

BRIAN SANDOVAL
Governor

DON SODERBERG
Director

KARA M. JENKINS
Administrator



COMMISSIONERS

Kevin Hooks, Chair
Tiffany Young, Secretary
Swadeep Nigam
Lauren Scott
Sean Higgins

DRAFT

Minutes

of the

Nevada Equal Rights Commissioners' Meeting

on September 29, 2015

Due to a recording malfunction, minutes were transcribed based on notes taken during the meeting.

I. Call to Order.

Kevin E. Hooks, Chair, called the meeting to order at 3:00 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, the agenda was posted, and that certificates of posting are on file.

Members Present: Kevin E. Hooks, Chair; Tiffany Young, Secretary; Swadeep Nigam; Lauren Scott; Sean Higgins.

Staff Present: Kara Jenkins, Administrator, Nevada Equal Rights Commission (NERC); Michael Baltz, Chief Compliance Investigator, NERC; Lila Vizcarra, Supervisory Compliance Investigator, NERC; Rose Marie Reynolds, Deputy Attorney General (DAG); Javier Fernandez, Administrative Assistant II, NERC; and Norma Delaney, Administrative Assistant III, NERC.

Public Present: Scott Youngs, Project Director, Nevada Assistive Technology Resource Center (NATRC), University of Nevada, Reno (UNR); and George McKinlay, Data Systems Manager and Project Director, NATRC, UNR.

III. Introduction of newly appointment Commissioners.

Kara Jenkins, Administrator, NERC, introduced the two new Commissioners, and provided the following bios:

Kevin E. Hooks, President and CEO of the Las Vegas Urban League -

The Urban League is the largest community action agency in the state of Nevada and, thanks to his team building, one of the largest Urban League affiliates in the United States.

Mr. Hooks has been instrumental in boosting the organization's revenue through strategic restructuring, new service offerings, profitable corporate partnerships and robust re-branding.

Mr. Hooks' history of proactive leadership began with State Farm Insurance Companies in the early 1990's; he worked as a marketing executive in Hollywood in the 2000's; his development and implementation of an urban-focused marketing platform for studio movie releases led to his appointment to Vice President and General Manager for UPP Entertainment Marketing. In that role, Mr. Hooks advanced celebrity brand placement protocols for major events such as the Sundance Film Festival, People's Choice Awards, and MTV Video Music Awards.

In 2014, Mr. Hooks won the National Urban League's Newcomer CEO of the Year Award.

Sean Higgins, STH Strategies – Mr. Higgins is a 46 year resident of Nevada. He is the principal in the government affairs and legal firm of STH Strategies, with his primary focus in the government affairs arena.

Mr. Higgins regularly lobbies before the Nevada State Legislature, and also represents clients at both the local level, before elected bodies at the county and cities, and the U.S. Congress. He brings years of experience in both the legal and business world to his work; his 17 years as in-house counsel for a gaming company based in Las Vegas help give him a unique perspective on the issues that face the state of Nevada. Mr. Higgins also advises clients on business developments and implementing strategic initiatives designed to assist his client's achieve their goals.

Both Mr. Hooks and Mr. Higgins stated that they look forward to working with the other Commissioners in addition to the NERC staff.

IV. First public comment period.

None.

V. Approval of minutes of meeting held on May 18, 2015.

Minutes approved with following changes:

Page 1, under agenda item IV, correct year in subject line to 2014;

Page 9, fourth paragraph – change misspelled word from “codding” to “coding”.

Ms. Scott made motion to approve minutes with corrections; Mr. Nigam seconded.

VI. Presentation by Scott Youngs, Project Director, Nevada Assistive Technology Resource Center (NATRC), University of Nevada, Reno (UNR).

Mr. Youngs expressed concern that state agencies do not have accessible mediums for individuals with disabilities; the websites are not user-friendly to individuals with disabilities.

During open discussion, the conversation included comments from the Commissioners, including Mr. Hooks and Mr. Higgins. They advised that while new to the Commission, they read the prior minutes regarding Mr. Youngs' concerns/comments. It was agreed that Mr. Youngs would provide a proposal at the next Commissioners' meeting so that it can be placed on the agenda for discussion as to how they can best promote the idea.

VII. Discussion regarding Administrator's Report.

Ms. Jenkins advised that Michael Baltz, Chief Compliance Investigator, would provide the report on the various types of complaints NERC received since the last meeting.

Mr. Baltz read into the record the breakdown of complaints listed under Tab 5 (copy attached).

A. **Personnel** – Ms. Jenkins announced that NERC will open recruitment for a new position entitled, NERC Chief Investigator/Outreach Specialist. This position will assist Ms. Jenkins in outreach and training to school districts state-wide with an emphasis on cyber bullying and LGBT discrimination. This position will also investigate specifically public accommodation and public places discrimination. This position will likely start in December 2015.

- B. **EEOC 2015 Legal Update/Work-sharing Agreement** – Ms. Jenkins provided law updates and highlights under Tab 4 (copy attached). Ms. Jenkins also reported that NERC successfully closed 642 cases for an overall award of \$456,000 for SFY 15.
- C. **Budget** – Ms. Jenkins provided NERC's 2016 financial status report. NERC will realize savings due in part to a successful upward modification grant from the EEOC. NERC's realized savings will be approximately \$88,000 based on a \$1.5 million dollar budget (copy attached).
- D. **NERC Performance Indicators** – Ms. Jenkins provided (2) two handouts detailing NERC's performance indicators; the overall report for SFY 2015 and a summary (copies attached).
- E. **Outreach** – Ms. Jenkins reported that 2015 outreach and EEO training to employers state-wide reached approximately 1,200 individuals.

VIII. Discussion regarding location and time of next meeting and agenda items.
All members agreed that quarterly meetings would be more beneficial.
This will be an action agenda item at the next meeting.

Ms. Jenkins advised that Ms. Delaney will send out an email regarding availability of the videoconference rooms and availability of the Commissioners. It was agreed that the next meeting would be in January 2016.

Agenda items for next meeting – action items: Discussion regarding criteria for public hearings; follow-up on Mr. Youngs' presentation; quarterly meetings.

IX. Second Public Comment Period.
None.

X. Adjournment.
Meeting adjourned by Mr. Hooks at 5:05 p.m.

Respectfully submitted,

Tiffany Young, Secretary

Tab 3

EEOC LEGAL UPDATES

EEOC 2015 Law Updates/Highlights

The following are highlighted cases from the Equal Employment Opportunity Commission's (EEOC) Fair Employment Practice Agencies 2015 Annual Training EEOC Conference

Race and Color discrimination

- *Waldon v. Cincinnati Pub. Sch.* (6th Cir. Mar. 3, 2015), appeal filed (6th Cir. March 3, 2015)

An Ohio law required school districts to conduct criminal background checks and terminate employees convicted of specified crimes, regardless of how old the conviction was. This resulted in only African Americans losing their jobs.

Held: It is the plaintiff's burden to establish that the state policy had a disparate impact on minorities state-wide. It is not sufficient to show a disparate impact on the defendant's employees.

- *Henry v. CorpCar Servs. Houston, Ltd.* (5th Cir. Jan. 27, 2015), pet. For cert. filed (U.S. June 10, 2015)

After requesting time off for Juneteenth (an African American holiday in most states, including Texas, commemorates the abolition of slavery; June 19), plaintiffs, two African American chauffeurs, were required to attend a safety session, in which a white woman dressed in a gorilla suit sang and danced while referring to "big black lips" and "big back butts."

Held: While the harassment occurred over a brief time period, it was sufficiently severe because African Americans have historically been subjected to offensive comparisons of animals.

Sex Discrimination

- *Ambat v. City and Cnty. Of S.F.* (9th Cir. 2014)

The Sheriff's Department implemented a policy that prohibited male deputies from supervising female inmates in the housing units of county jails due to the complaints of sexual misconduct between male deputies and female inmates.

Held: Female gender was not a bona fide occupational qualification (BFOQ) (or exception) because there was not a substantial basis for believing that all or nearly all male deputies would be likely to or pose a risk to, or engage in sexual misconduct with female inmates.

Pregnancy

- *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015)

UPS had a policy that limited light duty assignment to individuals injured on the job, those with disabilities, and those who lost [certification] to drive commercial motor vehicles. UPS denied plaintiff, a pregnant UPS driver, an accommodation for her lifting restriction.

Bottom line: If an employer can give light duty to non-pregnant employees that require the accommodation but not pregnant women, the court will not look favorably at the employer's articulated defense.

Transgender

- *Lusardi v. Dep't of the Army*, EEOC Appeal (Apr. 1, 2015)

Nothing in Title VII makes any medical procedure a prerequisite for equal opportunity (for transgender individuals or anyone else).

Restrictions on transgender female's ability to use a common female restroom facility constituted disparate treatment on the basis of sex.

The restroom restrictions combined with hostile remarks, including intentional remarks, including intentional pronoun misuse, created a hostile work environment on the basis of sex.

Sexual Orientation

- *Boutillier v. Hartford Pub. Sch.*, (D. Conn. Sept. 25, 2014)

Plaintiff's supervisor berated, screamed at and criticized plaintiff about her sexual orientation after learning that plaintiff was married to a same sex spouse

Held: There was a plausible claim of sex discrimination based on non-conforming gender behavior.

National Origin Discrimination

- *Guerrero v. California Dept. of Corrections*, (S.D. Cal. July 21, 2015)

Plaintiff, a formerly undocumented immigrant, was denied employment because of his admitted prior use of an invalid SSN solely to obtain employment.

Held: The practice of asking about prior invalid SSN use had a disparate impact on Latinos. Employer was asked to use other methods to consider candidacy that had less of an impact.

Religious Discrimination

- *Davis v. Fort Bend Cnty.*, (5th Cir. 2014)

The county denied plaintiff's religious accommodation request to be excused on a Sunday for an event that involved breaking ground for a new church and feeding the community.

Held: The determination of whether the practice is religious turns on whether the plaintiff "sincerely believed it to be religious" and not on the nature of the activity itself.

Tab 4

Budget

Department of Employment Training and Rehabilitation
Nevada Equal Rights Commission
Budget Account : 101-2580
MONTHLY FINANCIAL STATUS REPORT for SFY 2016
Aug 31, 2015

	Leg. Approved Budget	Actual Year to Date Amount	Projection	SFY 2016 Actual & Projected	SFY 2016 Projected Difference
REVENUES					
2501 Appropriation Control	1,099,421.00	1,099,421.00	0.00	1,099,421.00	0.00
2511 Balance Forward Prior Year	0.00	0.00	0.00	0.00	0.00
3435 Fed EEOC Contract	441,351.00	0.00	456,000.00	456,000.00	14,649.00
4203 Prior Year Refunds	0.00	0.00	0.00	0.00	0.00
4254 Miscellaneous Revenue	1,200.00	40.00	1,160.00	1,200.00	0.00
TOTAL REVENUES	1,541,972.00	1,099,461.00	457,160.00	1,556,621.00	14,649.00
EXPENDITURES					
01 Personnel Services	1,102,518.00	134,009.06	956,905.00	1,090,914.06	11,603.94
02 Out of State Travel	0.00	0.00	0.00	0.00	0.00
03 In State Travel	10,400.00	1,012.29	1,115.67	2,127.96	8,272.04
04 Operating	170,701.00	24,876.73	138,100.62	162,977.35	7,723.66
05 Equipment	1,990.00	0.00	0.00	0.00	1,990.00
26 Information Services	7,720.00	1,044.75	3,134.25	4,179.00	3,541.00
30 Training	12,617.00	1,457.71	0.00	1,457.71	11,159.29
81 Department Cost Allocation	231,371.00	19,531.83	182,527.21	202,059.04	29,311.96
87 Purchasing Assessment	222.00	55.50	166.50	222.00	0.00
88 Statewide Cost Allocation Plan	4,433.00	0.00	4,433.00	4,433.00	0.00
TOTAL EXPENDITURES	1,541,972.00	181,987.87	1,286,382.24	1,468,370.11	73,601.89

Total Realized Savings Including Additional Revenues: 88,250.89

Tab 5

Framed Charges Based on Protected Categories;

Performance Indicators (2 pages)

Complaints accepted from May 1, 2015-September 21, 2015
Break down of Complaints

Race

Cases with Race allegations:

- 97 employment
- 6 public accommodation
- 3 housing

for a total of 106 Race allegations framed during this period

National Origin

Cases with National Origin allegations:

- 72 employment
- 2 public accommodation
- 0 housing

for a total of 74 National Origin allegations framed during this period

Gender

Cases with Gender allegations:

- 120 employment
- 2 public accommodation
- 2 housing

for a total of 124 Gender allegations framed during this period

Religion

Cases with Religion allegations:

- 15 employment
- 1 public accommodation
- 0 housing

for a total of 16 Religion allegations framed during this period

Color

Cases with Color allegations:

- 6 employment
- 0 public accommodation
- 0 housing

for a total of 6 Color allegations framed during this period

Age

Cases with Age allegations:

- 80 employment
- 0 public accommodation
- 0 housing

for a total of 80 Age allegations framed during this period

Disability

Cases with Disability allegations:

- 107 employment
- 4 public accommodation
- 6 housing

for a total of 117 Disability allegations framed during this period

Retaliation

Cases with Retaliation allegations:

- 121 employment
- 0 public accommodation
- 0 housing

for a total of 121 Retaliation allegations framed during this period

Equal Pay

There were no cases alleging violations of the Equal Pay Act (EPA) framed during this period to be transferred to EEOC

There were 245 total cases resolved through investigation during this period.

There were 63 cases successfully resolved through settlement, for a total amount of \$586,628.17.

NERC PERFORMANCE INDICATOR HIGHLIGHTS

July1-June 30, 2015

1. Percent of Cases formalized – 22 calendar days

GOAL: 82%
ACTUAL: 5%
DID NOT MEET

*Note: Majority of cases are formalized in 70 days

2. PERCENT of EEOC Contract Met (cases closed)

GOAL: 660 Estimated
ACTUAL AWARD: 574 (met)
UM Granted: 642
100% cases closed by September 30
MET STANDARD

3. PERCENT OF CASES RESOLVED THROUGH MEDIATION

GOAL: 39.87%
ACTUAL: 85%
MET STANDARD

State of Nevada
Department of Employment, Training and Rehabilitation
Nevada Equal Rights Commission Division: SFY 2015 Monthly Performance Indicators

Nevada Equal Rights Commission
Budget Account 2580

STATE PERFORMANCE INDICATORS	TOTAL SFY14	JULY	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APRIL	MAY	JUNE	TOTAL SFY15	Challenges	Strategies
1. Percent of discrimination cases formalized for investigative process within 15 working days (22 calendar days).	82%	82%	82%	82%	82%	82%	82%	82%	82%	82%	82%	82%	82%	82%	The majority of cases are formalized within 70 days.	Formalizing cases within 22 days will remain a challenge. A more attainable indicator would relax the standard to at least 45 working days.
	Cases formalized within 15 days	n/a	7	6	6	9	6	2	4	4	3	4	6	5		
2. Percent of EEOC Contract Met. FFY 14 = 660 (estimate); 642 is actual award	642*	57	68	37	64	45	55	51	50	55	30	57	52	619	The legislative approved amount is estimated at 960 (this tends to be the safe number when planning). *Update - Initial closure award from EEOC was 574 cases. NERC requested an upward modification and was granted contract credit for 642 cases. In June NERC was at 616 closures (exceeding the original contract amount of 574). This report does not show that in July, NERC closed an additional 87 cases, for full upward modification credit.	We are training the new investigators as quickly and efficiently as possible. *Note - the FFY ends Sept. 30, 2015.
	Planned	660	55	55	55	55	55	55	55	55	55	55	55	660		
3. Percent of cases resolved through mediation.	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	39.87%	No challenges to note. Our mediator (North) has a very high success rate.	Mediators are successful once we get both parties at the table. The goal will be to encourage this voluntary form of Alternative Dispute Resolution.
	Actual %	84%	103%	120%	67%	116%	81%	100%	93%	91%	100%	55%	100%	95%		
4. Percent of cases open 180 days or less. Includes DAG Cases	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	No comment at this time	
	Planned	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%	75%		
5. Number of Complaints Filed 1,550 Annual (Charge RECEIPTS - IWS report)	1,550	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	1550	no comments at this time	There is no way to gauge the anticipated number of complaints filed each month. That is purely customer-driven. NERC typically averages closing approximately 700 cases per year.
	Actual	N/A	87	67	115	81	60	60	86	82	79	78	73	89		
6. Number of Complaints Filed Proceeding past Intake Interviews	700	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	700	These include cases that have proceeded past the initial intake interview. Currently, NERC is backlogged about 5-6 weeks out from the date of filing to scheduling an intake appointment. The intake appointment determines whether a case will be investigated or not.	There is no way to gauge the anticipated number of complaints filed each month. That is purely customer-driven. NERC typically averages closing approximately 700 cases per year.
	Actual	N/A	84	66	113	80	59	55	79	77	67	77	71	82		