discrimination under Title VII, Public Accommodation, and Housing and that to not have the Commission would not be beneficial to the citizens of Nevada

Ms. Jenkins added that one of Committees' questions for NERC was in regards to the operating budget for the NERC Commissioners and that she responded there is no budget and the Commissioners are paid per diem from NERC's budget.

Ms. Jenkins stated that she submitted her response to the questions and provided where in the law the Commissioners are authorized, and that when she is advised of the time she will be appearing before the Committee, she will so inform the Commissioners.

Mr. Nigam opined that the Sunset Committee is looking at Commissions/Boards that have not been meeting for years and years; that they (NERC Commissioners) have been meeting regularly and have an agenda.

Ms. Cafferata agreed with Mr. Nigam and commented that the Sunset Committee is not looking at them specifically, but rather at all Boards/Commissions.

Ms. Jenkins added that NERC currently is a training ground for investigators as they are hired, receive training, but are hired at a grade 28 and after a few years of experience they promote elsewhere, which they should; however, then NERC has to start the process all over again. She added that in comparison to the Las Vegas EEOC investigators, they start out at \$43,000 for the same work the NERC investigators do and receive the same type of training, but the pay level is lower with NERC. Ms. Jenkins added that she is working on an occupational study with State Human Resources to be able to include their approval when submitted to the legislature. Ms. Jenkins indicated that she is aware this is a budget issue but is hoping for the Commissioners' support come legislative session in getting the bill draft approved and submitted.

F. Outreach FFY 2013/2014

Ms. Jenkins advised that for FFY 2014, she has participated in three events, with a fourth upcoming:

- Silver State Fair Housing, both Michael Baltz and she presented;
- Chaparral High School, she spoke at the Epilepsy Conference regarding disabilities, reasonable accommodations – stated that it was very inspiring as it provided insight to what individuals go through;
- Guest speaker at UNLV regarding harassment, TVII in April 2014;
- She is getting ready to speak at NV State Bar regarding TVII – how attorneys can approach NERC for support and exhausting remedies

Ms. Jenkins concluded the Administrator's Report.

VII. Discussion regarding need for regulations on motion practice for public hearings, clarification of the definition of gender identity or expression, and amending NAC 233.135(3) and NAC 233.250

Ms. Jenkins commented that in regards to regulations on motion practice for public hearings, that after her review, at this time she is not moving forward adopting or creating regulations for Commissioners to entertain and put in the law; that she is not saying it will not happen, but her focus has been hiring and retaining investigative staff.

In regards to the clarification of the definition of gender identity or expression, Ms. Jenkins advised that she is not moving forward at this time as there is not a significant business impact such that a regulation needs to be created to have clarity on what gender identity or expression is; that if it becomes a business issue, then it will be approached again.

Ms. Cafferata asked Ms. Jenkins if she has a time frame when she may propose the regulations, to which Ms. Jenkins' response was "not at this time."

Ms. Cafferata stated that her concern is that when there was a hearing or about to be a hearing and there was a motion presented, there were no regulations to do so and it became a problem as the employer wanted the Commissioners to dismiss the case based on a motion and she (Ms. Cafferata) believes it denied the employee the right to have a hearing, and the Commissioners had no regulations to do that. Ms. Cafferata added that while it may not be a priority currently, she

believes it is something that the Commissioners should be moving on and adopting so it does not happen again.

Ms. Young agreed with Ms. Cafferata.

Ms. Jenkins acknowledged both Ms. Cafferata and Ms. Young's comments.

Ms. Cafferata asked that the packets contain the regulations/laws/language if there is to be any open discussion on the same.

Ms. Jenkins acknowledged Ms. Cafferata.

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

Discussion regarding the number of times per year the law states the Commissioners must meet; that while two times per year may be required, the Commissioners' feel that they are not involved; that based on what was presented at this meeting, there should be more meetings to have continuity; that with the upcoming legislative session, they would like a meeting in either September or October 2014; that while the legislative session is meeting, they should meet and outside of the session, the meetings could be more spread out. Ms. Jenkins stated that Norma Delaney will send an email regarding dates and availability based on the video-conference rooms being available.

In regards to agenda items, Ms. Scott commented that at the last legislative session, there was a lot of work pushing through specific bills regarding LGBT (Lesbian, Gay, Bisexual, and Transgender) equality and gender identity issues and based on Ms. Jenkins comments, these areas are being passed over and she (Ms. Scott) asked Ms. Jenkins if data could be provided in the packet as to what type of complaints NERC is seeing and are those laws/regulations involving gender identity coming up as issues with NERC or is it an issue the Commissioners can ignore or need to address. Ms. Scott stated that she does not see any data to support Ms. Jenkins' argument that it is not an issue.

Ms. Jenkins stated she appreciated Ms. Scott's comments and will provide data in the next packet.

Ms. Cafferata asked Mr. Campos if his concerns regarding Spanish translations were addressed to his satisfaction by either Ms. Hendren or Ms. Jenkins.

Mr. Campos explained that when he was with Consumer Affairs, they received complaints from individuals whose first language was Spanish or could not communicate sufficiently in English; that the investigators with Consumer Affairs were not certified; that it caused a legal issue because even though there were investigators who were bilingual, sometimes they could not translate properly; that there was discussion with the DAG's office as to whether someone should be hired or acquire translation services, which incurs costs for translation; there was also a dilemma regarding the brochures that are provided during outreach. Mr. Campos stated that he brought the issue before the Commissioners asking for guidance or possible remedies as there is a need but there is also associated costs. He added that the Consumer Affairs Division in the end opted for English only.

Ms. Delaney stated that the forms on-line are in English only; that should a Spanish person come into the office, the employment forms are provide in Spanish too; that when letters are sent to Spanish individuals, there is a paragraph at the top of all outgoing correspondence advising the individual to have someone translate in their native language; that the Commission no longer sends out written correspondence in Spanish; that there are currently 4 investigative staff members who are bilingual and one bilingual clerical.

Ms. Jenkins asked Mr. Campos if he would like this as an agenda item, to which he indicated that he was only asking a question to the Commission/agency.

Ms. Cafferata stated that one issue is just speaking Spanish I not enough; you have to understand the Spanish in legal terms; that courts now have certified Spanish interpreters; that she is not suggesting NERC go to that extent but believes it should be a subject open for discussion.

Ms. Cafferata reiterated her prior statement that she believes the Commissioners should move forward regarding the regulations for motion practice

IX. Public comments

None.

X. Adjournment

Ms. Cafferata adjourned meeting at 3:37 p.m.

Respectfully submitted,

Tiffany Young
Secretary/Commissioner