

TRANSCRIPT OF PROCEEDINGS
BEFORE THE
TEXAS COMMISSION ON HUMAN RIGHTS
AUSTIN, TEXAS

IN THE MATTER OF THE OPEN MEETING)
OF WEDNESDAY, OCTOBER 26, 2011)

BE IT REMEMBERED THAT AT approximately 9:05 a.m., on Wednesday, the 26th day of October 2011, the above-entitled matter came on for hearing at the Texas Workforce Commission, Commission on Human Rights, 101 E. 15th Street, Austin, Texas 78778, Room 244, before TOM ANDERSON, CHAIRMAN, and TONI GLOVER, DANNY OSTERHOUT, SHARA MICHALKA and VERONICA STIDVENT, COMMISSIONERS; and the following proceedings were reported by Lou Ray, Certified Shorthand Reporter.

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P R O C E E D I N G S

WEDNESDAY, OCTOBER 26, 2011

(9:05 a.m.)

1. Call to Order
2. Welcoming of Guests

CHAIRMAN ANDERSON: It's 9:05. We'll go ahead and get started. Welcome, everyone. My name is Tom Anderson. I'm the Chair of the Texas Commission on Human Rights. And on behalf of the other Commissioners -- Commissioner Michalka phoned me and is on the way. So welcome, everybody.

Do we have anybody who wants to speak?

Ms. Smith -- okay.

So we welcome everybody, and we have some good news to report this month -- or this meeting. So we're looking forward to hearing the information.

3. Discussion, Consideration and Possible Action Regarding Activities Conducted for the Fourth Quarter of Fiscal Year 2011: Attendance at Regularly Scheduled Weekly, Bi-weekly, and Monthly Texas Workforce Commission and the Civil Rights Division Meetings, Presentations in Outreach Meetings and Meetings with Federal Government Entities; Customer and Division Services Issues

CHAIRMAN ANDERSON: Item No. 3 is the discussion -- discussion, consideration, possible action regarding activities conducted for the Fourth Quarter of fiscal year 2011. So, Mr. Babiak, if you want to go

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1 ahead and get started?

2 MR. BABIAK: Good morning, Chair Anderson,
3 Commissioners. I'm Jonathan Babiak, CRD director. The
4 fourth quarter of the fiscal year was fairly quiet with
5 mostly routine activities, nothing significant. We
6 finished out the fiscal year, and we'll have more detail
7 for you on that under Agenda Item No. 4.

8 We had a meeting with our liaison at EEOC
9 to request a contract number of cases. We've requested
10 a thousand and 50, and my understanding is that we will
11 know sometime in the spring what the actual contract
12 number will be.

13 At the end of August, I assisted
14 Commissioner Stidvent with a presentation that she gave
15 at the annual conference of the International
16 Association of Official Human Rights Agencies. And
17 Commissioner Stidvent's presentation was on the value
18 and viability of human rights organizations. I think
19 that the audience was very engaged during the
20 presentation. I think the presentation was excellent,
21 and proof of that was the number of requests after the
22 presentation was over for a copy of the PowerPoint.

23 We did have a question arise from HUD on a
24 recent decision of the Texas Supreme Court. The
25 decision was on the case of Ojo versus Farmers

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1 Insurance, and I think in the materials it may be
2 misspelled. Ojo is O-j-o. Mr. Ojo is a homeowner in
3 the Houston area, and he had a homeowners policy with
4 Farmers. And Farmers raised his premium 9-and-a-half
5 percent, and Mr. Ojo contacted Farmers and said, "I've
6 never had a claim. Why has my premium increased?" And
7 Farmers responded by telling him that it was based on
8 his credit score.

9 Well, Mr. Ojo sued in a federal court in
10 California as a class action. The jurisdiction for the
11 federal court was based on the fact that Farmers is a
12 California company. When the case reached the Ninth
13 Circuit on appeal, the Ninth Circuit applied something
14 called the McCarran-Ferguson Act, which is a federal law
15 from 1946.

16 The general rule in any conflict between
17 federal and state law is that the federal law prevails.
18 The McCarran-Ferguson Act allows for what is called
19 reverse preemption. And in the area of insurance, state
20 law prevails over federal law unless the federal law in
21 question directly regulates insurance. And because
22 Mr. Ojo's case was brought under the Federal Fair
23 Housing Act, the Ninth Circuit certified a question
24 directly to the Texas Supreme Court.

25 And the question was whether Texas law

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1 authorized the use of credit scoring to set homeowners
2 insurance premiums, even if doing so would have a
3 disparate impact on one or more protected classes. And
4 the decision by the Texas Supreme Court in May answered
5 the certified question and stated that Texas law did
6 authorize the use of credit scoring.

7 HUD contacted us to informally express a
8 concern that this decision would render Texas law
9 non-substantially equivalent. I got on a conference
10 call with John Moore from TWC regulatory integrity, and
11 Rob Jones from the Office of General Counsel, and we
12 discussed the matter with HUD. And after the conference
13 call, wrote HUD a letter to say that in our opinion the
14 decision of the Texas Supreme Court does not impact the
15 substantial equivalence of the state law, and offered to
16 HUD that if HUD has any language that they think would
17 improve the Texas Fair Housing Act, that we will put
18 them in touch with the Lt. Governor or the Speaker of
19 the House, or both, and they can open that discussion
20 with the policymakers in the Legislature.

21 CHAIRMAN ANDERSON: So at the present
22 time, then, we're business as usual until we hear
23 something different from the Legislature or from HUD?

24 MR. BABIAK: Yes, sir, that's correct.
25 We've not had any direct response from HUD after sending

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1 them the letter, and that was about a month-and-a-half
2 ago.

3 I did look in the HUD annual report.
4 Nationwide there are approximately 10,000 fair housing
5 complaints every year. And there are, I believe, about
6 10 to 15 each year nationwide that relate to insurance.
7 CRD has not had a case relating to insurance in the last
8 five years.

9 Are there any questions on anything in the
10 materials on my activities for June, July and August?

11 COMM. STIDVENT: No. I'd just like to say
12 thank you to you and your staff for your help with that
13 presentation.

14 MR. BABIAK: You're very welcome.

15 CHAIRMAN ANDERSON: And thank the
16 Commissioner for her participation. I think having the
17 Commissioners participate in these type of activities is
18 very effective and worthwhile, and I appreciate you
19 doing this.

20 And she is welcome to do more. Right?

21 (Laughter)

22 Thank you.

23
24
25

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1 4. Discussion, Consideration and Possible
2 Action Regarding Quarterly Report Concerning
3 the Texas Workforce Commission Civil Rights
4 Division Budget for the Fourth Quarter of
5 Fiscal Year 2011

6 MR. BABIAK: And as we can go to Agenda
7 Item No. 4: Discussion, consideration and possible
8 action regarding the quarterly report concerning the
9 Texas Workforce Commission Civil Rights Division budget
10 for the Fourth Quarter of fiscal year 2011. And I think
11 Daryl Steglich from the budget area will be joining me
12 for this item.

13 Okay. We are on page 2 in your materials.
14 And we're on the slide "Expenditures by Category Fiscal
15 Year Comparisons 2009, 2010 and 2011 as of August 31st."
16 And in this slide let me jump to the conclusion. Our
17 2011 total projected revenue -- and this is just below
18 the table on the slide -- 2,649,000, and for 2011 our
19 total expended was 2,506,000. So we expended almost all
20 of our revenue, but not more than our revenue.

21 CHAIRMAN ANDERSON: That's carryover,
22 then?

23 MR. BABIAK: Yes, that's correct.

24 CHAIRMAN ANDERSON: That will be
25 carryover.

MR. BABIAK: That is correct. Any
questions about the first slide?

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1 Okay. We can go to the second slide: The
2 monthly and total number of cases. In housing, we
3 exceeded our budget number. And in employment we missed
4 it by three cases.

5 CHAIRMAN ANDERSON: That's great.
6 That's -- big congratulations to you and the other
7 members of the team, your CRD team. Now, I do have one
8 question: If you're asking for 1050 cases in 2012 and
9 we essentially were on target for 2011, how are you
10 planning on making that 1,050?

11 MR. BABIAK: We added an Investigator V
12 position, and that person started in the middle of July
13 and is now fully productive. And it's the production
14 from that position. And that position -- when Tony
15 Robertson was here in the manager position, Janet
16 Quesnel was in a supervisor position and had five
17 investigators reporting directly to her. Tony left,
18 Janet was selected as manager, and Janet's supervisor
19 position was converted to a producing investigator
20 position. And that is the position -- we now have six
21 Investigator V positions producing; whereas, in the past
22 we only had five.

23 CHAIRMAN ANDERSON: And so what do they
24 produce per year? More than 150?

25 MR. BABIAK: Well, we have case closures

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1 from two mediators and then from the six investigators.

2 CHAIRMAN ANDERSON: Okay. And you're
3 confident you can make the 1,050?

4 MR. BABIAK: We're going to start working
5 on it as soon as this meeting is over.

6 CHAIRMAN ANDERSON: Okay.

7 MR. BABIAK: And, yes, sir, I'm sure we
8 can do it.

9 Any questions on the slide with the count
10 of the cases?

11 (No response)

12 Okay. We're on page 3. At the last
13 meeting in July, we had a slide with information that
14 was too small to see. And the information that was on a
15 single slide in the past has now been broken out into
16 six different slides. One, so we can all see it and,
17 two, in the hopes that it will better communicate the
18 information to you.

19 The first slide, BY, budget year, 2011
20 Total Revenue Versus Expenditure. Again, this is the
21 total conclusion, and the next five slides will provide
22 the detail that goes into this one. Our revenue in the
23 first column going vertically -- our actual revenue was
24 just slightly more than what we budgeted. And then
25 moving to the right, we have the expenditure amount, and

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1 the expenditure was less than the revenue. And so we
2 expended about 93 percent of our actual revenue.

3 CHAIRMAN ANDERSON: Now, that's because of
4 the short -- the less number of employees in your
5 budget -- is that primarily the reason?

6 MR. BABIAK: I don't know if I could
7 account for an explanation for why we made more than we
8 spend. I think that part of it is that we closed 376
9 housing cases and 909 employment cases. I think it just
10 comes from the additional revenue of closing the cases
11 and controlling costs.

12 CHAIRMAN ANDERSON: Because salaries from
13 2010 to 2011 is about 100,000, and the expenditure
14 slide, page 2, that would make up part of it.

15 MR. BABIAK: That's correct.

16 Any questions about that first slide?

17 (No response)

18 Okay. As we move on to the next five
19 slides, just as a background, in CRD we have our HUD
20 activities, which we pay for without using any general
21 revenue. All of the rest of our activities require
22 general revenue. And so we are looking at it as two
23 parts: Not supported by general revenue and supported
24 by general revenue. And so the slide at the bottom of
25 page 3 is the HUD activities, the activities that are

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1 not supported by general revenue. Again, as you can see
2 in the vertical column, our revenue exceeded our
3 budgeted amount. Our expenditures were less than our
4 revenue, and we expended about 97 percent of our
5 revenue.

6 Any questions on that slide before we move
7 on?

8 (No response)

9 Okay. Let's go to page 4. Now, at the
10 top of page 4, this is a subtotal. This is the total of
11 all of the activities that we support with general
12 revenue. And the three slides following will give you
13 the detail on that, but first let's look at the total.

14 We had a revenue deficit -- meaning our
15 revenue was slightly less than what we budgeted.
16 However, our expenditures were still less than our
17 revenue for all of the activities that we support with
18 general revenue.

19 CHAIRMAN ANDERSON: Is that because of
20 the -- is that because of the conversion from Janet's
21 position to a revenue position?

22 MR. BABIAK: I don't know if I could
23 attribute that to one single cause. I think there's
24 probably a number of causes. I don't know if converting
25 that position would have had a substantial impact,

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1 because that position didn't start producing cases until
2 the middle of July. And even at that time, because of
3 the lag in the way the cases are processed didn't --
4 that we didn't get a lot of cases out of that conversion
5 before August 31.

6 CHAIRMAN ANDERSON: Fiscal year ends in --
7 on August 31st. Right?

8 MR. BABIAK: Yes, that's correct.

9 CHAIRMAN ANDERSON: That's the state --

10 MR. BABIAK: Yes. Okay. On the bottom of
11 page 4, this is the EEOC portion of our general revenue
12 supported activities. And the amounts in this chart are
13 only those amounts from the contract. And as you can
14 see, compared in this chart to the one immediately
15 previous, the entire amount of the deficit was because
16 our EEOC actual revenue was less than our budgeted
17 amount by about \$6,000, and we expended from the
18 contract amount more than our actual revenue. However,
19 that is to be expected because this is one of the
20 activities that we support with general revenue.

21 Any questions on that?

22 COMM. STIDVENT: For the year 2012, is the
23 contract amount per case going to go up? Is there any
24 relief in those numbers because of the amount paid by
25 case? Is EEOC increasing that at all?

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1 MR. BABIAK: For 2012 EEOC has not
2 communicated to us any plans to change the per-case
3 reimbursement amount. Right now it will stay at \$600.

4 CHAIRMAN ANDERSON: And it's a thousand --
5 well, what's the cost for closing an EEOC case?

6 MR. STEGLICH: For the record, Daryl
7 Steglich of the Texas Workforce Commission. The amount
8 on a per-case basis from EEOC is somewhere in the
9 neighborhood of a thousand dollars per case. Yes, sir.

10 CHAIRMAN ANDERSON: Okay.

11 MR. BABIAK: Any other questions on that
12 slide before we move to page 5?

13 (No response)

14 Okay. Top of page 5, this slide captures
15 all of our training and monitoring activities. Our
16 actual receipts were just as budgeted. Our expenditures
17 were -- from those receipts were less than the receipts.

18 And then finally the last slide shows the
19 general revenue that we used to support EEO training and
20 monitoring, and we expended about \$740,000 of our
21 general revenue.

22 Any questions?

23 (No response)

24 And that concludes Agenda Item No. 4.

25 We'll be coming back on Agenda Item No. 7 to discuss the

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1 2012 budget. But before we move on, are there any
2 questions about 2011?

3 CHAIRMAN ANDERSON: You're to be commended
4 for -- I know the last time we came out with a number
5 that was greater than the budgeted amount. In other
6 words, we had money to carry over. And this -- all this
7 money that we're carrying over is a result of
8 efficiencies and the work of the employees and not a --
9 not the result of a -- I think we got -- in the past we
10 got some money from a claim or somebody -- some
11 distribution I believe.

12 MR. BABIAK: I don't think there's been
13 any sort of extraordinary revenue. And I agree with
14 you, yes, the managers, the supervisors and every single
15 person in CRD has worked extremely hard this year. And
16 I think that the success that's embodied in these
17 numbers is just the result of folks coming to work every
18 day and working real hard.

19 COMM. GLOVER: Before we move on -- I
20 don't really need one. Before we move on, I just would
21 like to echo what was said previously, too. We really,
22 really do appreciate the efforts of everybody, and these
23 numbers are impressive.

24
25

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1 5. Discussion, Consideration and Possible
2 Action Regarding the Quarterly Report Concerning
3 the Texas Workforce Commission Civil Rights
4 Division Employment Enforcement and Training
5 and Monitoring Activities for the Fourth
6 Quarter of Fiscal Year 2011

5 MR. BABIAK: Thank you. Okay. I think
6 that brings us to Agenda Item No. 5. I think Janet will
7 come to the podium. This is discussion, consideration
8 and possible action regarding the Quarterly Report
9 concerning the Texas Workforce Commission Civil Rights
10 Division employment, enforcement and training and in
11 monitoring activities for the fourth quarter of fiscal
12 year 2011.

13 MS. QUESNEL: Good morning. For the
14 record, Janet Quesnel, Employment Investigations
15 Manager. We resolved 221 complaints in the fourth
16 quarter, ending with a total of 909 for the fiscal year,
17 which is 99.67 percent of the budgeted resolutions.

18 Next slide.

19 The 909 closures consisted of 63.3 percent
20 no cause, with the remaining percentages no-fault
21 settlements, withdrawals and dismissals.

22 The next slide. Out of the categories, we
23 had 23.2 percent under the Americans with Disabilities
24 Act; 24.4 percent age discrimination in employment; and
25 52.4 percent Title VII.

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1 CHAIRMAN ANDERSON: You have 909 for the
2 Fourth Quarter with 908 on that slide. But it's only
3 one, but, I mean, is that just a typo or --

4 MR. BABIAK: I'm afraid that I can't tell
5 you where that case went. I'm sure that Becky will
6 punish me when we get back to the office.

7 CHAIRMAN ANDERSON: Okay.

8 MR. BABIAK: I've already got my first
9 assignment.

10 (Laughter)

11 We'll try and figure out how to reconcile
12 that discrepancy.

13 CHAIRMAN ANDERSON: As long as we get paid
14 for it.

15 MR. BABIAK: Yes, sir.

16 MS. QUESNEL: Okay. With our pending
17 cases, we have only 3.3 percent that are over 300 days.

18 CHAIRMAN ANDERSON: Good.

19 MS. QUESNEL: That is hard work.

20 Next slide. In EEO and housing training
21 conducted, we have one EEO and two housing
22 presentations.

23 And the next slide. We had 89 individuals
24 at EEO training, 500 at EEO presentations, and three at
25 housing presentations.

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1 Next slide --

2 CHAIRMAN ANDERSON: What are the training
3 people doing in addition to the training? That's not a
4 real large volume there of work.

5 MR. BABIAK: We have two staff who do
6 training and policy reviews. One is the primary policy
7 reviewer, and he's backup on the training duties. He
8 also does some housing investigations.

9 The second person in the training and
10 monitoring area is the primary trainer, and he's also
11 backup on the policy reviews. And with the policy
12 reviews, they -- there's two or three policy reviews
13 every month. So that's a substantial amount of work.

14 MS. QUESNEL: Okay.

15 CHAIRMAN ANDERSON: Can they do some
16 outreach or have they done some outreach to --

17 MR. BABIAK: We are working on trying to
18 develop more training business. Our primary trainer,
19 Richard Webb, attended the Texas Business Conference in
20 August. The Texas Business Conference is a one-day
21 labor and employment law seminar hosted by the Office of
22 the Employer Commissioner of the Texas Workforce
23 Commission. Richard had a booth there.

24 In September, Richard and Swinney
25 (phonetic), the backup trainer, had a booth at the Texas

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1 Business Conference in Houston. And Janet and I have
2 been discussing other opportunities for how we can
3 better market our training.

4 CHAIRMAN ANDERSON: Okay. You know that
5 there's the SHRM conferences -- the SHRM conference or
6 state -- the different chapters in the state -- there's
7 34 chapters -- who are always looking for topics for
8 monthly meetings and things. There's one right here in
9 Austin, the Austin HR -- I think it's called AHRMA. And
10 then Houston has one, and there's College Station
11 and there's -- like I said, there's 34 of them around
12 the state.

13 MR. BABIAK: We'll try to get in touch
14 with them and see if they'll let us come to one of their
15 luncheons and give them a little infomercial on our
16 training services.

17 CHAIRMAN ANDERSON: They're always looking
18 for speakers and topics.

19 MS. QUESNEL: Okay. We conducted eight
20 on-site reviews and certified 12 agencies in compliance
21 with the Texas Commission on Human Rights Acts.

22 Next slide. We had a total of 55 reviews
23 completed through August.

24 CHAIRMAN ANDERSON: Is that --

25 MS. QUESNEL: I'm sorry.

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1 CHAIRMAN ANDERSON: Is that the number
2 we're supposed to do?

3 MR. BABIAK: I think the target is 60.
4 Dennis Swinney, who is the lead on the firefighter
5 reviews, is trying to revise the methods by which we
6 schedule the departments for review. Looking at the
7 statute and the rules, there isn't a lot of clear
8 guidance on the frequency that these reviews are to be
9 conducted. So we're looking at what we can do to clean
10 that up.

11 COMM. OSTERHOUT: Excuse me, Jonathan, I
12 have a question, if you don't mind. How did we get
13 involved in the firefighter reviews? My son-in-law is a
14 captain at the Dripping Springs Volunteer Fire
15 Department. And he asked me that last night, and I
16 couldn't explain it to him. I said, "I don't really
17 know how we -- how that came under the jurisdiction of
18 the CRD."

19 CHAIRMAN ANDERSON: I know.

20 COMM. OSTERHOUT: Oh, okay.

21 MR. BABIAK: I believe there was
22 legislation around 1999 that created the process of
23 firefighter reviews. It's fairly recent.

24 CHAIRMAN ANDERSON: And there was no money
25 provided.

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1 COMM. OSTERHOUT: That's how we got it?

2 CHAIRMAN ANDERSON: No money provided and
3 there was a legislator -- I think out of Houston -- that
4 said they needed to review the firefighters, Daryl
5 (phonetic) said, so he remembers also. And they said,
6 "I think we'll put them in CRD," which is what they did.
7 That's the reason you don't get compensated for it
8 because there was no money at the time and there never
9 has been any money appropriated for them.

10 COMM. OSTERHOUT: Thank you.

11 MS. QUESNEL: We are in the process of
12 reviewing the methods that we use to select fire
13 departments for reviews. We are in the process of
14 hiring a new intake investigator, hopefully by the end
15 of this month. And we do have our new Investigator V in
16 place and already generating revenue.

17 Any questions?

18 MR. BABIAK: Janet, I know that it's
19 beyond the fourth quarter, but do you happen to remember
20 the number of employment closures that we had in the
21 month of September?

22 MS. QUESNEL: 105, I think it was. They
23 really worked very hard.

24 Okay. Any questions? And I do apologize
25 for going so fast. I'm still a little nervous, so I'm

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1 working on it. Thank you.

2 6. Discussion, Consideration and Possible
3 Action Regarding the Quarterly Report Concerning
4 the Texas Workforce Commission Civil Rights
5 Division Housing Enforcement, Alternative
6 Dispute Resolution, and Outreach Activities
7 for the Fourth Quarter of Fiscal Year 2011

8 MR. BABIAK: Okay. That brings us to
9 Agenda Item No. 6. Vickie will come to the podium.
10 This is discussion, consideration and possible action
11 regarding the quarterly report concerning the Texas
12 Workforce Commission Civil Rights Division housing
13 enforcement alternative dispute resolution and outreach
14 activities for the fourth quarter of fiscal year 2011.

15 Vickie?

16 MS. COVINGTON: Good morning,
17 Commissioners, TWC staff and guests. For the record, my
18 name is Vickie Covington, Manager, Investigation Team 1,
19 Outreach and ADR.

20 I'd like to share with you this morning
21 regarding our alternative dispute resolution. Our
22 mediators, they held 188 conferences last fiscal year
23 that resulted in 156 resolutions with benefits to
24 complainants. Their mediation success rate is
25 83 percent, so I would really like to commend them on
the work that they did for the people of Texas in fiscal
year 2011.

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1 Are there any questions?

2 Next slide. As you can see, our housing
3 cases that we received continue to increase. We had an
4 overall increase of 83 cases last fiscal year. However,
5 we were still able to reach 105 percent of our budgeted
6 target rate.

7 The housing type of case closures -- let
8 me back up to ADR. We also included some case scenarios
9 in your books that can be found under the ADR tab.

10 We also included case scenarios for the
11 housing cases. And last fiscal year, approximately half
12 of the cases we received -- or we resolved resulted in
13 favorable resolution for the complainant either through
14 the conciliation process or withdrawal with resolution.
15 The other half resulted in no-cause findings,
16 complainants changed their minds about pursuing the
17 complaint, or they were dismissed for reasons such as
18 lack of jurisdiction.

19 The age -- I'm sorry about that. The age
20 of our pending cases, age cases continue to be a focus
21 of our efforts, and we have implemented regular case
22 staffings so that we can address the age cases in our
23 inventory.

24 CHAIRMAN ANDERSON: The inventory was
25 significantly greater at the end of this year than it

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1 was in 2009 and 2010. Any particular reason other than
2 we're just getting more cases that are -- well, what is
3 the reason?

4 MS. COVINGTON: We're getting more cases,
5 Chair. And if you will recall, we also lost some staff
6 last year. We have four fairly new housing
7 investigators, but they are coming on board pretty
8 quickly.

9 CHAIRMAN ANDERSON: Commissioner, you want
10 to come up? You're sure?

11 Okay.

12 MS. COVINGTON: And we shared with you
13 throughout the last fiscal year some of the outreach
14 activities we were participating in. And Jonathan had
15 talked earlier about one of our investigators -- one of
16 our trainers who has also taken on the additional
17 assignment of investigating fair housing cases. And
18 actually a case that was investigated by Trainer Swinney
19 was waived to HUD at their request because they had a
20 companion case. And we worked collaboratively with HUD
21 on the investigation, and as a result the cases were
22 charged by HUD. HUD expressed their appreciation for
23 Investigator Swinney for his efforts in the
24 investigation.

25 We also sent nine fair housing staff to

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1 Weeks 1 through 4 of the National Fair Housing Training
2 Academy. Two of those folks, one trainer and one new
3 fair housing staff, completed all three weeks last
4 fiscal year. We also attended the IAOHRA annual
5 conference, and there was a question earlier regarding
6 the trainers. They actually trained 19 housing
7 providers who agreed to participate in fair housing
8 training as part of a conciliation agreement.

9 Are there any questions?

10 CHAIRMAN ANDERSON: On the ADR, is there
11 any way we can capture -- I know that you capture
12 dollars that you are able to award during your
13 settlements. There are other resolutions other than
14 financial. Is that correct?

15 MS. COVINGTON: Yes, Chair.

16 CHAIRMAN ANDERSON: Is there any way that
17 you can capture -- I mean capture some of that
18 information? Because you're still resolving the case
19 even if it doesn't merit or require any financial
20 resolution. Is that --

21 MR. BABIAK: I think we'd have to talk to
22 the mediators to see if the non-financial terms that are
23 in the settlements are -- if there's enough commonality,
24 and I'll try to think of some examples -- you know,
25 favorable reference, for example, might be a common

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1 term. And if it is, yes, we could track it. If there
2 isn't sufficient commonality, then you've really just
3 got -- each settlement is case-specific, and I don't
4 know if it would be possible. We'd really just have to
5 talk to the mediators to see if the non-financial terms
6 have enough commonality to try and track them.

7 CHAIRMAN ANDERSON: Or maybe just a sample
8 or two, or some reference to -- this didn't result in
9 financial, but it did result in a settlement because
10 there was an apology or favorable reference or whatever.
11 I don't know that we're necessarily -- that I'm looking
12 for necessarily an exhaustive list.

13 MR. BABIAK: We can talk to the mediators
14 and see what they can tell us.

15 CHAIRMAN ANDERSON: Okay.

16 COMM. MICHALKA: Quick question. Right
17 here it -- on the ADR report it says the NSF includes
18 withdrawal with benefits. So that, I assume -- I've
19 always looked at it meaning a monetary amount. Is that
20 right?

21 MS. COVINGTON: Not necessarily. There
22 are many resolutions that result in nonmonetary
23 benefits, such as a favorable letter of reference, as
24 Jonathan stated earlier.

25 COMM. MICHALKA: Okay. So it would be

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1 those two? It would be that category split into
2 monetary and nonmonetary?

3 MS. COVINGTON: Yes, Commissioner.

4 COMM. MICHALKA: Okay.

5 MS. COVINGTON: Are there other questions?

6 (No response)

7 Thank you, and I think I will be followed
8 by our Director.

9 7. Discussion, Consideration and Possible
10 Action Regarding the Fiscal Year 2012 Operating
11 Budget to Include Goals and Objectives
Concerning the Texas Workforce Commission Civil
Rights Division

12 MR. BABIAK: Okay. I think that brings us
13 to Agenda Item No. 7. I think Daryl will rejoin me.
14 This is discussion, consideration, possible action
15 regarding the fiscal year 2012 operating budget to
16 include goals and objectives concerning the Texas
17 Workforce Commission Civil Rights Division. And the
18 slide for this agenda item is at the bottom of page 13
19 in your materials. Our budget for the year is roughly
20 \$2,753,000.

21 CHAIRMAN ANDERSON: This budget comes from
22 TWC, so there's not a lot of discretion in the budget,
23 is there?

24 MR. BABIAK: Well, yes, the budget is
25 approved by TWC, but it was based on input from program

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1 staff and staff in budget and funds management.

2 MR. STEGLICH: For the record, Daryl
3 Steglich. We worked very closely with Jonathan and his
4 team to come up with the number of cases closed --
5 closed cases for EEOC and HUD, the training and
6 monitoring revenue. Now, the general revenue that -- we
7 pull that. We provide them with historical data that
8 they can look at. But ultimately the decision on how
9 much revenue is available resides with Jonathan and his
10 team because they're the ones -- they have to generate
11 the revenue in order for us to make it fit within the
12 budget, and then we work with them.

13 For the program as a whole, which includes
14 the Civil Rights Division plus the other expenses
15 associated with the Texas Workforce Commission for IT
16 costs and things of that sort and utilities and so on
17 and so forth. So there is -- I guess the discretion
18 that you're speaking of is more predicated on the
19 revenue that's generated. And if there are additional
20 items that the Civil Rights Division in and of itself
21 can build into their departmental budget, that would
22 benefit them for any excess that they raised.

23 CHAIRMAN ANDERSON: Where does the 150,000
24 that was a carryover, where does that show up?

25 MR. STEGLICH: That is -- that is not

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1 included in this particular dollar amount. Those
2 amounts are available should we come up to a point to
3 where there are expenditures that need to be -- that
4 were unanticipated in the budget. You know, something
5 breaks that's big or so on and so forth. So that is not
6 built in, though it can be brought in at any time based
7 on Jonathan's request.

8 CHAIRMAN ANDERSON: Is there -- is there
9 any pieces of equipment or anything that you-all
10 discussed that would increase efficiencies or anything
11 like that that would necessitate tapping into that
12 150,000?

13 MR. BABIAK: Right now at this time, no,
14 there really isn't. Our case management software
15 application for both housing and employment is provided
16 to us by our federal oversight partner. So we don't
17 have substantial IT development and maintenance costs.
18 Other than that, no, we won't have any plans right now
19 for anything major that would require those funds.

20 CHAIRMAN ANDERSON: The other operating
21 expenses, that's where the admin fee for TWC support is
22 included. Right?

23 MR. STEGLICH: That is correct, yes, sir.

24 CHAIRMAN ANDERSON: And it's based on,
25 what? The number of employees we have?

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1 MR. STEGLICH: There are -- not to get
2 into too much --

3 CHAIRMAN ANDERSON: Detail.

4 MR. STEGLICH: -- detail for you,
5 generally speaking the costs associated with the
6 non-Civil Rights Division are based on salaries expended
7 for the Division. There are some costs that are
8 allocated based on number of FTEs and so on and so
9 forth. But it's -- the goal of those cost allocations
10 is to have an appropriate charge to the Civil Rights
11 Division so that they pay their fair share of the total
12 costs for the agency, they being a very small dollar
13 amount as far as their salaries compared to the total
14 agency. They get a relatively small proportion of the
15 total expenses.

16 CHAIRMAN ANDERSON: The total budgeted
17 FTEs is 33, and that's what you are at right now other
18 than the one person you're looking for, the intake?

19 MR. BABIAK: Yes, that's correct.

20 CHAIRMAN ANDERSON: You have 32 on -- you
21 have 32 on hand and looking for one.

22 MR. BABIAK: Yes.

23 CHAIRMAN ANDERSON: Are you looking for
24 any additional people?

25 MR. BABIAK: Not at this time.

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1 CHAIRMAN ANDERSON: Okay. If we did, how
2 would that work, Daryl? Would we have to go to TWC and
3 say we need an increase in budget or would they tell us
4 to take it out of the 150,000?

5 MR. STEGLICH: It would come out of the
6 150,000, yes, sir. The focus of adding additional FTEs,
7 as with anyplace within the agency, is on the
8 sustainability of the funding associated with that. The
9 \$150,000 that -- in round numbers that we're talking
10 about here is available, but it can be exhausted at some
11 point in time.

12 So the ideal situation for that would be
13 one-time purchases, things that are one-time to kind of
14 carry that along, and plus a contingency for something
15 that happens that there's a large additional expense
16 that could happen.

17 CHAIRMAN ANDERSON: So adding a person
18 you -- really wouldn't fit in that because that would be
19 a rollover cost that we wouldn't have the budget in
20 successive years.

21 MR. STEGLICH: Under the assumption that
22 you would not have a budget excess in future years, that
23 is correct. Now, if we have sustainability in future
24 years -- that is, Jonathan next year comes in similarly
25 below the total that he has revenue, then that gets into

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1 the possibility of sustainability to be able to add --
2 add staff or do other things that are recurring types of
3 expenses.

4 CHAIRMAN ANDERSON: One thing that
5 concerns me -- and I don't know how it works here, but
6 it does in the federal government -- is if we don't
7 spend all the money, then in future years they look to
8 say, "Okay, they can get by with less. We're going to
9 cut your budget, your general revenue." Is that a
10 possibility? Is that the way it works with the state?
11 It does in the federal government I know.

12 MR. STEGLICH: There's always a
13 possibility that in these economic times that there
14 could be reductions in the cost -- in general revenue
15 that is provided for all agencies. But historically the
16 Texas Workforce Commission has not offered up Civil
17 Rights general revenue as reduction when the Legislature
18 asks for them.

19 CHAIRMAN ANDERSON: I thought -- those of
20 us on the -- up here at the Commissioners would like to
21 be advised of that so we could also talk with people and
22 say that we're a good steward of the dollars and we
23 don't want our budget cut. We do want to have that
24 flexibility that we haven't had in the past to -- so
25 we're not stressed at the last minute making sure we're

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1 staying within budget.

2 MR. STEGLICH: Correct. And we'll make
3 sure that that happens. Yes, sir.

4 CHAIRMAN ANDERSON: Any questions from the
5 Commissioners?

6 (No response)

7 8. Training on How to Segregate Conciliation
8 Activities and Investigative Activities in a
Fair Housing Complaint

9 MR. BABIAK: Okay. Well, then, now we are
10 on to Agenda Item 8. This is training on how to
11 segregate conciliation activities and investigative
12 activities in a fair housing complaint. Coming to the
13 table will be Ray Hammarth, David Pernel and Bettye
14 Taylor, and I will be going to the podium.

15 MR. HAMMARTH: Good morning, Chair
16 Anderson and Commissioners, staff and guests. I'm Ray
17 Hammarth. I'm a lead investigator over the mediation
18 team -- or the ADR team -- and the housing team. Today
19 we're going to separate -- do training on separating
20 conciliation activities and investigation activities in
21 fair housing cases. Ms. Bettye Taylor will be giving
22 training on the overview of the process. Part of that
23 process is separating verbal information in
24 investigation and conciliation activities. Another part
25 is separating documentary evidence in conciliation and

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1 investigatory activities. And we'll be giving all of
2 you the entire process on how to separate investigative
3 evidence and using it wisely and judiciously in doing
4 conciliations.

5 As you know, the Texas Fair Housing Act is
6 substantially equivalent to the Fair Housing Amendments
7 Act of 1988 which amended the Civil Rights Act of 1968
8 on the federal level. Since HUD separates these
9 activities, conciliation and investigatory activities,
10 we do the same thing in Texas. Now, our statute does
11 require that we attempt conciliation in each and every
12 housing discrimination case. So we do that in the
13 spirit of the law, and we do that throughout the entire
14 process from the time the complaint is filed until we
15 dismiss it for one of the bases of not reasonable cause,
16 or lack of jurisdiction or conciliation, or we charge
17 the case if we find reasonable cause.

18 So we record these activities in Title
19 VIII paperless -- paperless office tracking system, or
20 TEAPOTS as we refer to it. That's how we actually
21 record it from our notes, after interviews and looking
22 at the documents and analyzing it.

23 As does HUD, we do the same thing. Like
24 with the EEOC, we use IMS; we use TEAPOTS for HUD
25 because that's their software system, which they want us

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1 to use and we use them. And it's fully -- everything we
2 do is fully documented in there from beginning to end.

3 So I now turn it over to Bettye Taylor.

4 MS. TAYLOR: Thank you. Good morning,
5 Commissioners and everyone who's present. My name is
6 Bettye Taylor, and I'm an investigator in the housing --
7 with the housing team, although I've been with the Civil
8 Rights Division for a while. As a housing investigator,
9 I'm responsible for investigating and conciliating the
10 assigned cases. And conciliating those issues is the
11 topic that we're going to explore today.

12 I was not doing this work in July, but I
13 did read the Commission report, and I did realize that
14 Commissioner Stidvent had a question about conciliation,
15 so we will respond about the challenge of keeping
16 separate the investigation part from the conciliation
17 part of the activities in our recordings and in our
18 verbal communication with all the parties to the
19 complaint, so appropriately documenting these exchanges
20 after we have these different communications.

21 Now, my assignments to date -- they're
22 just a few -- but they indicate that my success doing
23 this concurrent activity may flow from developing and
24 applying the art and the skill of introducing these
25 terms, defining them and explaining them to the parties.

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1 This starts with our letters of -- the
2 communication -- the written communication that is sent
3 out immediately after the case is assigned. We've got
4 about six different letters throughout the investigation
5 period. The important thing, though, in the letters
6 would be the ending part that invites people to
7 conciliate at any point during the process of the
8 investigation. There's certain information that's
9 required in these letters, and that's boilerplate.
10 Certain additional information inside of there is bolded
11 or underlined or both so that it draws the attention of
12 the reader, the complainant or the respondent, that this
13 is kind of important.

14 They may get that mail; they may not even
15 read or pay attention to that mail until they get a call
16 from the investigator. That part comes up when we have
17 an initial interview with the person. In your packet
18 you probably have a document that's a script template
19 that we use when we are making the contact to talk with
20 that person.

21 I'd like to call your attention to that.
22 There's the top part that is for the complainant, and
23 the bottom part is for the respondent. Each of these
24 scripts pretty much says the same thing, but you'll
25 notice Part A is explaining what the role is for the

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1 investigator. And the Part B is to say that I will also
2 serve as a conciliator for this case. And it defines
3 that you're required to attempt resolution of the issues
4 raised, and all of these will be disclosed during the
5 investigation time period. And it invites the person to
6 participate in the resolution, if they have an offer.

7 Some people, once they get it -- the
8 complainant, of course, is probably less familiar with
9 this whole process than respondents. So you listen
10 carefully, and when they ask questions, sometimes it's
11 just to define, "Well, what does conciliation mean?"
12 And, "What am I going to get from this?"

13 There are opportunities such as providing
14 information on an attachment to that first letter that
15 they get. It's a -- it's a record of damages, for
16 example. If the person has actual information about
17 what they may have lost if they couldn't move where they
18 wanted to move or something like that, that could give
19 them a realistic picture of what they lost or how they
20 need to be made whole.

21 But the bottom line is that the
22 investigator as conciliator invites that offer at the
23 end of that initial interview, and it serves to kind of
24 remain a thread throughout the process so that at any
25 time, considering the amount of information that that

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1 complainant or that respondent has, they may say, "I
2 want to be an active part in the resolution of this
3 outcome -- in the outcome of this investigation." And
4 by making an offer, they can possibly do that. Their
5 offer is conveyed by the investigator, the conciliator
6 to the other side. No influence on the part of the
7 investigator or the conciliator; it's just conveying
8 this is what the offer is to the other party and
9 informing the party that made the offer of what the
10 acceptance or lack of acceptance was.

11 It's important -- well, there are several
12 different areas of importance before I hand off to our
13 more seasoned conciliator. We have files that also are
14 separated. There's tabs so that information on the
15 left-hand side is not to be shared, may not be
16 disclosed. Information on the right-hand side may be
17 disclosed to the parties.

18 And then examples of that on the left-hand
19 would, of course, be the -- any correspondence relating
20 to a conciliation offer. On the right-hand, any of
21 those letters that may have gone out, any public type of
22 information.

23 There are four important notes about
24 sharing information that the conciliator needs to
25 remember: That you would consult with management at any

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1 time before sharing any information, especially that
2 which you're not sure of, because it could contain
3 information that's not disclosable to a party. You use
4 all the reasonable precautions that are available to you
5 to limit the scope of whatever disclosure of information
6 you have. And you keep on hand -- when you're in
7 travel, for example, only those documents that would be
8 appropriate to expose. Provide evidence only in order
9 to assist the parties in making realistic and practical
10 assessments of their respective positions.

11 Five critical points for separating the
12 investigation and the conciliation are to end any
13 investigation activity, such as an interview or
14 whatever, before you proceed to talking about
15 conciliation. That is very important.

16 You separate your notes that are related
17 to investigation from those that are related to
18 conciliation. And you take a break before you proceed
19 into the second part.

20 You initiate a separate phone call
21 sometimes it's not practical to do that. If you're on
22 the phone, you say, "Now, take a breath and we're going
23 to talk about conciliation possibilities." It's hard
24 enough sometimes just to get people to the phone, so you
25 don't want to lose them.

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1 And then you verbally announce that this
2 is the part where I'm going to take time to hear any
3 offers that you may have that you may want to present to
4 the other side.

5 I see six -- possibly six different ways
6 that the conciliator can establish trust and maintain
7 neutrality when they're being a conciliator. You inform
8 each party that the information that they provide is
9 exclusive to their knowledge. And only the Civil Rights
10 Division could determine whether that would be disclosed
11 to any other party.

12 You never depart from -- or give the
13 impression of being emotional or nonprofessional or
14 taking sides with either party. Or when you hear an
15 offer saying, "Oh, that doesn't sound like something
16 that would be acceptable." This is not your game. It's
17 the -- it's the responsibility and the offer that has
18 been made; you take that offer, no matter that. You
19 present that offer and then you get whatever response
20 and you convey that back to the other party.

21 You refrain from characterizing any offer
22 as fair or unfair, because an offer is an offer. And
23 you don't threaten either party by saying, "Well, if you
24 don't participate in conciliation efforts, it could be
25 bad for you." They need to be aware that the

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1 investigation is going to continue no matter what, and
2 the conciliation opportunity is there. It's a voluntary
3 effort. It's not something that's required, but it does
4 enable all of the parties to participate and to become
5 actively involved in the outcome.

6 David has significant experience in
7 actually doing these, and -- anywhere from the shuttle
8 diplomacy, the face-to-face or the telephone calls. He
9 can tell you about his experiences. Thank you.

10 Do you have any questions, though?

11 CHAIRMAN ANDERSON: Before David, what
12 level -- you talked about confidentiality. What level
13 of -- what is your open records? Is it once a case is
14 resolved is everything subject to open records or is it
15 some of the material not subject to open records?

16 MR. BABIAK: Ray, can you address that
17 question?

18 MR. HAMMARTH: Yes. Conciliation
19 discussions are not disclosable, which is why we put
20 them on the left-hand side of the file. And if it's
21 mixed in a letter, we redact it or we separate it
22 somehow. But the conciliation information always goes
23 on the left-hand side of the file. So if there is an
24 Open Records Act request, management and legal will know
25 that's not to be disclosed. And they'll check to be

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1 sure that that's not released; that nothing stray
2 that's, you know, from the right-hand side gets released
3 that shouldn't be released. With conciliation
4 discussion, dollar amounts, whether they're seeking
5 damages, the damages worksheet, that's all on the
6 left-hand side of the file, anything to do with
7 conciliation or settlement offers or negotiations.
8 That's why we don't put that in the -- in the document
9 section. We'll say conciliation explained or
10 conciliation discussed. In the interview section, we do
11 the same thing. We do not put the details of the
12 conciliation or any companion cases related to that
13 case.

14 CHAIRMAN ANDERSON: Okay. Thank you.

15 MR. BABIAK: Thank you.

16 COMM. STIDVENT: I still have a question.

17 MR. HAMMARTH: Sure.

18 COMM. STIDVENT: I don't understand as
19 you're going through the process how you as an
20 investigator keep that information separate in terms
21 of -- I understand how you keep it separate physically.
22 But if someone were to disclose something in a
23 conciliation discussion, whether it's a confession or an
24 admission that would further the investigation, do you
25 disregard that? I mean, how do you treat that? Because

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1 you are doing both, once you have that data point, what
2 do you do with it?

3 MR. BABIAK: Commissioner, I think that
4 that question is going to be addressed --

5 COMM. STIDVENT: Okay.

6 MR. BABIAK: -- by David's portion of the
7 presentation. And if not, then let us know and we'll
8 try and address your question.

9 Any other questions on the overview before
10 we move to David?

11 (No response)

12 Okay. David Pernell.

13 MR. PERNELL: Good morning, Commissioners.
14 I'm David Pernell, Civil Rights Investigator for the
15 Texas Workforce Commission. Before I actually start my
16 presentation, I do have a small handout that was not
17 provided in the agenda that I wanted to give. I'm going
18 to be discussing the challenges that we face in keeping
19 the conciliation efforts and the investigative
20 activities separated in the -- in our investigative
21 process.

22 Some of the challenges that I face have
23 begun at the -- or begin at the very beginning like
24 Ms. Taylor stated, during the initial interview. There
25 are times where you're discussing the investigation

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1 allegations with the complainant or the respondents, and
2 because it is usually an emotional situation for both
3 parties, there are times where conciliation offers and
4 conciliation terms are discussed during that initial
5 interview.

6 The main thing I try and do during those
7 times is to try and refocus both parties on this
8 specific aspect of what we're discussing at the time.
9 I'll try and reiterate that we are simply discussing the
10 investigation as this time and we will come back to the
11 conciliation efforts and we will discuss that at a later
12 time after the investigation portion has been just
13 discussed.

14 Depending on the tone of the conversation,
15 sometimes we will just go and start with the
16 conciliation terms first because of how the parties are
17 wanting to discuss it. So that's one of the challenges
18 and one of the tools that I use in trying to keep the
19 two separated.

20 Another challenge that I've faced during
21 the conciliation and investigative activities and
22 keeping them separate is during an on-site
23 investigation. During those times I usually try and
24 meet with both parties separately. I will try and --
25 usually I try and meet with the respondents first and

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1 I'll get as much investigative activities and as much
2 investigative information as I can. And then I will
3 come back to the respondents and make sure that we
4 discuss our conciliation efforts if there are any --
5 offers or terms that we want conveyed to the complainant
6 at that time.

7 For the majority of my cases, the
8 complainants are not usually still on site at those
9 apartment complexes or at the houses that the complaint
10 has been filed against. So I usually either try and
11 have a conference call with the respondents and the
12 respondents' representative and the complainants in
13 which we can discuss conciliation openly between both
14 parties, or I will make the additional trips back and
15 forth the respondents to the complainants and return
16 with more conciliation offers or terms if they've been
17 provided during the on-site investigation.

18 In the handout that you have, it is a
19 small -- a small synopsis of what our case print and the
20 TEAPOT system is -- detailing as Mr. Hammarth and
21 Ms. Taylor discussed earlier. I'm not sure how much you
22 are familiar with the TEAPOT system, but in our -- on
23 page 1 you will see the interviews. That is simply the
24 initial interview that is discussed -- it's a brief
25 summary of what is discussed during those interviews

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1 with a very small statement at the very end that says
2 "conciliation discussed."

3 On page 2 of the handout you will also see
4 at the very top in the document section, which is,
5 basically, our initial notification letters, which also
6 has a brief summary of what that document entails, with
7 another small statement at the end that says
8 "conciliation discussed."

9 At the bottom of that -- of page 2 you
10 will see the conciliation attempts, and these
11 conciliation attempts are simply the -- they correlate
12 with the interviews and the documents that I just
13 mentioned earlier. And they have -- they provide the
14 more detailed information that is discussed during those
15 initial interviews and the detailed information that is
16 discussed within those documents.

17 Of course, this is a -- just a brief -- a
18 little -- a small example as to what it is that we do
19 while we're doing investigations and our conciliation
20 efforts. Of course, the names are changed, and only my
21 name is actually the correct name that's on here. But
22 the comment section does include the -- our initial
23 interview part of what Ms. Taylor had mentioned: The
24 small script as to what's in those notification letters,
25 and it's followed by on page 3 and page 4 the actual

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1 attempts and terms that have been offered by the
2 respondents to the complainants and vice versa from the
3 complainants with the counteroffers that are given to
4 the respondents.

5 These are simply a small number of the
6 challenges that we face trying to keep the two
7 separated. There are times where we -- of course we
8 request to have the separation of documentation and
9 conciliation efforts on separate documents during the
10 investigation. Although we do request that, it's not
11 always done that way. Nine times out of ten the
12 respondents and the complainants will just provide
13 conciliation efforts along with their investigative
14 information all on one page. I try and remedy that by
15 making copies of the section that has the conciliation
16 terms in it. I redact the information that's necessary,
17 and I put the -- like Mr. Hammarth discussed -- I put
18 the conciliation efforts on the left side of our
19 investigative file, and I keep the documentation in the
20 investigative actions on the right side of the file.

21 Is there any questions or anything I can
22 try and help explain or clarify? I'm not sure -- did
23 that answer your question --

24 COMM. STIDVENT: No.

25 MR. PERNELL: It didn't?

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1 MS. TAYLOR: May I add something to -- I'm
2 trying to process the question the way you asked it, and
3 let me try this. Here's the investigation. It starts
4 and it's moving along. And somebody says, "Oh, I want
5 to make an offer." And that happens, and then -- now,
6 the investigation is going to continue no matter what.
7 And the offer may or may not be accepted.

8 As you flow through the investigation,
9 you're accruing new information. That full set of
10 information, all of the information available, won't be
11 available to the parties until the investigator has
12 determined that I've answered all the questions that I
13 put out there for them, whatever the basis is, whatever
14 the things that are going on. And at the end there is
15 the predetermination interview where the investigator --
16 the conciliator -- I mean, they're in investigator role
17 now. They're telling the parties this is the total
18 amount of the information I've collected, whether from
19 the -- whichever side. They don't say whose side it is
20 on. But by hearing the information in that interview,
21 the recipient of that information understands the
22 strengths and the weaknesses of their position, and they
23 may say, "Oh, it might be time to make an offer because
24 I may lose."

25 COMM. STIDVENT: Right.

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1 MS. TAYLOR: And, you know, in their mind
2 there's a winner and there's a loser. So the question
3 that I'm thinking -- or answering for you is
4 conciliation information may or may not tip the scale.
5 You know, the amount of the offer or the --

6 COMM. STIDVENT: Yeah, that's actually
7 not --

8 MS. TAYLOR: -- rebounding offer might
9 make a difference --

10 COMM. STIDVENT: No. What I'm asking is
11 if in the course of -- let's say, for example, that I
12 bring a housing complaint that someone has refused to
13 rent an apartment to me because I'm Hispanic, and the
14 respondent denies that, and so you're investigating
15 whether that's true, and during the course of your
16 investigation, you also host a conciliation discussion.
17 During that discussion we have a heated -- I have a
18 heated exchange with the respondent, and during the
19 course of that --

20 MS. TAYLOR: Now, wait, wait. Say that
21 again?

22 COMM. STIDVENT: So you have a -- we're
23 having a conciliation discussion during the course of
24 the investigation. So the complainant and the
25 respondent are having this discussion, and so I'm the

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1 complainant and the respondent, right?

2 (Simultaneous discussion)

3 MR. TAYLOR: Is there any opportunity for
4 the complainant and the respondent to have a
5 conversation?

6 MR. BABIAK: I believe -- and staff will
7 correct me if I'm wrong -- but it's not a normal
8 practice to have a conference --

9 COMM. STIDVENT: Okay.

10 MR. BABIAK: -- with the respondent and
11 the complainant present simultaneously.

12 MR. PERNELL: Yes.

13 COMM. STIDVENT: Okay.

14 MR. PERNELL: I mentioned -- you may be
15 discussing what I mentioned. I do do that when I --
16 when both parties are usually on good terms and there's
17 not going to be very many heated conversations. We try
18 and have -- I may try and conduct a conciliation
19 discussion as a conference together when both parties
20 are there on site if the complainant is still remaining
21 on site at the property, we may have -- be able to have
22 a concession -- or a conference together like that.

23 If it does become heated, I simply
24 separate the two parties. I'll allow the complainant to
25 go back and we'll just -- I'll just go back and forth --

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1 COMM. STIDVENT: So let me change the
2 scenario up again. So let's say they're not together.

3 MR. PERNELL: Okay.

4 COMM. STIDVENT: Let's say you're having
5 conciliation discussion with the respondent who, during
6 the course of the investigation, has denied any
7 discriminatory intent.

8 MR. PERNELL: Yes.

9 COMM. STIDVENT: But during the
10 conciliation discussion admits to saying something that
11 is prohibited or doing something that would qualify as
12 discrimination under the statute -- okay? -- but it's
13 during the conciliation discussion.

14 So the respondent says, "I'm willing to
15 make an offer, but I don't think I did anything wrong.
16 All I did was 'X.'"

17 MR. PERNELL: Yes.

18 COMM. STIDVENT: And "X" is actually
19 prohibited under the statutes. How do you keep that
20 separate? That would advance your investigation into a
21 determination that they did, in fact, violate the law,
22 but that's a conciliation discussion.

23 So my question is what do you do with that
24 information?

25 MR. PERNELL: In my experience, anything

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1 discussed during conciliation can only be used for
2 conciliation purposes. So even --

3 COMM. STIDVENT: But my question is you
4 now know this.

5 MR. PERNELL: So even if there is -- even
6 if that statement is made, we still have to simply
7 continue with just conciliation. Nothing that's
8 discussed during the conciliation, we can't go and use
9 it in our investigative process or with our
10 investigative activities. So even if there is a blatant
11 discriminatory statement made during the conciliation
12 efforts, we don't use that during our investigation
13 because we -- like we said, we try and keep it separate
14 and we're wearing two different hats at that time.

15 COMM. STIDVENT: So how do you do that,
16 though, now that you have that information?

17 MR. PERNELL: We simply -- basically, we
18 would just have to -- or in my experience I simply would
19 have to eliminate that part of the -- that part of the
20 conversation or that part of the information that I
21 obtained during the conciliation when I go back to the
22 investigative action. I basically have to ignore that
23 part that was stated during that and still try and find
24 evidence -- or try and obtain information during the
25 investigative process that would also bring out that

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1 same statement or that would also bring out evidence to
2 support that same kind of statement.

3 COMM. STIDVENT: And that's the crux of my
4 question is how do you -- how do you deal with the fact
5 that you have information that advances the
6 investigation that you're not supposed to know as part
7 of the conciliation process? Because presumably that
8 would make you ask them in the investigative portion,
9 "Hey, did you ever say --"

10 MR. PERNELL: Well, yeah. Well, for
11 myself, I don't -- I've never gone back and actually
12 stated, "Well, did you say this if it's been said during
13 the conciliation process."

14 COMM. STIDVENT: Okay.

15 MR. PERNELL: I may try and find a
16 roundabout way asking for documentation or evidence that
17 may be able to bring out that same thing or -- that's
18 pretty much the only --

19 COMM. STIDVENT: So let me ask it another
20 way: Does the conciliation process hinder the
21 investigation process in some instances? Because if you
22 do get information in conciliation but then you can't
23 use because you are trying to build this trust and
24 confidentiality and so you can't actually use it to
25 advance your investigation, is the fact that the same

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1 person is doing both conciliation and investigation a
2 hinderance in some instances to the investigative
3 portion?

4 MR. PERNELL: During my experiences, I
5 haven't had it as -- I haven't had it act as a hindrance
6 for me at this point.

7 MR. BABIAK: And I will mention that in
8 our rehearsals, David mentioned something that he did
9 not mention here today, and that is the fact that he's
10 been a housing investigator for over three years.

11 COMM. GLOVER: I have to jump in on this.
12 Excuse me. But my concern is that -- and I don't know
13 how to get beyond this, and perhaps it's been answered
14 and I just haven't gotten it through my gray matter.
15 But during the process, if there is something that is
16 blatantly discriminatory and against the law, am I
17 hearing that it can just kind of be buried on the
18 left-hand side of a file and no action taken?

19 MR. PERNELL: If that -- for myself, if
20 that information is gathered during the investigative
21 process, it's used right away. If it's -- if it comes
22 out during the conciliation aspect of my role, then
23 unfortunately it's -- it is some -- I guess it would
24 seem that it would be buried. But like I said, I would
25 try somehow to try and get that same information during

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1 my -- when I go back to my investigative role. I would
2 try and figure out some kind of way that I would be able
3 to obtain some kind of evidence or documentation to
4 support --

5 COMM. GLOVER: Right. And I salute you
6 for that effort. But my concern is that -- if that
7 effort failed and that information is still out there,
8 that there was a case of blatant discrimination, which
9 is against the law, that it could conceivably in this
10 process stay buried, if in fact the effort didn't get
11 somebody to admit that they had done this.

12 MR. PERNELL: Well, I haven't had any of
13 those instances. And just off the top of my head, I
14 know at that point I would more than likely go to my
15 team lead or my supervisors and discuss it with them --

16 COMM. GLOVER: I would hope so.

17 MR. PERNELL: -- and see what they can --
18 because, of course, they would have more experience with
19 this situation than I would. So I would try and go to
20 my team leader or supervisors to try and see what kind
21 of information they can give me.

22 COMM. GLOVER: Can somebody else give me
23 any more information on that?

24 MR. HAMMARTH: I can tell you that the
25 same principle would apply in employment discrimination

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1 complaints. We can't use that evidence. What that does
2 do is lengthen the investigation, and we do confirm that
3 through another source, either a witness or documentary
4 evidence.

5 MR. BABIAK: Commissioner, I think the
6 principle is one that we find generally in our American
7 legal system. And the primary example of it is that
8 settlement offers are inadmissible at trial. And I
9 think that the underlying rationale for that is to
10 encourage people to settle disputes rather than to have
11 them decided by a fact finder, a judge, an investigator.

12 COMM. GLOVER: I agree with the -- I agree
13 with you on most levels. But again, this isn't like
14 about reimbursement or compensation. This is about
15 information that has been put out there about Illegal
16 discrimination, and I -- in the investigative process
17 you said that something could be done about that.

18 My concern is that there is a loophole
19 somehow, though, in the system where, if it doesn't come
20 out at the right time, it could -- and I do get what
21 you're saying. I get what you're all saying. But I've
22 got to say this is a genuine concern of mine.

23 COMM. STIDVENT: And I would say the
24 analogy doesn't quite hold. Because while settlement
25 offers aren't admissible at trial, the difference here

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1 is that you have one person sort of as mediator and
2 prosecutor, if you will, instead of the investigator.
3 And so you have an inherent conflict in those rules in a
4 way that if you were presenting this at trial, everyone
5 has different roles there. And I would submit that here
6 the fact that the same person is receiving the
7 information and withholding the information makes that
8 role difficult.

9 So I'm still uncomfortable with it. I
10 know that you-all have been doing this for years and are
11 comfortable with the role and are comfortable with how
12 this works in practice, but I just think that it is
13 setting up a situation where you will have these
14 conflicts, where you have information that
15 discrimination is occurring, but you can't use that
16 information.

17 COMM. GLOVER: Yeah, this is in no way, by
18 the way, anything derogatory about any of you or the
19 work that you're doing. It's just that if -- if within
20 the system there's a pocket that can grasp information
21 that should be used, but because of the way it's done it
22 can't be used, we've got to take a look at that.

23 MS. COVINGTON: Commissioners, if I may --
24 for the record, Vickie Covington, Manager, Investigation
25 Team 1 -- we are also responsible for public interest

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1 components in the conciliation agreements. And so if a
2 situation arises -- and it does arise from time to
3 time -- where there appears to have been a violation,
4 that's where the public interest would come in and
5 that's when we would have the dialogue with the
6 investigator and with the complainant to see if we can
7 bring in things like training for the respondents or
8 some kind of relief for other people who may have been
9 harmed during a potential violation.

10 COMM. STIDVENT: But how does that resolve
11 the conflict? My point here is if you have information
12 and you can't use it to further that investigation, but
13 your solution is maybe we can bring a public interest
14 suit or some remedy that benefits other people, that
15 doesn't address the conflict within the case at hand.
16 And it doesn't address the conflict of -- also to the
17 parties. If you're saying that this is confidential and
18 that the conciliation comments are confidential, and
19 then you say -- then you get some information that you
20 would want to use in an investigation, but you can't,
21 and then your solution is to use that in some other
22 peripheral action, either remedial training or an action
23 on behalf of the public, that's a conflict and you're
24 violating the trust that you've just told those parties
25 by saying that we're holding what you tell us completely

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1 confidential.

2 I don't know how you can really be both
3 the confident -- the confidant of the parties and the
4 investigator.

5 MS. COVINGTON: But it is part of our
6 procedures for public interest -- it's included in our
7 manual that if that should come out, then we as the
8 Civil Rights Division have a role in the public
9 interest.

10 COMM. STIDVENT: If that information comes
11 out during the course of the investigation or during the
12 course of the conciliation?

13 MS. COVINGTON: During the course of the
14 conciliation.

15 COMM. STIDVENT: Then I -- well, then,
16 frankly, I really think you're in trouble because I have
17 no idea how you can tell people that it's confidential
18 and then have a public interest role based on that
19 confidential information.

20 I have to say I'm just deeply troubled by
21 this.

22 COMM. GLOVER: As am I.

23 MS. COVINGTON: I hope that helped
24 somewhat.

25 COMM. STIDVENT: So thank you, but --

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1 COMM. GLOVER: Yeah.

2 CHAIRMAN ANDERSON: Is it similar to the
3 application -- although you're dealing -- you do have
4 different parties, you know, the prosecutor and the
5 defense, but, you know, that information can't be used
6 either.

7 COMM. STIDVENT: In that case the ultimate
8 fact finder is the jury or the judge, so that's a
9 different thing.

10 CHAIRMAN ANDERSON: Yeah. But it's still
11 not going to come in.

12 COMM. STIDVENT: And that's fine because
13 the question is -- the fact finder has that -- the
14 question of what is the ultimate fact finder. Here the
15 ultimate fact finder is both the investigator and the
16 confidant, and I think that's a conflict of interest.

17 COMM. OSTERHOUT: Are people under oath
18 when they come to y'all? Do y'all -- I mean, like you
19 would in a -- you know, a witness in a --

20 MR. BABIAK: I don't believe we place the
21 parties under oath when we're taking their statements.

22 COMM. OSTERHOUT: So they're sworn to tell
23 the truth, the whole truth and nothing but the truth,
24 then they can pretty much do what they --

25 MR. BABIAK: Well, I don't know if they

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1 would be subject to penalties for perjury, but they may
2 still be subject to other penalties for making false
3 statements or submitting false documents.

4 COMM. OSTERHOUT: Okay.

5 MR. BABIAK: And with some hesitation, are
6 there any other questions?

7 (Laughter)

8 CHAIRMAN ANDERSON: No, I think they did a
9 great job. It's not easy to do this, and I think they
10 handled the question and answer period very well.
11 Obviously, we have some concerns about the process, but
12 I guess the process is pretty much -- Is this something
13 that HUD supports --

14 MR. BABIAK: Yes.

15 CHAIRMAN ANDERSON: -- says this is the
16 way to process it?

17 MR. BABIAK: Yes, it's the HUD way.

18 CHAIRMAN ANDERSON: The HUD way. Right or
19 wrong, it's the federal government's way.

20 MR. BABIAK: Yes. And I guess we will
21 discuss under a later agenda item what other training
22 you may want at an upcoming meeting.

23 Well, thank you, folks.

24 COMM. GLOVER: Thank you very, very much.

25 COMM. STIDVENT: Thank you very much.

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1 9. Discussion, Consideration and Possible
2 Action Regarding the Commission on Human Rights
3 Duties, Roles, and Responsibilities Concerning
4 Agenda Development Procedures

4 CHAIRMAN ANDERSON: Under No. 9, I think
5 the only issue there, Jonathan, is maybe another topic
6 for January. We've done, you know, the employment
7 investigation; we've done the HUD investigations; we did
8 the segregation and conciliation activities.

9 MR. BABIAK: If I might, I would recommend
10 that you consider perhaps a presentation from our policy
11 reviewers on what they -- exactly what do they do during
12 a policy review, an overview and then some hypothetical
13 examples.

14 CHAIRMAN ANDERSON: And you might include
15 a short piece on the firefighter review --

16 MR. BABIAK: Okay.

17 CHAIRMAN ANDERSON: -- which is always --
18 I think it's come up every year, every time we get the
19 firefighters -- I know I've asked the question in the
20 past, you know, how did this come about and why did we
21 get passed with it?

22 MR. BABIAK: Okay.

23
24
25

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1 10. Discussion, Consideration, and Possible
2 Action Regarding Future Meetings of the
Commission on Human Rights

3 CHAIRMAN ANDERSON: No. 10, discussion,
4 consideration, possible action regarding future
5 meetings. The future meetings are on page -- the pages
6 aren't numbered, but it's two pages later --
7 January 18th, April 18th, July 18th and October 17th.
8 These are all 2012.

9 Does anybody here have a concern about any
10 of those dates?

11 COMM. GLOVER: I'm sorry. Where are the
12 dates?

13 CHAIRMAN ANDERSON: It's the -- that's
14 mine. Never mind.

15 All right. Let me read it to you again.
16 It's January 18th, April 18th, July 18th and
17 October 17th. These are all 2012, of course.

18 COMM. GLOVER: Could you give me July and
19 the next one down again?

20 CHAIRMAN ANDERSON: July 18th and
21 October 17th.

22 COMM. GLOVER: I have no problem with any
23 of those.

24 CHAIRMAN ANDERSON: I think the only one
25 we need to really be concerned about right now is

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1 January 18th. Since we would need to modify the others,
2 we can discuss that in the January meeting. But does
3 anybody have any big issues with January 18th?

4 (No response)

5 And even though it's after January, the
6 fiscal year for the state and for the CRD has already
7 occurred. We've already had the year-end financials and
8 results. So this is -- even though it's in January,
9 it's just a regular quarterly meeting and it won't
10 reflect, obviously, any totals other than that quarter.

11 Okay. January 18th is a go, and so are
12 all the other dates at this time.

13 Becky, should we do the action items now
14 before we go into executive session?

15 Jonathan, do you have these also? You
16 want to discuss them?

17 MR. BABIAK: Sure.

18 CHAIRMAN ANDERSON: Okay.

19 MR. BABIAK: The first action item: At
20 the last meeting, Chair Anderson asked how we
21 communicate our needs to our federal partners related to
22 the software applications, and we really do this
23 informally on an ongoing basis when issues arise because
24 all of the state and local agencies like us are
25 simultaneously using the system, in addition to EEOC and

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1 HUD who work cases directly. Normally, they are already
2 aware of issues by the time we raise them. And
3 occasionally they will allow us to give input on any
4 kind of upgrades that they're planning, although I don't
5 think that that's a formal process.

6 The next item, I guess Commissioner Diggs
7 said she would contact us to schedule a budget briefing,
8 and I guess there was no interest in having a budget
9 briefing. And, Commissioner Stidvent, I don't know if
10 you think there's a continuing need for that --

11 COMM. STIDVENT: I think if something
12 arises, then we can talk about it again in January. But
13 I think everything's looking great, so I would hate to
14 pull you away from your general productivity which is
15 evidenced in the budget reports.

16 MR. BABIAK: Okay. Thank you. The next
17 item, Chair Anderson asked that we look at participating
18 in a veterans' symposium being sponsored by the Texas
19 Employers Support of the Guard and Reserve. I called
20 Dwayne James, and he explained that the primary purpose
21 of that symposium was to connect employers with veterans
22 for the purpose of hiring and, in his opinion, he didn't
23 think that it was an appropriate forum for communicating
24 about HB 1178.

25 He did say that the Texas ESGR already

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1 does that on a continuing basis, and primarily they
2 accomplish that by providing information directly to the
3 reservists and state military forces, who then in turn,
4 hopefully, take that information to their employers. As
5 a side note, Mr. James has left Texas ESGR, and the new
6 executive director is John Steel, a retired Lt. Colonel
7 of the Air Force, and I've spoken to him to make
8 contact.

9 The next item, Chair Anderson requested
10 that we follow up on HB 3591 and SB 1327 to determine
11 any open records impact. And I've spoken to Lona
12 Chastain in open records, and she tells me that her
13 staff has been trained on the processes that are
14 associated with that bill.

15 Next, Chair Anderson asked that we convey
16 our thanks and congratulations to TWC training and
17 development staff for the objectivity training they
18 developed for us. And, yes, we have done that.

19 Commissioner Diggs had a question about
20 seeing if we could explain the reduction in average cost
21 per case that had arisen from September 2010 through
22 about May of 2011. And from our research, it looks like
23 that that was primarily the result of a vacant position
24 from January through April.

25 Chair Anderson had a question about

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1 whether there would be any way to simplify the process
2 of getting into the building. And, unfortunately, if
3 you're a TWC employee, you get a badge. And if you're
4 not a TWC employee, we welcome you as a guest.

5 And I think that's all of the action
6 items.

7 CHAIRMAN ANDERSON: Okay. There is a --
8 the Commissioners will reconvene -- those who are able
9 to -- in Room 144T, located at 1117 Trinity Street for a
10 meet and greet lunch with the Civil Rights Division
11 staff. That's immediately following our executive
12 session. So any of the Commissioners are welcome to
13 attend that, but it will not be for the purpose of
14 business and no business will be discussed during that
15 meeting other than -- what's the official word, Susanna,
16 incidental discussions or something? We're going to
17 meet at that lunch, but we're not going to be conducting
18 business. Is there official terminology on that? I
19 forget what it is.

20 MS. CUTRONE: I'm sorry. Could you repeat
21 the first part of your inquiry?

22 CHAIRMAN ANDERSON: Okay. We're going to
23 be meeting at -- after executive session at the CRD
24 building and will be -- it's a luncheon. It's a social
25 engagement. It's not business. Is there any kind of

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1 official wording or something that we say that we will
2 not be conducting any business other than incidental
3 discussions or --

4 MS. CUTRONE: Well, the item is noticed
5 appropriately on the agenda, and I would just advise the
6 Commissioners to enjoy the time with staff and refrain
7 from talking about issues that would need to be posted
8 and noticed pursuant to the Open Meetings Act.

9 11. THE FOLLOWING ITEMS MAY BE DISCUSSED IN OPEN OR
10 EXECUTIVE SESSION AND HAVE ACTION TAKEN IN OPEN
MEETING:

11 CHAIRMAN ANDERSON: Okay. Then we've all
12 been so advised.

13 We are now getting ready to move into
14 executive session and have action taken in open -- and
15 any action taken in Open Meeting. And we don't have the
16 style of the case -- I'll read the names of the case:
17 The Government Code §551.074, the appointment,
18 employment, evaluation, reassignment of duties,
19 discipline, dismissal, accomplishments, performance
20 goals and responsibilities of the Texas Workforce
21 Commission Civil Rights Division Director and other
22 personnel.

23 Item b, Government Code §551.071(1),
24 contemplated litigation of pending litigation of Texas
25 Commission on human rights, Texas Workforce Commission,

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1 David Powell and Robert Gomez versus Marilou Morrison;
2 John Benavides, et al, versus Texas Commission on Human
3 Rights; Texas Workforce Commission, Civil Rights
4 Division versus Cameron Overstreet, et al; Texas
5 Workforce Commission, Civil Rights Division v. Raymond
6 Henshaw and Mark Henshaw; Texas Workforce Commission,
7 Civil Rights Division, on behalf of Gregory Collins v.
8 Saratoga Property Owners Association, et al; and Texas
9 Workforce Commission, Civil Rights Division versus
10 Spiros Tsokos, I believe is the name.

11 And c, Government Code §551.071(2), all
12 matters identified in this agenda where the
13 Commissioners seek advice of their counsel as privileged
14 communications under the Texas Commission -- Texas
15 disciplinary rules of professional conduct, State Bar of
16 Texas, to discuss Open Meetings Act and the
17 Administrative Procedures Act, and adjournment of the
18 regular meeting at 10:41.

19 (Recess: 10:41 a.m. to 11:17 a.m.)

20 CHAIRMAN ANDERSON: All right. Out of the
21 executive -- yes, the executive session of the Texas
22 Commission on Civil Rights, Civil Rights Division, is
23 completed at 11:20, and we're now back in -- the times
24 are off. We're now back in session at 11:17. So the
25 times are probably off in the other room, but probably

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1 concluded about 11:16. It's now 11:17, and we're back
2 in open session -- regular session. There was no action
3 items taken in executive session.

4 Is there any other business for the
5 Commission?

6 Seeing none, if no objection, this meeting
7 is adjourned at 11:18. Thank you.

8 (Proceedings adjourned at 11:18 a.m.)

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C E R T I F I C A T E

STATE OF TEXAS)
COUNTY OF TRAVIS)

I, LOU RAY, a Certified Shorthand Reporter
in and for the State of Texas, do hereby certify that
the above-mentioned matter occurred as hereinbefore set
out.

I FURTHER CERTIFY THAT the proceedings of
such were reported by me or under my supervision, later
reduced to typewritten form under my supervision and
control and that the foregoing pages are a full, true
and correct transcription of the original notes.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal this 2nd day of November 2011.

LOU RAY
Certified Shorthand Reporter
CSR No. 1791-Expires 12/31/11

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