

West Virginia Human Rights Commission

Annual Report 2020



SERVING ALL OF WEST VIRGINIA



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Bill J. Crouch
Cabinet Secretary

State of West Virginia
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
HUMAN RIGHTS COMMISSION
Room 108A, 1321 Plaza East
Charleston, WV 25301-1400
Telephone: (304) 558-2616 Fax: (304) 558-0085
Toll Free: 1-888-676-5546

Ronald Jones Jr
Executive Director

December 3, 2020

The Honorable Jim Justice
Governor, State of West Virginia
State Capitol Building
1900 Kanawha Blvd., East
Charleston, WV 25305

Dear Governor Justice:

It is with pleasure that I present to you the Commission's Annual Report for Fiscal Year July 1, 2019, through June 30, 2020. The Commission steadfastly continues its mission to eradicate discrimination and to improve its services to the residents of West Virginia, pursuant to the West Virginia Human Rights Act, the West Virginia Fair Housing Act, and the West Virginia Pregnant Workers Fairness Act, as amended.

During Fiscal Year July 1, 2019, through June 30, 2020, the Commission has accomplished many of its goals, in addition to continuing to investigate and litigate cases of discrimination. The Commissioners and staff receive ongoing training from the U.S. Equal Opportunity Commission and the office of the West Virginia Attorney General, Civil Rights Division.

The Commission continues to conduct outreach to community advocacy groups and businesses regarding discrimination laws in housing, public accommodation, and employment. In addition, the Commission strongly supports alternative dispute resolution programs because of their cost effectiveness.

For additional information, feel free to visit our website at www.hrc.wv.gov. Thank you for the opportunity to be of service to the people of this great state.

Respectfully submitted,

Ronald L. Jones, Jr.
Executive Director

Dr. Ronald Jones, Jr

Mission Statement

The West Virginia Human Rights Commission is a neutral agency that administers and enforces the West Virginia Human Rights Act, as amended, and the West Virginia Fair Housing Act, prohibiting discrimination in employment, housing, and places of public accommodation for all residents of West Virginia regardless of race, religion, color, national origin, ancestry, sex, blindness, disability, and age, specifically disputes regarding housing, familial status, and persons with disabilities who utilize assistance animals.

Declaration of Policy

It is the public policy of the State of West Virginia to provide all residents equal opportunity for employment, equal access to places of public accommodation, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodation is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, or pregnancy. Equal opportunity in housing accommodation or real property is hereby declared a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, disability, familial status, or persons with disabilities who utilize assistance animals.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, pregnancy, familial status, or persons with disabilities who utilize assistance animals is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

Unlawful discrimination damages both the individual and society in a myriad of ways, not the least of which is shame and humiliation experienced by the victim — feelings that diminish the person’s ability to function in every area of life. Society is damaged by the unwarranted and foolish refusal to accept an individual’s talents and efforts merely because of race, sex, religion, age, color, national origin, ancestry, blindness, disability, pregnancy, familial status, and persons with disabilities who utilize assistance animals. With regard to housing, discrimination strikes at the dignity of the individual. It says to the victim that no matter how much money you have, no matter what your social position, you cannot live here.

Specifically, the West Virginia Human Rights Act prohibits discrimination by any employer employing 12 or more persons within the state for 20 or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: Provided that such terms shall not be taken, understood, or construed to include a private club, based on race, color, religion, national origin, ancestry, sex, age, blindness, disability, and pregnancy in the selection, discharge, discipline or other terms and conditions of employment. The Act also prohibits any advertisement of employment that indicates any preference, limitation, specification or discrimination based on race, religion, color, national origin, ancestry, sex, age, blindness, disability, or pregnancy. Throughout this report, all references to age indicate 40 and above.

Lastly, it is unlawful under the Act to retaliate or discriminate in any manner against a person because the person has opposed a practice declared unlawful by this Act or because the person has made or filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing concerning an unlawful practice under the Act.

The West Virginia Fair Housing Act protects each person’s right to personal dignity and freedom from humiliation, as well as the individual’s freedom to take up residence wherever the individual chooses. This Act prohibits discrimination in housing based on race, religion, color, sex, national origin, ancestry, age (40 and above), blindness, disability, familial status (the presence of children under the age of 18 years of age in the household) and persons with disabilities who utilize assistance animals. Wide ranges of discriminatory practices are prohibited, affecting a variety of persons and businesses. Realtors, brokers, banks, mortgage lenders, insurance companies, developers, real estate buyers and sellers, landlords and tenants are all affected by the West Virginia Fair Housing Act. It is important that all those covered by the Act know their rights and duties under the Act.



Dr. Darrell Cummings
Chair
Ohio County

The Commissioners and Their Role



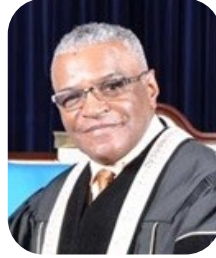
Timothy Hairston
Vice Chair
Monongalia County



Karl Gattlieb
Kanawha County



Lisa Younis
Jefferson County



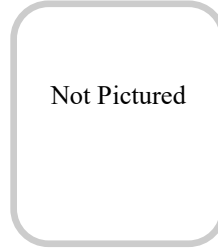
Wesley Dobbs
Marion County



John McFerrin
Monongalia County



Marie Redd
Cabell County



Randall Morgan
Kanawha County

Commissioners play a tremendously important role at the Human Rights Commission. They act as an appellate body for cases appealed from a final order of an administrative law judge. All cases on appeal are confidential and Commissioners should not inform anyone about what is discussed during the deliberation of these cases. Commission meetings are held on the third Thursday of every month, unless otherwise agreed. All meeting times, location and agenda are posted on the Secretary of State's website. Commission meetings, except for executive session, are open to the public.

Commissioners also approve modifications or amendments, or both, to procedural, legislative, and interpretive rules. In addition, Commissioners should:

Have an awareness of civil rights issues at the local and state level and develop appropriate strategies to address these issues with the advice of the Executive Director and the community;

Be visible in their communities and throughout the state;

Provide assistance and information to individuals needing the agency's services;

Form advisory committees and hold public hearings, as appropriate;

Attend monthly meetings; and

Receive ongoing training from the staff of the Human Rights Commission, the Attorney General's Civil Rights Division, and other invited members of the community and the West Virginia State Bar.

(Note: Please see W. Va. Code § 5-11-8 for complete listing of the Commissioners' powers and functions.)

Highlights of the West Virginia Human Rights Act

The West Virginia Human Rights Act (W.Va. Code §5-11-1 et seq.) was enacted in 1961 and is administered and enforced by the West Virginia Human Rights Commission.

Employment Discrimination and Harassment W.Va. Code §5-11-9(1)

It shall be an unlawful discriminatory practice...for any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment...

Public Accommodations Discrimination W.Va. Code §5-11-9(6)(A)

It shall be an unlawful discriminatory practice...for any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to: (A) Refuse, withhold from or deny to any individual because of his race, religion, color, national origin, ancestry, sex, age, blindness, or disability, either directly or indirectly, any of the accommodations, advantages, facilities, privileges or services of such place of public accommodations; ...

Reprisal Related to Employment or Public Accommodation W.Va. Code §5-11-9(7)(A)-(C)

It shall be an unlawful discriminatory practice for any person to...(A) Engage in any form of threats or reprisal,...or otherwise discriminate against any person because he or she has...filed a complaint, testified or assisted in any proceeding under this article.

Housing Related Reprisal and Intimidation W.Va. Code §5-11A-16

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by sections four, five, six or seven of this article.

The West Virginia Code is available in public libraries and on the Legislature's website at www.wvlegislature.gov

The Executive Director's Vision



The vision of the WVHRC is to provide better quality, and more efficient, effective services to the residents of the State of West Virginia. By utilizing a more proactive approach, the Commission aims to provide clarity to who we are and the services we provide overall.

It is our endeavor to be more accessible to the residents of West Virginia across the entire state, so that they become more personally in touch with who we are and the services we provide, while holding ourselves to a standard of accountability that can be counted on.

The WVHRC will be committed to outreach. We will aggressively target those areas of West Virginia that are underserved, and largely affected by acts of discriminatory behaviors. The WVHRC intends to create collaborations with both the private and public agencies that promote human rights and mutual respect among all the people of West Virginia. Our focus will be on creating a network of human rights agencies and create the narrative of human rights in the state. The WVHRC seeks to empower residents with the knowledge of human rights and provide them the ability to advocate. We seek to become the leader in human rights advocacy and education in the state.

The West Virginia Human Rights Act, as amended, The West Virginia Fair Housing Act and the West Virginia Pregnant Workers Fairness Act, protects the rights and dignity of all persons within the state of West Virginia regardless of race, religion, color, national origin, ancestry, sex, blindness, disability, and age, specifically in issues of housing, familial status, and persons with disabilities who utilize assistance animals.

Our motto is, ***“We want our faces to be seen and our voices to be heard,”*** with a message of intolerance toward discrimination, while promoting equality for all persons. The Human Rights Commission is committed to fulfill its mission across this Great State of West Virginia!

Community Partnerships, Relations and Outreach List

The following section represents a list of partnerships the West Virginia Human Rights Commission maintains with community groups, agencies, and businesses. This is part of the Commission's effort to educate and serve the community while administering the West Virginia Human Rights Act, as amended, the West Virginia Fair Housing Act, and the Pregnant Workers' Fairness Act, all of which prohibit discrimination in employment, housing, and places of public accommodations.

It is the responsibility of the Human Rights Commission to bring about mutual understanding, respect, tolerance, and equal protection of the laws. While not all-inclusive, the following list represents selected outreach events:

- ◆ Align Human Resources
- ◆ Beni Kedem Shriner's Temple
- ◆ B'nai Jacobs Synagogue
- ◆ Boyden Design Construction
- ◆ Charleston Black Ministerial Alliance
- ◆ (CECDC) Charleston Economic Community Development Corporation
- ◆ Charleston Housing Authority
- ◆ Charleston Job Corps
- ◆ City of Charleston, Mayor's Office of Economic and Community Development
- ◆ City of Charleston Police Department
- ◆ Community for Social Justice of Morgantown
- ◆ Covenant House
- ◆ Deepwell Energy
- ◆ Fairness West Virginia
- ◆ Habitat for Humanity
- ◆ (HOPE CDC) Hope Community Development Corp.
- ◆ Housing and Urban Development—Local Office
- ◆ Huntington Housing Authority
- ◆ Kanawha County Schools
- ◆ (KISRA) Kanawha Institute for Social Research & Action, Inc.
- ◆ Mercer County Board of Education
- ◆ Metropolitan Community Development Corporation, Inc. MCDC, Inc.

Community Partnerships, Relations and Outreach List, continued

- ◆ Northern West Virginia Center for Independent Living
- ◆ Ohio Civil Rights Commission, Columbus, Ohio
- ◆ Shepherdstown University
- ◆ (SHRM) Society For Human Resource Management
- ◆ Smoot Construction
- ◆ The Minority Health Advocacy Group of Charleston, WV
- ◆ U.S. Equal Employment Opportunity Commission
- ◆ U.S. Housing and Urban Development
- ◆ U.S. Housing and Urban Development, Pittsburgh Field Office
- ◆ Weirton Human Rights Commission
- ◆ Wheeling Human Rights Commission
- ◆ West Virginia Advocates, Inc.
- ◆ West Virginia Attorney General's Office, Civil Rights Division
- ◆ West Virginia Americans with Disabilities Act Coalition
- ◆ West Virginia Association of Realtors (WRA)
- ◆ West Virginia Bureau of Senior Services
- ◆ West Virginia Department of Arts, Culture, and History
- ◆ West Virginia Equal Employment Opportunity Office
- ◆ West Virginia Federation of the Blind and Visually Impaired
- ◆ West Virginia Federation for Deaf and Hearing Impaired
- ◆ West Virginia Housing Development Fund
- ◆ West Virginia Legislature
- ◆ West Virginia Martin Luther King, Jr. Holiday Commission
- ◆ West Virginia Money Follows the Person Initiative
- ◆ West Virginia Office of the Governor
- ◆ West Virginia Governor's Office of Economic Opportunity
- ◆ West Virginia Herbert Henderson Office of Minority Affairs
- ◆ West Virginia State Association of Public Housing
- ◆ West Virginia State Bar Association
- ◆ West Virginia State University
- ◆ West Virginia State University College of Professional Studies
- ◆ West Virginia Women's Commission
- ◆ YWCA

Selected Outreach & Training Highlights

** not all inclusive **

2019 MULTIFEST – August 2 - 4, 2019

Held in Charleston, West Virginia, at Haddad Riverfront Park (the Levee) and on Schoenbaum Stage. Celebrating 30 years of diversity and the statewide celebration of cultural diversity, with live music, cultural foods, vendors, arts and crafts, kids activities, eccentric clothing, and community information with headliner acts each night.

2019 IAOHRA Conference August 18 - 22

The mission of the International Association of Official Human Rights Agencies (IAOHRA) is to provide opportunities and forums for the exchange of ideas and information among member agencies and other human rights advocates. IAOHRA provides assistance in the development of programs for eliminating illegal discrimination in employment, housing, education, public accommodations, public services, and commercial transactions, including banking and lending practices. The WVHRC continues its membership and involvement in IAOHRA in its fight for civil and human rights.

United Way Day of Caring – September 18, 2019

United Way's 27th Annual Day of Caring brought together energetic volunteers to complete 60 community service projects throughout West Virginia. Over 45 companies generously allow their employees time off to volunteer painting, spending time with seniors, delivering meals, and much more.

11TH Annual Ohio Civil Rights Hall of Fame – October 4, 2019

Held in Columbus, Ohio, at the State Capitol. Honoring residents of Ohio who have left their mark in the state through tireless efforts in furthering civil and human rights in their communities.

2019 West Virginia Minority Business Expo – October 22, 2019

Held at the Charleston Civic Center. This event was a business educational and networking expo for minority businesses hosted by the Herbert Henderson Office of Minority Affairs. The keynote speaker, Ann McNeill, is President of one of South Florida's few African American female-owned construction companies.

WEST VIRGINIA MARTIN LUTHER KING, JR. HOLIDAY COMMISSION

Each year the West Virginia Human Rights Commission, in partnership with the West Virginia Martin Luther King, Jr. Holiday Commission, participates in the observance of the accomplishments, life, and legacy of the late Rev. Dr. Martin Luther King, Jr.

These ceremonies are held in remembrance of Dr. King's efforts towards the advancement of civil rights.

The ongoing partnership with the Holiday Commission serves to underscore the goals and objectives of the West Virginia Human Rights Commission in promoting equality and awareness of the rights of all residents of this great state.

WEST VIRGINIA HUMAN RIGHTS COMMISSION CELEBRATES BLACK HISTORY MONTH

During February's commemoration of Black History Month, the West Virginia Human Rights Commission, area faith-based organizations, along with Charleston's Black Ministerial Alliance, and other surrounding community groups, celebrated the birthday, life, and legacy of the late Rev. Dr. Martin Luther King, Jr.

Throughout the year, the West Virginia Human Rights Commission continues to have a presence in various community celebrations, commemorations, and events which emphasize the importance of human rights.

With the new precautions due to the COVID-19 pandemic, many planned endeavors were forced to be canceled or modified greatly. We look forward to a time that allows for normality within gatherings and outreach on the horizon.

The Complaint Process

The following is an overview of the complaint and investigative process, pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, W. Va. C.S.R. § 77-2-4.15.

I. Intake — Persons wishing to file a complaint or to obtain information regarding their rights may contact the Commission by telephone, U.S. mail, online, or by visiting the Commission’s office. Those wishing to file a complaint are provided a Background Information Form which will provide the Commission with all the necessary information to begin an investigation into the complaint.

The complaint is evaluated to ensure it meets the minimal jurisdictional requirements: in that, the harm complained of has occurred within the last 365 days; the complainant (person making the complaint) is a member of a protected class; and the complaint is with regard to employment, public accommodation, or a housing issue. In employment and public accommodation complaints, protected classes include: race, sex, age, disability, blindness, religion, ancestry, national origin, pregnancy and/or reprisal, as set forth in the West Virginia Human Rights Act and the West Virginia Pregnant Workers’ Fairness Act. In housing complaints, in addition to the aforementioned list of protected classes, familial status and persons with disabilities who utilize assistance animals are added, as set forth in the West Virginia Fair Housing Act. When a complaint meets the minimal jurisdictional requirements, it is docketed as an actual case. A docketed complaint is typed into a formal, legal complaint which is signed by the complainant and notarized by a notary public before being served upon the company/agency/person the complainant alleged caused the harm.

The company/agency/person is referred to as the respondent. The respondent is given an opportunity to respond to the allegations set forth in the formal complaint before the case is assigned to an investigator.

II. Investigation — Investigators analyze the information provided by the complainant and respondent and can request more information, as needed, to determine whether there is probable cause to believe that the respondent has engaged in unlawful discrimination under either the West Virginia Human Rights Act, the West Virginia Fair Housing Act, or the Pregnant Workers’ Fairness Act. Throughout the investigative process, the parties may request a pre-determination conciliation to attempt to settle the dispute before a determination is made in the case. After a Notice of Proposed Dismissal is issued to the complainant by the investigative team, the complainant may request a review meeting of his of her case, in writing, to the Executive Director. When a determination of no probable cause is made, the complaint is dismissed and the case is closed. The complainant receives a Right to Sue letter and may file the action directly in circuit court. When a determination of probable cause is made, the case must be set for a public hearing before the Commission’s Administrative Law Judge.

III. Administrative Hearing — Prior to the hearing date, an Administrative Law Judge orders the parties to participate in the Commission’s mediation process. If a settlement is not reached, the Administrative Law Judge conducts a Public Hearing and determines whether there is a violation of the West Virginia Human Rights Act, the West Virginia Fair Housing Act, or the Pregnant Workers’ Fairness Act. The administrative law judge’s final decision can be appealed to the Commission, the circuit court, and the West Virginia Supreme Court of Appeals.

Freedom of Information Act

Pursuant to W.Va. Code §29B-1-1 et seq., the West Virginia Human Rights Commission is subject to Freedom of Information Act (FOIA) requests. The Commission processes FOIA requests through its FOIA Coordinator.

These requests are generated by attorneys, other state and government agencies, the media and the general public. The documentation generally requested is for copies of investigatory and public hearing files and other public records regarding the West Virginia Human Rights Commission's procedures.

Other than those documents expressly deemed public by the West Virginia Human Rights Commission's procedural regulations, § 77-2-15.a of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission, the Commission's policy provides that investigatory files are considered non-public, as they are documents and information, which may also be used in a law enforcement action. W.Va. Code § 29B-1-4(4). Some documents that are exempt may be discoverable at a later stage of the proceedings. Often these files are voluminous and take considerable research to determine what documentation is exempt, or protected under other areas of the law, or both.

If a case withdraws to circuit court or is closed on the Commission's docket, then the law enforcement exemption previously invoked by the Commission under the FOIA in these matters no longer applies. A party is entitled to documents previously exempted, with the exception of documents denied and not provided, under the deliberative process exemption of W.Va. Code § 29B-1-4(8) consisting of advice, opinions and/or recommendations that reflect the deliberative, decision making process of the Commission or matters under a protective order.

The Commission charges \$1 per page copied for closed files, 50 cents per page copied for open files, and \$10 per electronic disk.



**West Virginia Human Rights Commission
Room 108 A
1321 Plaza East
Charleston, WV 25301-1400**

**(304) 558-2616
Toll-Free: 1-888-676-5546
Fax: (304) 558-0085**

www.hrc.wv.gov

The staff of the West Virginia Human Rights Commission is dedicated to promoting public awareness of the goals and objectives of the Commission, enforcing the laws set forth by the West Virginia Human Rights Act, as amended, and the West Virginia Fair Housing Act, and eliminating all forms of discrimination. If you feel you have been a victim of illegal discrimination as described in the West Virginia Human Rights Act or the West Virginia Fair Housing Act, please contact us for information on filing a complaint.

Related Links Available on our Website:

WV Human Rights Act

WV Fair Housing Act

Rules and Regulations

Investigative Process and Procedure

Annual Reports

Complaint Forms

Pre-Determination Conciliation

Poster for Workplaces and Places of Public Accommodation

Fair Housing Poster Contest

Case Activity for FY 2020

Case Activity During Fiscal Year July 1, 2019, to June 30, 2020

The Commission received a total of **1035** inquiries from West Virginians about their Civil Rights. Of that total:

676 were telephone inquiries;
29 were walk-in inquiries; and
330 were website inquiries.

The Commission mailed a total of **314** Background Information Forms to West Virginians. Of that total:

305 were telephone inquiries;
7 were walk-in inquiries; and
2 were letter inquiries.

Of those Background Information Forms:

195 were employment;
70 were public accommodation; and
49 were housing.

The Commission docketed a total of **181** new cases that were added to the current case load. Of that total:

145 were employment;
13 were public accommodation; and
23 were housing.

The Commission closed a total of **151** cases. Of that total:

112 were employment;
12 were public accommodation; and
27 were housing.

Alternate Dispute Resolution Programs

Pursuant to the Rules of Practice and Procedure before the West Virginia Human Rights Commission, W. Va. C.S.R. § 77-2-4-.15, the following information provides details on the two main Alternate Dispute Resolution Programs. These programs provide a valuable outlet for the complainant and respondent to attempt to reach a settlement and avoid costly and time-consuming litigation. The Commission is proud to be a leader in utilizing this tool, which allows both parties an opportunity to resolve differences effectively and efficiently. The results of conciliations and mediations may be monetary in nature or may also include non-payment conditions, i.e., a neutral work reference, a pay raise, the promise of a future job, an accommodation for a disability, anti-discrimination training, development of an anti-harassment/anti-discrimination policy in the work place, a change in work shift, or simply an apology from the respondent.

The Pre-Determination Conciliation Program offered by the West Virginia Human Rights Commission serves as an efficient and time-saving method to resolve complaints early in the investigatory process. The program involves a trained facilitator to help the participants arrive at a negotiated settlement in a fair and confidential setting. This program is a free service offered by the Commission. After a charge is filed, either party may request conciliation at any time prior to the Commission’s issuance of a determination. The Commission, after reviewing the charge and information obtained during the investigation, may determine that the involved parties could benefit from the Pre-Determination Conciliation Program, and would then inquire as to the charging parties’ interest in participating in the program. Conciliation is conducted during the investigative process. The investigation does not stop because conciliation occurs. Investigation will only stop if a settlement is reached by the parties. Upon completion of the investigation, the Commission will issue a determination of either no probable cause or probable cause. Requests for information concerning the Pre-Determination Conciliation Program may be directed to the Director of Operations at (304) 558-2616 or toll-free at 1-888-676-5546.

PREDETERMINATION CONCILIATION 2019-2020	
Successful Conciliation Settlements	19
TOTAL Monetary Benefits	\$135,700.00

mission serves as an efficient and time-saving method to resolve complaints early in the investigatory process. The program involves a trained facilitator to help the participants arrive at a negotiated settlement in a fair and confidential setting. This program is a free service offered by the Commission. After a charge is filed, either party may request conciliation at any time prior to the Commission’s issuance of a determination. The Commission, after reviewing the charge and information obtained during the investigation, may determine that the involved parties could benefit from the Pre-Determination Conciliation Program, and would then inquire as to the charging parties’ interest in participating in the program. Conciliation is conducted during the investigative process. The investigation does not stop because conciliation occurs. Investigation will only stop if a settlement is reached by the parties. Upon completion of the investigation, the Commission will issue a determination of either no probable cause or probable cause. Requests for information concerning the Pre-Determination Conciliation Program may be directed to the Director of Operations at (304) 558-2616 or toll-free at 1-888-676-5546.

The Mediation Program offered by the West Virginia Human Rights Commission serves as an efficient and time-saving method to resolve complaints that are in litigation. This program uses a trained mediator who is an attorney to help the participants arrive at a negotiated settlement in a fair and confidential setting. The parties may request mediation or the administrative law judge may order it. If the matter is not settled at mediation, the parties proceed to the previously set public hearing before an administrative law judge in the Office of Judges. If the parties reach a settlement and execute a written agreement, this agreement may be enforced in the same manner as any other written contract in a court of law. Requests for information concerning the Mediation Program may be directed to the Office of Administrative Law Judges, at (304) 558-2616 or toll-free at 1-888-676-5546.

MEDIATION 2019-2020	
Cases Withdrawn to Circuit Court	S
Cases Mediated and Settled	S
TOTAL Monetary Benefits	S*

trained mediator who is an attorney to help the participants arrive at a negotiated settlement in a fair and confidential setting. The parties may request mediation or the administrative law judge may order it. If the matter is not settled at mediation, the parties proceed to the previously set public hearing before an administrative law judge in the Office of Judges. If the parties reach a settlement and execute a written agreement, this agreement may be enforced in the same manner as any other written contract in a court of law. Requests for information concerning the Mediation Program may be directed to the Office of Administrative Law Judges, at (304) 558-2616 or toll-free at 1-888-676-5546.

hearing before an administrative law judge in the Office of Judges. If the parties reach a settlement and execute a written agreement, this agreement may be enforced in the same manner as any other written contract in a court of law. Requests for information concerning the Mediation Program may be directed to the Office of Administrative Law Judges, at (304) 558-2616 or toll-free at 1-888-676-5546.

*Total represents amount awarded to Complainants. This money is **not** collected by the West Virginia Human Rights Commission, and, therefore, is **not** represented as part of its budget. Conciliations and settlements may also include non-payment conditions as stated above. Mediation amounts are confidential and not disclosed by the WVHRC to third parties due to privacy reasons.

Settlements

July 1, 2019, through June 30, 2020
 Total Settlement Amount **\$135,700.00**

JULY 2019		
Date	Case	Settlement
	N/A	
AUGUST 2019		
Date	Case	Settlement
8/1/19	Brown v Pullman Ventures d/b/a Rooster's EAR-116-18	\$5,000.00
8/7/19	Williamson v Allevard Sogefi USA, Inc. EAD-144-18	\$7,500.00
SEPTEMBER 2019		
Date	Case	Settlement
09/24/19	Williams v WV Bureau of Juvenile Services ERS-13-18	\$250.00
09/30/19	M. Brown v AVI Food Systems EAR-187-18	<i>Notice of Right to Sue</i> issued on 09/30/19

OCTOBER 2019		
Date	Case	Settlement
10/15/19	Fleak v Delli-Gatti EA-164-18	<i>Notice of Right to Sue</i> issued on 09/11/19 <i>Final Dismissal / Closing Order</i> issued on 10/15/19
NOVEMBER 2019		
Date	Case	Settlement
11/06/19	Peterman v Tri-State Food Systems, Inc., d/b/a KFC EBS-166-18	\$13,000.00
11/06/19	WV HRC v Forest Mountain Apartments, LLC, et al WVHRC Docket No: HD-179-18 HUD Docket No: 03-18-9790-8	Attend training and make agreed upon modifications
11/25/19	Johnson v Elementis Specialties EAR- 135-18	\$1,100.00
11/25/19	Johnson v Steelworkers Local # 12625 EAR-136-18	\$1,100.00
DECEMBER 2019		
Date	Case	Settlement
N/A		

JANUARY 2020		
Date	Case	Settlement
01/14/20	Cook v Religious Coalition <i>et al</i> HD-03-19	Post notice of compliance and contact information for the WV Human Rights Commission
01/14/20	Coon v Zimmerman Associates, Inc. ER-184-18	Withdrawal of Complaint / Notice of Right to Sue
01/14/20	WVHRC v Forest Mountain, <i>et al</i> HD-179-18	Respondent has three years to complete the agreed upon changes or pay the Complainant \$5,000
01/28/20	Ball v Appalachian Power Company EREL-153-19	Withdrawal of complaint and Issuing a Notice of Right to Sue
FEBRUARY 2020		
Date	Case	Settlement
02/12/20	Collins v Gestamp ES-37-19	\$10,000.00
02/28/20	Watkins v Wood County Senior Citizens Assoc EAD-45-18	\$1,000.00
MARCH 2020		
Date	Case	Settlement
03/06/20	Stemple v Tucker County Commission EAS-142-18	CONFIDENTIAL
03/12/20	Weekley v Tennant HD-129-19	\$4,250.00
03/17/20	Justice v Blackhawk Mining EADREL-34-19	Requested <i>Notice of Right to Sue</i> , which was issued
MAY 2020		
05/26/20	Perry v Union Mission Ministries EA-64-19	\$2,500.00
NO CASES SETTLED IN APRIL OR JUNE		

Office of Judges Selected Case Summary

REPORT OF OFFICE OF JUDGES: SIGNIFICANT DECISION/RULING 2019

GEORGE BELL,

Complainant,

v

Docket No: EAD-109-19

PILGRIM'S PRIDE CORPORATION,

Respondent.

ORDER/RULING GRANTING IN PART, AND DENYING IN PART, RESPONDENT'S APPLICATIONS FOR SUBPOENA DUCES TECUM

BACKGROUND

The Complainant, George Bell, (hereafter Complainant or Mr. Bell), filed a complaint with the West Virginia Human Rights Commission (WVHRC) against Pilgrim's Pride Corp., (hereafter Respondent), on February 27, 2019, for unlawful employment discrimination under the provisions of the West Virginia Human Rights Act (WVHRA), W.Va. Code §5-11-1 *et seq.* In his complaint, Mr. Bell alleged that he had experienced unlawful discrimination by the Respondent, on the basis of his age (60), and disability (Complainant's Complaint, ¶ III). Specifically, he alleges that in violation of the Act, he was denied promotion to the position of Security Manager, for which he had applied and for which he was qualified, such position being awarded to another individual applicant, not a member of his protected classes, such decision being unlawfully based on his age (60) and disability, and that he had advised the Respondent of his disability but did not request any accommodations for the same. (Complaint ¶ IV B). Mr. Bell also alleges that he experienced "severe or pervasive hostile or offensive conduct" while employed with the Respondent, motivated by unlawful bias related to his disability and age, which actions substantially altered his work environment imputable to the employer. (Complaint, ¶¶ IV C-I).

In its verified answer to the Complainant's complaint, filed on or about December 19, 2019, the Respondent, admitted, in addition to being a "person" and "employer" within the meaning of the Act, W.Va. Code §5-11-3(a) and (d), (Complaint ¶¶ I and II), that the Complainant was first hired as a security guard on August 7, 2017, (Complaint ¶ IV A), that the Complainant applied for the position of "duplicate security manager" in February 2018 (Complaint, ¶ IV B), but denied the remaining allegations contained in Complainant's complaint, including Mr. Bell's allegation that he was qualified for the position of Security Manager for which he had applied and not selected, and denied that the Complainant had experienced multiple acts of alleged severe or pervasive hostile or offensive conduct, hostile work environment, in his employment with the Respondent, including such conduct involving Mr. Bell's supervisor, Mr. Tennant, motivated by unlawful bias imputable to the Respondent. (¶¶ IV C, D, E, G, H, and I).

In its verified answer, the Respondent also asserted multiple affirmative defenses, among them being Complainant's failure to state a claim upon which relief can be granted, tolling of the applicable statute of limitations/temporal condition precedent to filing a charge of discrimination, failure to mitigate damages, that the Complainant's treatment by the Respondent was based upon reasonable factors other than his age, that it questions whether the Complainant was a disabled person under the Act at the time of his application for, and denial of such aforementioned position, that Respondent was not aware of a disability alleged by the Complainant, that Respondent was not therefore under a duty to provide an accommodation, that it took reasonable care to prevent and promptly correct discriminatory and/or harassing behavior in the workplace and that it had no knowledge of any discriminating or harassing behavior, by it or imputed to it, as alleged. Respondent also asserts by way of affirmative defense that Mr. Bell failed to avail himself of the Respondent's internal procedure to address complaints of harassment or discrimination, and that alleged actions of Complainant's supervisor or management for the Respondent, which the Respondent denies, are not imputable to the Respondent.

RULING

Based upon all of the foregoing, including the written and oral arguments of the parties, a review of the law and the many cases cited by the parties in their arguments and upon review of the most recent cases in West Virginia and other Courts regarding the issuance of the *Subpoenas Duces Tecum* as requested by the Respondent and objected to by the Complainant, the applicable provisions of the *West Virginia Rules of Civil Procedure*, the applicable provisions of the West Virginia Human Rights Act, as amended, W.Va. Code §§ 5-11-1 et seq., the applicable provisions of *Rules of Practice and Procedure of the West Virginia Human Rights Commission*, the undersigned does hereby **GRANT IN PART, AND DENY IN PART, THE RESPONDENT'S AMENDED APPLICATION FOR SUBPOENAS DUCES TECUM** as follows:

With regard to **Martinsburg VA Medical Center**, a *Subpoena Duces Tecum*, under RCP 45 is **ORDERED** to be issued for the following employment information, regarding Mr. Bell:

Job applications, for the period of Mr. Bell's employment with Martinsburg VA Medical Center, such documents being found herein to be discoverable and relevant, under applicable law, as to the nature of the Complainant's prior employment experience and qualifications for the positions held with such employer. Such documents and information is also found hereby to be relevant to the Complainant's alleged disability during such employment period, as well as relevant to the claimant's skills and qualifications transferable or applicable to the subject position later sought and denied him by the Respondent.

Records relating to interviews and hiring decisions for the position(s) for which he was initially hired by such employer, or held during his period of such employment, which documents and information are hereby found to be discoverable and relevant, under applicable law, as to the nature of the Complainant's employment experience, skills and qualifications applicable to his duties of employment with Martinsburg VA Medical Center and later transferable and/or applicable to the essential duties of the subject position later sought and denied him by the Respondent herein.

Job titles/descriptions for the position for which Mr. Bell was hired or held during his period of employment with Martinsburg VA Medical Center. This information is found hereunder to be discoverable and relevant, under applicable law, as to the nature of the Complainant's prior employment experience, skills and qualifications and their transferability and application to the essential duties of the subject position later sought and denied Mr. Bell by the Respondent herein.

Mr. Bell's employee evaluations regarding his job performance in the position or positions held by him during the period of his employment with this employer, which documents and information are hereby found discoverable and relevant, under applicable law, as to the nature of the Complainant's employment experience, skills obtained and qualifications arising from his employment with Martinsburg VA Medical Center, transferable and/or applicable to the essential duties of the subject position later sought and denied him by the Respondent herein.

Disciplinary records related to Mr. Bell's performance of the position(s) held by him during the period of his employment with Martinsburg VA Medical Center, these records being herein found to be discoverable and relevant, under applicable law, as to his qualifications for the performance of the essential job duties for the subject position later sought and denied him by the Respondent herein.

Records related to Mr. Bell's separation/termination from employment, including the job related reason therefore. These records are hereby found to be discoverable and relevant, under applicable law, as to his qualifications for the performance of the essential job duties for the subject position later sought and denied him by the Respondent herein.

Complaints made by Mr. Bell or about Mr. Bell by others, related to disability and age discrimination, harassment, or hostile work during Mr. Bell's period of employment with Martinsburg VA Medical Center. This information is hereby found to be discoverable and relevant to the complaint and Complainant's claims filed herein and to the Respondent's alleged affirmative defenses to the same, under applicable law, but specifically does not include the requirement to provide documents or information regarding complaints by complainant or others regarding retaliation, or any other forms of discrimination under the Act, as they were not made part of the complainant's allegations in this matter and therefore are not part of or relevant to any claim or defense of the parties to this claim, under RCP 26(b).

Documents which reflect Mr. Bell's job performance, including awards, promotions, discipline, and demotions related to job performance, during his period of employment with Martinsburg VA Medical Center. These documents and information is hereby found to be discoverable and relevant to the Complainant's allegations of his greater qualifications than the other applicants for the position with the Respondent for which he applied and was denied, transferable and applicable to the duties of employment to be performed in the subject position sought with the Respondent.

Ruling Continued

Medical records regarding Mr. Bell's physical medical condition, records of requested accommodations related to job performance, and other records which reflect Mr. Bell's physical ability related to the position(s) held by Mr. Bell during his period of employment with Martinsburg VA Medical Center. These documents and information are herein found to be discoverable and relevant to the Complainant's complaint and claims therein and Respondent's affirmative defenses in this claim, including the allegation of Mr. Bell's having a disability as defined in the Act and the Commission's regulations.

Physical examination records kept in Mr. Bell's capacity as an employee. These documents and information are herein found to be discoverable and relevant to the Complainant's complaint and Respondent's affirmative defenses in this claim, including the allegation of Mr. Bell's having a disability as defined in the Act and the Commission's regulations.

To be clear, all of the foregoing requests are found, as noted above, to be discoverable from Martinsburg VA Medical Center through and under Rule 45 of the *West Virginia Rules of Civil Procedure*, as being in accordance with the provisions of Rule 26(b)(1) (also W.Va. CSR §77-2-17.a of the *Rules of Practice and Procedure of the West Virginia Human Rights Commission*) and applicable W.Va. statutory, regulatory and case law, as being relevant to the subject matter involved in this complaint, and pertaining to a claim or defense of the parties' in this matter, and/or which may lead to discoverable evidence relevant to the subject issues contained in the parties pleadings.

The above documents and information, when received by the Respondent pursuant to the requested and issued *Subpoenas Duces Tecum*, shall be considered confidential, to be marked as such, and subject to the *Protective Order* filed in this matter on or about April 17, 2020.

With regard to Respondent's requests for documents and other information from **Northwestern Regional Adult Detention Center** (hereafter Northwestern), a *Subpoena Duces Tecum* is **ORDERED** to be issued for the following employment information, regarding Mr. Bell, with the noted limitations:

Job applications: Same as noted above with regard to Martinsburg VA Medical Center and for the same reasons found to be discoverable and relevant herein. These documents and information are for Mr. Bell's entire period of employment with Northwestern.

Records relating to interviews and hiring decisions: Same as with Martinsburg VA Medical Center, and for the same reasons found to be discoverable and relevant. These documents and information are for Mr. Bell's entire period of employment with Northwestern.

Job titles/descriptions: Same as with Martinsburg VA Medical Center, and for the same reasons found to be discoverable and relevant herein. These documents and information are for Mr. Bell's entire period of employment with Northwestern.

Mr. Bell's employee evaluations: Same as with Martinsburg VA Medical Center, and for the same reasons found to be discoverable and relevant herein but only for the last five years of his employment with Northwestern.

Disciplinary records related to Mr. Bell's job performance: Same as for Martinsburg VA Center but only for the period encompassing the last five year period of Mr. Bell's employment, these records being herein found to be discoverable and relevant for that period, but not more, under applicable law, as to his qualifications for the performance of the essential job duties for the subject position later sought and denied him by the Respondent herein.

Records related to separation/termination from employment: Same as with Martinsburg VA Center, and for the same reasons are found to be discoverable and relevant herein.

Complaints made by Mr. Bell or about Mr. Bell by others, related to disability and age discrimination, harassment, or hostile work during Mr. Bell's period of employment: Same as with Martinsburg VA Medical Center, but with the further limitation to a period of five (5) years immediately preceding Mr. Bell's date of separation or termination from employment by Northwestern. It is hereby found that a period of time exceeding the five (5) year period immediately preceding Mr. Bell's separation and/or termination is neither temporally relevant or permissible under W.Va., RCP's 45 or 26(b)(1), and that it would not likely lead to discoverable or relevant information in this matter.

Documents which reflect job performance, including awards, promotions, discipline and demotions: Same as with Martinsburg VA Medical Center, with the further limitation to a period of five (5) years immediately preceding Mr. Bell's date of separation or termination from employment by Northwestern. As above, it is hereby found that a period of time exceeding the five (5) year period immediately preceding Mr. Bell's separation and/or termination is neither temporally relevant or permissible under W.Va., RCP's 45 or 26(b)(1) and that it would not likely lead to discoverable or relevant information in this matter.

Medical records regarding Mr. Bell's physical medical condition, records of requested accommodations related to job performance, and other records which reflect Mr. Bell's physical ability: Same as with Martinsburg VA Medical Center, with the further limitation to a period of five (5) years immediately preceding Mr. Bell's date of separation or termination from employment by Northwestern. As above, it is hereby found that a period of time exceeding the five (5) year period immediately preceding Mr. Bell's separation and/or termination is neither temporally relevant or permissible under W.Va., RCP's 45 or 26(b)(1) and that it would not likely lead to discoverable or relevant information in this matter.

Ruling Continued

The above documents and information, when received by the Respondent pursuant to the requested and issued *Subpoenas Duces Tecum*, shall be considered confidential, to be marked as such, and subject to the *Protective Order* filed in this matter on or about April 17, 2020.

With regard to Respondent's requests for documents and other information from **Northwestern Regional Adult Detention Center** (hereafter Northwestern), a *Subpoena Duces Tecum* is **ORDERED** to be issued for the following employment information, regarding Mr. Bell, with the noted limitations:

Job applications: Same as noted above with regard to Martinsburg VA Medical Center and for the same reasons found to be discoverable and relevant herein. These documents and information are for Mr. Bell's entire period of employment with Northwestern.

Records relating to interviews and hiring decisions: Same as with Martinsburg VA Medical Center, and for the same reasons found to be discoverable and relevant. These documents and information are for Mr. Bell's entire period of employment with Northwestern.

Job titles/descriptions: Same as with Martinsburg VA Medical Center, and for the same reasons found to be discoverable and relevant herein. These documents and information are for Mr. Bell's entire period of employment with Northwestern.

Mr. Bell's employee evaluations: Same as with Martinsburg VA Medical Center, and for the same reasons found to be discoverable and relevant herein but only for the last five years of his employment with Northwestern.

Disciplinary records related to Mr. Bell's job performance: Same as for Martinsburg VA Center but only for the period encompassing the last five year period of Mr. Bell's employment, these records being herein found to be discoverable and relevant for that period, but not more, under applicable law, as to his qualifications for the performance of the essential job duties for the subject position later sought and denied him by the Respondent herein.

All of the foregoing, as adjusted and limited, are found to be discoverable from Northwestern through and under Rule 45 of the *West Virginia Rules of Civil Procedure*, as being in accordance with the provisions of Rule 26(b) (1) (also W.Va. CSR §77-2-17.a of the *Rules of Practice and Procedure of the West Virginia Human Rights Commission*) and applicable W.Va. statutory, regulatory and case law, relevant to the subject matter involved in this complaint, and as to any claim or defense of the parties' in this matter, or likely to lead to discoverable information relevant to the subject issues contained in the pleadings.

The above information, upon receipt of the parties, shall be considered confidential and subject to the *Protective Order* filed in this matter on April 17, 2020.

The parties' objections and exceptions to this Order/Ruling are hereby preserved.

Conclusion

The Commission's goals, not all inclusive, for **fiscal year 2021** include:

Provide a continued, ongoing variety of training to the Commissioners and all staff;

In a collaborative effort with the EEOC and the Civil Rights Division of the Attorney General's office, continue to conduct additional training for investigative staff and Commissioners including City Commissions;

Promoting awareness of the Human Rights Act and services provided by the Human Rights Commission through the mechanism of infomercials and advertising;

Provide more extensive and innovative training sessions to educate businesses regarding discrimination law in housing, public accommodation, and employment;

Continue the Commission's mission to eradicate discrimination and continue to improve its services to the West Virginians by expanding community outreach to include additional advocacy groups;

Set up a dialogue of understanding between the Commission and all West Virginians to promote awareness of the goals and objectives of the Commission;

Continue to collaborate with the Governor's Herbert Henderson Office of Minority Affairs conducting Outreach and Education seminars to the community;

Continue to maximize the use of Alternative Dispute Resolution Programs, which includes Mediation and Pre-Determination Conciliation;

Organize and implement the Civil Rights Day for 2021;

Plan and implement the annual Fair Housing Summit/Seminar of 2021;

Work on and implement the new rules for the Pregnant Workers' Fairness Act;

Review and update all of the Commission's rules; and

Continue to work with West Virginia's youth in empowering and adding knowledge of human rights and violations of them.