## STATE OF WEST VIRGINIA

# UPDATE OF THE PRELIMINARY PERFORMANCE REVIEW OF THE

## **HUMAN RIGHTS COMMISSION**

Reduction of Case Backlog
Lack of Management Information System
Community Role of Commissioners Planned
Security Problems Resolved
Annual Report Planned for FY97

## OFFICE OF LEGISLATIVE AUDITOR

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February 1997

## WEST VIRGINIA LEGISLATURE

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Antonio E. Jones, Ph.D. Director

February 9, 1997

The Honorable Edwin J. Bowman State Senate Building 1, Room 231-WW 1900 Kanawha Boulevard, East Charleston, West Virginia 25305

The Honorable Joe Martin House of Delegates Building 1, Room 213E 1900 Kanawha Boulevard, East Charleston, West Virginia 25305

#### Gentlemen:

Pursuant to the West Virginia Sunset Law, we are transmitting an Update of the Human Rights Commission, which will be reported to the Joint Committee on Government Operations on Sunday, February 9, 1997. The issues covered herein are "Reduction of Case Backlog; Lack of Management Information System; Community Role of Commissioners Planned Security Problems Resolved; and Annual Report Planned for FY97."

Sincerely,

Antonio E. Jones

AEJ/wsc

Enclosure

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#### **OBJECTIVE, SCOPE AND METHODOLOGY**

This performance evaluation is an update of the Human Rights Commission (SBA) and is conducted in accordance with the West Virginia Sunset Law, West Virginia Code, Chapter 4, Article 10. The objectives of this audit are to determine:

- whether the Commission is acquiring, protecting and using its resources economically and efficiently;
- whether the Commission has complied with laws and regulations;
- whether the desired results and benefits established by the Legislature are being achieved; and
- the effectiveness of the Commission's program and functions.

This performance review is an update that will assist the Joint Committee on Government Operations in making one of the following three recommendations:

- the department, agency or board be terminated as scheduled;
- the department, agency or board be continued and reestablished;
- the department, agency or board be continued and reestablished, but the statutes governing it be amended in specific ways to correct ineffective or discriminatory practices or procedures, burdensome rules and regulations, lack of protection of the public interest, overlapping of jurisdiction with other governmental entities, unwarranted exercise of authority either in law or in fact or any other deficiencies.

The Human Rights Commission was created by the Legislature in 1961 to enforce the West Virginia Human Rights Act. It was transferred to the Department of Health and Human Resources in 1989. In 1995 PERD conducted a preliminary review on the HRC which resulted in the following issues.

- 1. As of June 30, 1995, a backlog of 549 cases exceeded the 365-day resolution period mandated by the Supreme Court.
- 2. Inadequate information system, and failure of JALAN.
- 3. Placement of the Human Rights Commission under DHHR created a conflict of interest.
- 4. The Commission has not played an active role in the promotion of harmonious relationships among disabled, racial, ethnic, religious, and other groups.
- 5. Confidentiality of records and safety of staff.
- 6. Annual Reports have not been filed.

This update uses the following designations of levels of compliance.

## **TABLE 1 Levels of Compliance**

<u>In Compliance</u> - The HRC has corrected the problems identified in the 1995 audit report.

<u>Partial Compliance</u> - The HRC has partially corrected the problems identified in the 1995 audit report.

<u>Planned Compliance</u> - The HRC has not corrected the problem but has provided sufficient documentary evidence to find that the Commission will do so in the future.

<u>In Dispute</u> - The HRC does not agree with either the problem identified or the proposed solution.

 $\underline{\text{Non-Compliance}}$  - The HRC has not corrected the problem identified in the 1995 audit report.

<u>Requires Legislative Action</u> - The recommendation was intended to call to the attention of the Legislature to one or more statutory issues.

## ISSUE AREA 1: As of June 30, 1995, a Backlog of 549 Cases Exceeded the 365-day Resolution Period Mandated by the Supreme Court.

#### Recommendation 1

Because reasons for the backlog vary and are somewhat in dispute, the Performance Evaluation and Research Division recommends that the HRC present a plan to pare the backlog at the first 1996 meeting of the Joint Committee on Government Operations.

Level of Compliance: In Compliance

The HRC has developed *alternative case resolution techniques* to supplement the adjudication hearing process. The total number of open cases, including cases opened since July 1, 1995, was reduced from 1,517 to 716 as of October 1996, a reduction of 47%. Of the 801 cases closed within this period, approximately 650 to 700 were found to have no probable cause, 62 were resolved during settlement conferences prior to hearing or withdrawn to Circuit Court, and 21 were resolved by mediation. Eighty-six (86) new cases were scheduled for hearing and 46 were in the hearing process. The Executive Director believes that if the Commission continues to average 435 complaints yearly, the backlog problem should be resolved by July 1998.

As of February 3, 1997, the backlog of cases exceeding the Supreme Court mandated 365-day resolution period was down to 318 cases, a reduction of 42% from October 1995. The Executive Director cautions, "[t]here will continue to be open cases that will exceed the 365-day restriction, not because of poor performance, but because of individual case complexity."

#### Recommendation 2

The HRC should provide training for intake personnel, and consider when it is necessary to consult with supervisors or attorneys at that stage of the process.

Level of Compliance: In Compliance

The HRC receives many complaints that are not discriminatory in nature and fall outside the jurisdiction of the Commission. These cases often require assistance in problem definition and identification of the appropriate agency to offer assistance. The HRC continues to provide these services as in the past, but no longer documents these services as "complaints" with the Commission. The Commission and Civil Rights Division of the Attorney General's Office have partnered to provide a series of educational sessions to intake and investigatory personnel.

#### ISSUE AREA 2: <u>Inadequate Information System, And Failure of JALAN</u>

#### Recommendation 3

The Human Rights Commission should follow both the "Short Term Recommendations" and "No. I" under "Long Term Solutions" in the Executive Summary of IS&C's Gap Analysis (as summarized below).

#### Short Term:

- 1) The EEOC Information Resources Management Services indicated that they will provide training for two employees of their FilePro database (CDS) at no cost to HRC. Because the CDS must continue to be maintained, regardless of what other efforts are undertaken, this would seem to be a part of any solution. The only associated costs would be for transportation, housing, and food. The EEOC estimated that the training would take 2-5 days, and it can be scheduled any time.
- 2) The EEOC is also willing to produce ad hoc reports if detailed requests are made.
- 3) HRC needs a permanent, full-time, experienced employee whose primary responsibility is to maintain the Commission's office automation environment, including hardware, software, communications, and databases. Without this person, no new system will work.

#### Long Term:

1) The best long-term plan for HRC would appear to be phasing out the AS/400 and migrating to a PC LAN (Local Area Network) environment. An upgraded EEOC UNIX PC could be connected to the LAN for transfer of data. This would be more in sync with the long-term plans of the EEOC to migrate to a client/server Oracle platform, and it would also provide the HRC with the PC's needed to access HRIS (Human Resources Information System), the upcoming mandatory implementation of a statewide network. This plan would require an appropriation to pay off debt on the AS/400 and pay for hardware, software, and development of the new system. While the initial cost for installing a LAN would be higher than upgrading the AS/400, the long-term costs in terms of personnel and maintenance should be less. HRC does not have the alternative of phasing-in LAN, with only a few employees initially being connected to the new database; others could then be added as funding becomes available.

#### Level of Compliance: Partial Compliance

For various reasons the HRC has been unable to comply with many aspects of the "short-term" recommendations. The proposals and offerings by the EEOC under points 1 and 2 were undermined by federal budget constraints. HRC has acquired a \$5,000 Housing and Urban Development (HUD) grant to purchase a portable computer system for processing information required by HUD and other needs of the Commission. According to the Executive Director, the HRC lacks the resources necessary to hire the recommended database manager (see Appendix A).

The "long-term" solution requires the purchase, development and implementation of a new information system. The agency has submitted budget requests for \$139,500 to the executive to cover the cost of a UNIX PC, installation and training, development of application, and system integration (see Appendix B). In the meantime, the existing management information system will continue to provide insufficient support to the Commission. For example, a total of 5.25 staff hours were required for the Commission to provide the number of opened cases exceeding 365 days for the compliance review of Recommendation 1 on page 3.

ISSUE AREA 3: Placement of the Human Rights Commission Under DHHR Created A Conflict of Interest

#### Recommendation 4

The Performance Evaluation and Research Division recommends that the Legislature consider making the Human Rights Commission an independent agency under the auspices of the Governor.

Level of Compliance: Requires Legislation

This recommendation was addressed to the Legislature, and does not apply in this update.

ISSUE AREA 4: The Commission Has Not Played an Active Role in the Promotion of Harmonious Relationships Among Disabled, Racial, Ethnic, Religious, and Other Groups.

#### Recommendation 5

The Human Rights Commission should become more active in the prevention of discrimination complaints through community involvement and other activities specified in the West Virginia Code.

Level of Compliance: Planned Compliance

The HRC has taken steps to adopt community action programs at the congressional district level. Commissioners will analyze the nature of conflict and discrimination within their respective districts and develop alternative solutions and programs with local and municipal leaders on a regional basis for the prevention and resolution of discrimination issues.

#### ISSUE AREA 5: Confidentiality of Records and Safety of Staff

#### Recommendation 6

The Human Rights Commission should obtain file cabinets which protect the safety of records by lock and key, and control who has access to keys and files.

Level of Compliance: In Compliance

The HRC has implemented comprehensive security procedures. Controls over access to HRC offices have been enhanced by the erection of a security wall and door, and lock mechanism which allows the receptionist to function as gatekeeper. All storage containers used to store case files and sensitive documents have been retrofitted with locking devices. Policies have been established requiring "all documents to be under lock and key when the office is unoccupied or when files are unattended." See agency's response to Recommendation #6 in Appendix A for specific security improvements.

#### **ISSUE AREA 6:** Annual Reports

#### Recommendation 7

An annual report should be submitted to the governor beginning with FY 1996-97 and continuing each year thereafter.

Level of Compliance: Planned Compliance

The HRC plans to issue an Annual report for FY97.

## **Agency Response**



#### STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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RE:	
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#### **RECOMMENDATION #1:**

Because reasons for the backlog vary and are somewhat in dispute, the Performance Evaluation and Research Division recommends that the HRC present a plan to pare the backlog at the first 1996 meeting of the Joint Committee on Government Operations.

#### **RESPONSE:**

Despite varying opinions as to the nature and root causes of the complaint backlog, there was a consensus, however, that much needed to be done to substantially reduce the number of active opened cases. When the issue of the case backlog was first addressed by the State Supreme Court in 1984, the Court allocated approximately \$500,000 on a one-time basis to hire additional attorneys to serve as administrative law judges to preside over approximately 400 cases awaiting administrative hearings. This initiative was an effective temporary solution to eliminating the hearing backlog. However, no permanent relief or solution was proposed and adopted that would have provided for the adjudication of future cases resulting from later investigations of the 1,100 open cases remaining. Those cases, which later resulted in recommendations for "Probable Cause," were subsequently slated for administrative hearings and became the "new" backlog that persisted for a number of years. Although the total number of new cases remained fairly constant year to year, there was no follow-on legislative relief or allocation of additional resources to effectively manage the existing large number of human rights complaints awaiting hearing.

Once the temporary administrative law judges completed the terms of their work agreement pursuant to the Supreme Court mandate, only one (1) administrative law judge remained assigned to the Commission to preside over hearings. In an attempt to improve the efficiency of the hearing process, one (1) additional permanent administrative law judge was assigned and funding was made available to contract for an additional administrative law judge on a part-time basis. This is the current system; and with other alternative dispute resolution systems in place and working, this arrangement may prove to be adequate.

Over the years, case management has become increasingly sophisticated given the evolution and application of case law reviews, revised statutes, and state court decision. A recent analysis revealed the complaint process is no longer predictable and

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fluid. Instead of a uniform flow of events, it has become discombobulated mainly due to the increased number of challenges to established rules of law and evidence, a more liberalized interpretation of due process, and the combative nature of private counsels with the ultimate objective of winning at all cost. These conditions, along with the absence of sound management practices, also facilitated the reemergence of the infamous backlog where the number of complaints received by the Commission exceeded the number of cases resolved.

Since September 1995, the HRC has developed and implemented alternative case resolution techniques to supplement the hearing process and reduce the number of active complaints that otherwise would contribute to the case backlog. With the use of settlement conferences, mediation and conciliation conferences in addition to the administrative hearing process, the total number of opened cases, including cases received between July 1, 1995 - October 30, 1996, was reduced from 1,517 to 716, a reduction of 47%. Of the total number of cases closed, 62 cases were resolved during settlement conferences prior to hearing or withdrawn to Circuit Court, and 21 cases were resolved during mediation after notice to hearing. Eighty-six (86) new cases were slated for hearing with a total of 46 cases now in the hearing process. The Commission is experiencing a "probable cause" rate of approximately 10-15% which accounts for the remaining 650-700 cases resulting in "no probable cause" determinations. When considering the Commission receives an average of 435 complaints yearly, it is expected that consistent performance will completely eliminate the case backlog by July 1998.

There will continue to be open cases that will exceed the 365-day restriction, not because of poor performance, but because of individual case complexity. As of February 3, 1997, there are 318 cases that are over a year old. Of the 318 cases, 159 cases are either scheduled for hearing, awaiting decisions from the administrative law judges, are on appeal to the Commission, the State Supreme Court, or the circuit courts, and the remainder of the cases are receiving priority attention consistent with the degree of cooperation from parties to the case and the level of case difficulty. As a practical matter, cases in the adjudication process are not influenced by the activities of the Human Rights Commission staff.

#### Recommendation #2:

The HRC should provide training for intake personnel, and consider when it is necessary to consult with supervisors or attorneys at that stage of the process.

#### RESPONSE:

HRC has followed a longstanding provision of the West Virginia Code that mandates all claims of unlawful discrimination must be documented and fully investigated. Although many complaints are not discrimination in nature and do not fall under the jurisdiction of the Commission, they very often only require assistance in defining the problem and identifying the appropriate agency that they can go to for assistance. Unlike procedures that were in effect years ago, the Commission continues to offer this advice and assistance but do not document these cases as filed complaints with the Commission.

Further, the Commission, in conjunction with the Civil Rights Division of the Attorney General's Office, is providing a series of educational sessions to benefit not only intake personnel, but also the investigatory staff. These workshops have been conducted on site at the Commission. They have been regularly scheduled for either half or full-day sessions. Educational materials accompany each subject. Staff members have been provided 3-ring binders in which to keep handouts which provide a training manual for future reference. Often the training sessions integrate real work situations which are conducted in a role-playing mode. Staff members are also provided evaluation sheets which contain forms for suggestions for future presentations.

In addition, the Civil Rights Division has facilitated training for the Commissioners. Guest speakers, including professors from the WVU College of Law and trainers from the Job Accommodation Network, have spoken on the Americans with Disabilities Act. Other guest speakers have addressed sexual harassment, pregnancy discrimination, and other areas that are encompassed in the West Virginia Human Rights Act. We have attempted to offer training that do not strain our budget. However, it has become obvious that further training, especially of the Commissioners and their role vis-avis the duties spelled out and implied in the Human Rights Act, would be extremely helpful. This would of course entail funds not presently available to the Commission.

#### **RECOMMENDATION #3:**

The Human Rights Commission should follow both the "Short Term Recommendations" and "No. 1" under "Long Term Solutions" in the Executive Summary of IS&C'S Gap Analysis.

#### **RESPONSE:**

The "Short Term" solution consists of training for two employees on the FilePro database (CDS) by the EEOC, ad hoc reports to be generated by the EEOC as required, and the hiring of a permanent, full-time employee to manage office automation. This recommended solution has merit but only addresses issues of employment discrimination under the jurisdiction of the EEOC. Since the publication of the Performance Review report, proposals and offerings by the EEOC have been undermined by federal budget constraints and other competing programs making many services unavailable. However, the HRC has acquired a special grant of \$5,000 from the U. S. Housing and Urban Development (HUD) to purchase a portable computer system that would be especially adaptable to processing information required by HUD and would also satisfy certain needs of the Commission. Resource constraints have restricted efforts to obtain authorization for new hire of a system analyst or database manager.

The "Long Term" solution recommends phasing out the current AS/400 computer system, migrating to a PC LAN environment, and obtaining an upgraded EEOC UNIX PC to be connected to the LAN for data transfer. This is a resource issue and has been addressed in a 1997 Request for Supplemental Appropriation submission to the legislature as well as in the 1998 Request for Appropriation.

#### **RECOMMENDATION #4:**

The Performance Evaluation and Research Division recommends that the Legislature consider making the Human Rights Commission an independent agency under the auspices of the Governor.

#### **RESPONSE:**

Under previous administrations, Governors made a conscious decision to position the Human Rights Commission under the Department of Health and Human Resources. Any decision to realign the Commission directly under the governor is an action to be pursued by the legislature in concert with the Governor.

#### RECUIVILLADATION #5:

The Human Rights Commission should become more active in the prevention of discrimination complaints through community involvement and other activities specified in the West Virginia Code.

#### **RESPONSE:**

In anticipation of an upgraded computer environment, the Commission's vision for the future includes the adoption of a community action program at the Congressional District level. Working as subcommittees, Commissioners would analogize the nature of conflict and discrimination and develop solutions and methods of prevention on a regional basis with local and municipal leaders.

#### **RECOMMENDATION #6:**

The Human Rights Commission should obtain file cabinets which protect the safety of records by lock and key and control who has access to keys and files.

#### **RESPONSE:**

An extensive personnel and document security program was implemented that focused on the control of patrons, protection of documents, personnel security, and the security of the office. Visitors no longer have unimpeded access to the Human Rights Office. Utilizing self-help and discretionary funds, the main entrance to the office has been relocated to the opposite end of the office where a security wall was erected and access made available only with a key or by means of a lock release mechanism controlled by the receptionist. All other access doors are locked and accessibility

provided only with a key that is in the possession of each employee.

All storage containers that are used for the storage of case files and relative investigative documents have been retrofitted with locking devices. By established policy, all documents are kept under lock and key when the office is unoccupied or when files are unattended.

#### **RECOMMENDATION #7:**

An annual report should be submitted to the governor beginning with FY 1996-97 and continuing each year thereafter.

#### RESPONSE:

An annual report is planned for FY 1996-97. There will be a heavy reliance on the use of computers for report preparation, analyzing past performance, assessing recent trends, making predictions, and developing specific programs. Without adequate computers, however, it is feared the Commission's report will not necessarily represent the desired manner of portrayal likened to details, accuracy and quality that are expected.

**NOTE:** For this report, a total time of 5 hours and 15 minutes of employee effort was consumed in determining the number of opened cases exceeding 365 days. The current data retrieval system is a manual process with the current automation limited to recording data without any flexibility for manipulation of data.

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## Appendix B Budget Submissions

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