



Mission Statement

The mission of the Civil Rights Division is to reduce discrimination in employment and housing through education and enforcement of state and federal laws.

Vision

The vision of the Civil Rights Division is to help create an environment in which the people of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.

Texas Commission on Human Rights Commissioners

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TEXAS COMMISSION ON HUMAN RIGHTS HOLDS FINAL MEETING

Governor Greg Abbott Recognizes Commissioners' Service with Proclamations



From Left to Right: Comr. Diggs, Comr. Stidvent, Comr. Thomas, Chairman Anderson (Center), Comr. Michalka, Comr. Glover, and Comr. Osterhout

Wednesday, July 22, 2015 marks the close of a chapter in Texas civil rights enforcement and education. The Texas Commission on Human Rights (TCHR) conducted its final quarterly meeting.

Prior to the recent legislative session, the Sunset Commission reviewed the duties and operations of the Texas Workforce Commission, including the Civil Rights Division (CRD), and recommended

streamlining of CRD's oversight, by discontinuing the seven-member TCHR and transferring its duties to the three-member Texas Workforce Commission. The Legislature adopted these recommendations in Senate Bill 208, which was enacted into law, and made effective on September 1, 2015.

In its last meeting, the TCHR issued a decision to file a civil action in an equal employment opportunity (EEO) sexual harassment matter. It also heard reports on the areas of employment, housing, training and monitoring.

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Immediately following the meeting, attendees adjourned to a farewell reception for the TCHR. CRD Director Lowell Keig reflected on the accomplishments of the TCHR. Keig said that with the direction and input of the TCHR, “We developed a three-year strategic plan to provide us with goals and guidance. Two years into implementation of that plan, we have seen tremendous improvements.”

Keig pointed out that under the TCHR’s oversight, the division has returned to its role as an enforcement body. He highlighted the following actions:

- Two companion EEO matters were presented to a panel in January, 2015. One matter was approved by the panel as reasonable cause and the full TCHR voted to file a civil action if it did not settle, which it did.
- One EEO matter was approved by a panel as reasonable cause in June, 2015.
- One of two EEO matters presented to a panel in July, 2015 was found to be reasonable cause.
- One of two EEO matters presented to the full TCHR in the final meeting was approved for the filing of a civil action.

Although determinations of reasonable cause for housing matters are made by the CRD Director and parties elect whether or not to proceed with judicial determination, Keig pointed out that the TCHR’s governance has resulted in great strides in housing enforcement and that several cases are currently in litigation being handled by the Attorney General’s Office.

Keig went on to state, “Your oversight has helped us reach a state of greater financial stability. With your oversight, we have become more efficient and technologically savvy.” He listed the improvement in training of state employees on EEO and sexual harassment, which has gone from a couple of hundred state employees per year to several thousand per year.

Keig concluded the highlights of the TCHR’s accomplishments by conveying that from 1993 to the present, TCHR has overseen an agency that secured millions of dollars in recoveries through conciliation or settlement for complainants, and made thousands of determinations of no reasonable cause on complaints against employers and housing providers when the evidence was found to be insufficient to support the allegations.

TWC Chair Andres Alcantar, TWC Commissioner Ronald Congleton and TWC Executive Director Larry Temple thanked the TCHR Commissioners for their service, and Luke Bellsnyder with Governor Greg Abbott’s Office presented each of the TCHR Commissioners with a proclamation from the Governor.

In addition, Keig presented framed flags that were flown over the Capitol for each of the TCHR commissioners and delivered a crystal gavel to TCHR Chair Tom Anderson, who had served on the TCHR since 2003.

Following farewell comments from the TCHR commissioners, Keig concluded the ceremony with the words of Barbara Jordan, the late politician and Civil Rights leader who was the first African American elected to the Texas Senate after Reconstruction and the first southern Black female elected to the United States House of Representatives: “More is required of public officials than slogans and handshakes and press releases. More is required. We must hold ourselves strictly accountable.” Keig urged that the TCHR commissioners had “met this challenge over and over” and thanked them for their service. ■

CRD Education, Training & Outreach



Photo courtesy of CRD

Recent Events

The Civil Rights Division's Training & Outreach Coordinators recently spoke at the Texas State Independent Living Council (TXSIL) Texas Transportation Works Summit, August 16-18, 2015, in Lubbock Texas. The Summit comprised of various workshops and panels discussion that are interconnected to the transportation needs in the lives of people with disabilities, such as:

- Employment
- Housing
- Advocacy

TXSIL's Transportation Work statewide initiative is to address the barriers experienced by individuals with disabilities and senior populations that use public transportation in rural and small urban areas of Texas.

Upcoming Schedule of Events

The Texas Workforce Commission Civil Rights Division (TWCCRD) is committed to providing training and

technical assistance, outreach and education programs to assist housing providers, consumers and other stakeholders in understanding and preventing discrimination. We believe that discrimination can be averted if everyone knows their rights and responsibilities. Please come and visit with us at the following upcoming scheduled events:

- October 21, 2015 from 1-3pm, CST. Fair Housing Overview: Presented by TWC – Civil Rights Division. Learn the basics about Fair Housing in Texas and apply what you learned in a review of case scenarios. This HUD-approved presentation will give general information about Fair Housing and how the Texas Fair Housing Act relates to your work. For more information please contact TWCCRD Training at (888) 452-4778, locally (512) 463-2642, or CRDTraining@twc.state.tx.us
- November 4, 2015 from 1-3pm, CST. Texas Workforce Commission Civil Rights Division's Investigative Role. Learn the basics about how TWCCRD investigates Fair Housing Complaints. This presentation will

give general information about how complaints are received and evaluated by TWCCRD. For more information please contact TWCCRD Training at (888) 452-4778, locally (512) 463-2642, or CRDTraining@twc.state.tx.us

No-Cost Outreach and Education Programs: TWCCRD representatives are available on a limited basis at no cost to make presentations and participate in meetings with employees and employers, and their representative groups, as well as community organizations and other members of the general public.

TWCCRD Education Training & Technical Assistance: TWCCRD provides low-cost, fee-based trainings and technical assistance programs via webinars and in-person sessions throughout the State of Texas.

For more information, availability, and training designed for your needs, contact TWCCRD at (888) 452-4778, (512) 463-2642, or CRDTraining@twc.state.tx.us. ■



Fair Housing and Criminal Background Checks

The practice of using criminal records data to screen applicants is now commonplace in conventional housing communities—even required in federally assisted and public housing communities. Yet the practice is drawing scrutiny, at least in part, because it affects a growing number of prospective residents: Over the past several years, there has been a sharp increase in the number of people who have had contact with the criminal justice system, meaning a significant increase in the number of people with a criminal history.

Although communities have legitimate reasons to safeguard their property and residents, many have raised concerns about the use of criminal background checks under federal civil rights laws.

In general, the issue is whether the exclusionary policies based on criminal background checks have an unfair effect—in legal terms, a disparate impact—on African Americans and Hispanics, who are protected under

federal civil rights laws governing employment and housing.

The law recognizes at least two types of illegal discrimination: disparate treatment (intentional) and disparate impact (unintentional). Most people recognize that intentional discrimination is prohibited by civil rights laws, but they may be unaware that it's possible to have “unintentional” discrimination, such as when a rule or leasing policy that applies to everyone tends to affect a protected group or minority more than others. Usually, this kind of unintentional discrimination (disparate impact) has to be proven using statistical evidence.

The issue gained attention when the Equal Employment Opportunity Commission (EEOC) issued new guidelines governing the use of criminal arrest and conviction records in employment decisions. Among other things, the EEOC's new enforcement guidance recognized that exclusionary criminal records policies may have a

disparate impact based on race and national origin.

Unfortunately, there has been little guidance in the housing arena. Neither HUD nor the courts have formally addressed fair housing concerns about the use of criminal background checks by conventional housing communities. While a few states limit the use of criminal records in housing and employment decisions, only a handful of local governments have added fair housing protections for individuals with criminal records.

As a best practice, it may be a good time to review your community's policies and practices when it comes to the use of criminal background checks while screening potential residents. ■

CRD Issues Charges of Discrimination

The Civil Rights Division issued several charges of discrimination during the last quarter of fiscal year 2015. Many of those cases involved violations that affected housing for persons with disabilities.



In one case involving a multi-family property in the Valley, the complex was not designed and constructed in accordance with Fair Housing accessibility requirements.

In two other cases, one involving a condominium owner's association in Houston and the other, an apartment complex in Houston, the respondents each failed to grant a reasonable accommodation request for a “curb cut” ramp for the complainants, who use a wheelchair, to have an accessible route to their units.

In addition, in San Antonio, multiple independent living facilities required

applicants to provide information that inquired about the nature/severity of their disabilities, had restrictions/requirements on motorized personal transportation vehicles that only applied to persons with disabilities, and/or made statements that tended to indicate a preference, limitation, and/or discrimination affecting persons with disabilities. Medical inquiries and conditions may be required for assisted living or nursing facilities, but run afoul of fair housing protections for independent living. ■

SELECTED RECENT CASE LAW SUMMARIES



Texas Department of Housing & Community Affairs (TDHCA) v. Inclusive Communities Project, Inc. (ICP)

135 S.Ct. 2507; 2015 U.S. LEXIS 4249 (July 25, 2015)

ICP brought suit in federal district court alleging that TDHCA had caused continued segregated housing patterns by allocating too many low-income housing tax credits to housing in predominantly black inner-city areas and too few in predominantly white suburban neighborhoods. The district court concluded that ICP had established a disparate impact claim based on statistical evidence. After assuming that TDHCA's proffered non-discriminatory interests were valid, the district court found that TDHCA had a burden to show that there were no less discriminatory alternatives and that TDHCA did not meet that burden.

TDHCA appealed to the Fifth Circuit Court of Appeals. While the appeal was pending the U.S. Department of Housing and Urban Development (HUD) promulgated a new regulation that used a burden-shifting framework for disparate impact claims, but placed the burden of showing no less discriminatory alternatives on the complainant. The Fifth Circuit held that disparate impact claims were cognizable, but reversed and remanded the case to the district court on the merits in light of the new HUD regulation, because the district court had improperly placed the burden

on TDHCA to prove less discriminatory alternatives.

TDHCA appealed to the United States Supreme Court, which decided to hear the sole issue of whether disparate impact claims may be brought under the Fair Housing Act. The Supreme Court held affirmatively. The Supreme Court found that disparate impact liability permits plaintiffs to counteract unconscious prejudices and disguised animus that escape easy classification as disparate treatment. The Supreme Court affirmed the Fifth Circuit judgment and the case now is proceeding back to the district court for further proceedings.

Bowman v. RJM Center, LLC and Links Construction, LLC

2015 U.S. Dist. LEXIS 103650 (E. Dist. Tex. August 7, 2015)

Mr. Dana Bowman lost both legs while serving in the Army and uses a wheelchair. He alleged that he visited Centre Place Apartments and found various barriers to accessibility. Bowman filed a fair housing complaint against defendants for design and construction violations.

In a motion to dismiss for lack of subject matter based on the face of the complaint, the defendants argued that Bowman lacked standing because they contended that he never intended to rent an apartment at Centre Place. The defendants produced evidence that Bowman owns a home worth over \$500,000 that is located 53 miles away from Centre Place. Also, they alleged that he has filed 80 fair housing lawsuits in three different states in less than two

years; therefore, they assert that he is a "tester" who never had any interest in renting an apartment and never suffered an injury by being denied access.

Because the defendants brought a subject matter dismissal motion, the Court stated it would dismiss only if, taking all facts as true and resolving all inferences and doubts in the plaintiff's favor, that the plaintiff's claim would not entitle him to relief. So, the Court noted Bowman alleged numerous barriers to accessibility that he alleged deterred him from renting and the Court inferred that he intended to rent an apartment. Therefore, the Court said that Bowman had standing and it was not necessary to consider at that time whether testers have standing to pursue claims. The Court did state that the issues raised must be fleshed out through discovery and summary judgment.

The defendants also unsuccessfully attempted to claim that Bowman's claim was not ripe because he was not denied a reasonable accommodation or otherwise discriminated against. The Court pointed out the Bowman did not allege an accommodation denial and that the Fair Housing Act specifically includes non-compliant design and construction within the definition of "discrimination."

The defendants also asserted a motion to dismiss for failure to state a claim because Bowman failed to identify the specific location of each alleged barrier to access, relying on pleading requirements of the Americans with Disability Act, rather than the Fair Housing Act. The Court noted that Bowman claimed that the complex

had no accessible parking spaces for tenants or guests, that mailboxes were inaccessible due to their height and a curb, that the dumpster was inaccessible, that doorway thresholds, light switches, electrical outlets, and thermostats were too high, and that some units did not have sufficient space around refrigerators and door width. Based on these allegations, the Court found that Bowman provided adequate information to state a claim and that if defendants needed additional information, they could seek it through discovery.

Chavez v. Aber

2015 U.S. Dist LEXIS 104317 (W. Dist. Tex. – El Paso, August 8, 2015)

Yvonne Chavez rented a duplex from Fairview Court, LLC, of which Dick Aber was the owner, director and manager. Fairview had a “no pets” policy. The psychiatrist of Chavez’ minor son recommended an emotional support animal for the child and Chavez adopted a three-month old mixed-breed pit bull. Plaintiffs sought damages for defendants’ refusal to grant an accommodation to keep the dog. This summary will not go into an extensive discussion of the facts and all of the bases for the defendants’ dismissal

motion; however, a few will be covered here.

Defendants claimed that Chavez had no standing. The Court pointed to Chavez’ allegation that she had out-of-pocket damages of a monthly rent increase from \$550 to \$780 as a result of the accommodation being denied and the family moving to a new home, and confirmed Chavez had standing.

Aber contended that plaintiffs failed to state a claim against him individually. The Court cited a Sixth Circuit case for the principle that “an agent who assists his principal in committing a [violation of the FHA] is himself liable as a joint tortfeasor.” Chavez alleged that Aber verbally asked Chavez to get rid of the dog, delivered a notice to vacate, threatened to have Animal Control remove the dog, and verbally denied the accommodation request. Therefore, the Court held that because plaintiffs claimed Aber personally assisted Fairview in the discriminatory conduct, he could be held individually liable.

The Court also analyzed the evidence on each of the prima facie elements of the denial of reasonable accommodation violation and the

retaliation violation, and concluded that plaintiffs had sufficiently pled a both claims.

The plaintiffs further pled a separate claim of retaliation under Tex. Prop. Code Sec. 92.331 (not under the Fair Housing Act), which prohibits retaliation by a landlord against a tenant, and is an absolute defense in an eviction suit. Under that provision, a landlord may not retaliate because a tenant in good faith exercises or attempts to exercise a right or remedy granted by lease, municipal ordinance, or federal or state statute. The Court found that plaintiffs had adequately alleged a plausible claim of retaliation under Chapter 92 for exercising rights under the Fair Housing Act. ■