



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 citizens of the State of Texas may pursue and enjoy the benefits of employment and housing that are free from discrimination.

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Texas Celebrates Two Civil Rights Anniversaries

50th Anniversary of Title VII and 25th Anniversary of Texas Fair Housing Act

50th Anniversary of Title VII

"We must not approach the observance and enforcement of this law in a vengeful spirit. Its purpose is not to punish. Its purpose is not to divide, but to end divisions—divisions which have all lasted too long. Its purpose is national, not regional." — President Lyndon Baines Johnson upon signing the Civil Rights Act of 1964.

July 2, 2014 marks the 50th anniversary of the signing of the Civil Rights Act of 1964 into law. The Act prohibits discrimination on the basis of race, color, religion, national origin, and sex in public accommodations, employment, and federally funded programs.

This seminal piece of legislation not only changed

the history of women and minorities, but also led to later protections for persons over 40 and individuals with disabilities.

President John F. Kennedy sent the original bill to the U.S. House of Representatives in June 1963. At the time of his assassination in November 1963, a version of the bill had just passed from the House Judiciary Committee on to the House Rules Committee.

However, the active role played by President Johnson, the former Senate Majority Leader from Texas, was instrumental in getting this then-controversial legislation passed. Over several months, President Johnson methodically pushed the legislation along with these

actions and words:

- On November 27, 1963, just five days after President Kennedy's assassination, in President Johnson's address to Congress, he clearly supported the civil rights legislation: "No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest possible passage of the civil rights bill for which he fought so long," Johnson said.
- President Johnson met with the Executive Director of the National Association for the Advancement of Colored People (NAACP), Roy Wilkins, on November 29, to discuss the civil rights bill.
- On December 2, 1963, President Johnson called Katharine Graham, publisher of the Washington Post, to

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On July 2, 1964, President Lyndon B. Johnson signed the Civil Rights Act as Martin Luther King, Jr. and others look on. *Cecil Stoughton/LBJ Library photo*

enlist her editors' support in pressuring representatives to sign a discharge petition that would bring the bill out of committee and to the floor for consideration without a report from the committee.

• In his first State of the Union Address, on January 8, 1964, President Johnson stated, "Let this session of Congress be known as the session which did more for civil rights than the last hundred sessions combined."

• On January 18, 1964, President Johnson met with key civil rights leaders, including NAACP's Wilkins and Martin Luther King, Jr. to discuss strategy for the civil rights legislation.

• After watching Senate Majority Leader Hubert Humphrey's appearance on Meet the Press on March 8, 1964, President Johnson

suggested that Humphrey garner Senate Minority Leader Everett M. Dirksen's support to get the bill passed.

• On July 2, 1964, President Johnson formally signed the Civil Rights Act of 1964 into law, using 72 ceremonial pens. Many dignitaries, including Martin Luther King Jr., Rosa Parks, and several other national civil rights figures, attended the ceremony.

Interesting Facts about Title VII's passage:

• Debate on this bill resulted in the longest U.S. Senate filibuster in American history – 57 days long.

• The Act was signed on July 2, 1964, the date of President Johnson's daughter Luci's 17th birthday, and the ninth anniversary of his 1955 heart attack.

• U.S. Rep. Howard W. Smith (D-Va.), chairman of the House Rules Committee, added the word "sex" to Title VII of the bill. Critics argued that he made the amendment as a tactic to garner opposition against the bill from male chauvinist U.S. Representatives. Rep. Smith stated that he amended the bill as support of Alice Paul and the National Women's Party.

• On June 19, 1964, the Senate passed the civil rights bill, 73-27.

• On July 2, 1964, the House voted 289-126 to accept the Senate version of the bill.

25th anniversary of Texas Fair Housing Act

On April 11, 1968, President Johnson signed the Civil Rights Act of 1968 ("Title VIII") into law, seven

days after the murder of Martin Luther King Jr. and during the King assassination riots. Title VIII, which provided for equal housing opportunities, is commonly known as the Fair Housing Act, and was meant as an expansion of the Civil Rights Act of 1964. The 1968 Act prohibited discrimination regarding the rental, sale, and financing of housing based on race, color, religion, and national origin. In 1974, gender was added, and in 1988 so were people with disabilities — as well as families with children.

Modeled after Title VIII, the Texas Fair Housing Act was passed during the 71st Texas Legislative Session on May 25, 1989, and signed into law by Governor Bill Clements on June 16,

1989. The Act provided the framework for fair housing discrimination claims in Texas and solidified the commitment of Texas to protect the public against fair housing discrimination based on race, color, national origin, sex, religion, familial status, or disability. Enforcement of the Act was placed with the Texas Commission on Human Rights (TCHR).

During the 73rd Legislative Session in 1993, the Texas Fair Housing Act was codified as Chapter 301 of the Texas Property Code.

During the 78th Texas Legislative Session in 2003, the operations of TCHR were transferred to the Texas Workforce Commission's Civil Rights Division (CRD). TCHR was retained as a governing body for CRD. Since March

2004, CRD has continued the mission of ensuring fair housing opportunities for the citizens of Texas. CRD investigates and resolves housing discrimination complaints and provides technical assistance and training to housing providers. Here are some milestones:

- 1995 — TCHR files

its first Fair Housing civil enforcement action in Court.

- 2000 — TCHR partners with Greater Houston Fair Housing Center to conduct a Fair Housing study.
- 2004 — As the functions

of TCHR are being transferred to CRD, TCHR is reconstituted to increase the number of members of TCHR to seven with the addition of one public member. The original structure of TCHR was six members appointed by the

governor with the advice and consent of the state Senate, for overlapping six-year terms, with one member representing industry, one member representing labor, and four members representing the general public.

- 2006-2007 — CRD

utilizes a HUD \$100,000 Grant for a Fair Housing Education & Outreach Initiative targeting the areas effected by hurricanes Katrina and Rita.

- 2013 — CRD embarks on Rapid Process Improvement Initiative, and receives a \$500,000 HUD Grant for an Outreach Campaign in the “oil boom” areas and an Enforcement Initiative. ■

Fair Housing Mediation Launched By Civil Rights Division

For many years the Texas Workforce Commission's Civil Rights Division (CRD) has offered a very successful early mediation program to parties involved in employment discrimination cases.

Beginning July 1, 2014, complainants and respondents involved in fair housing complaints will also have an opportunity to participate in the mediation process. Mediation is an alternative approach to investigation/litigation for resolving disputes.

For those cases in which complainants and respondents agree to participate, a trained fair housing mediator will assist the parties in negotiating a resolution of the complaint. The fair housing mediator

will not decide who is right or wrong and has no authority to impose a settlement on the parties. Instead, the mediator helps the parties jointly explore different options leading to a resolution of their differences.

Mediation has a number of advantages over traditional investigation and litigation. Mediation is informal. It is less expensive and less time consuming than investigation/litigation; in fact, for parties with a CRD fair housing complaint, it is free. Mediation cost savings will not only directly benefit the parties, but savings will also accrue to the State of Texas, due to a reduced expenditure of CRD staff time and resources for conducting investigations.

Mediation is confidential.

Communication between the parties during mediation do not become public record absent all parties' consent. This encourages candor and flexibility on the part of the persons involved. Even if a case does not settle, mediation often improves relationships between the parties and narrows the issues that must be decided during an investigation or later at trial.

The mediator serves as a guide, establishing a procedure in which the issues are discussed, options for resolving the dispute are explored, and mutually acceptable solutions are considered. Although the mediator will control the process, it is the parties themselves who determine what approach works best

for them. By investing themselves in the process, the parties have an excellent chance of reaching a settlement that is acceptable to all sides.

Robert Sumners will be at the helm of the new fair housing mediation program. Sumners has been a fair housing investigator with CRD for almost three years. He is a licensed attorney with a law degree from the University of Texas School of Law. In addition, Sumners is also certified as a mediator. An invitation to mediate and information about the program will be sent to parties soon after a complaint is filed. If you have questions, please contact Sumners at robert.sumners@twc.state.tx.us. ■

Recent Fair Housing Case Law Summaries

Greater New Orleans Fair Housing Action Center, Inc. (GNOFHAC) v. Dopp

2014 U.S. Dist. LEXIS 56532 (E. Dist. La. April 23, 2014)

GNOFHAC, a fair housing advocacy organization, filed a complaint with the U.S. Department of Housing and Urban Development (HUD), after conducting an investigation of a rental property offered by the two married defendants, and concluded that as a result of its testing unlawful discrimination was occurring. HUD referred the matter to the Louisiana Department of Justice, which issued a reasonable cause determination. GNOFHAC then filed suit.

Defendants filed a counterclaim for intentional infliction of emotional distress, negligent infliction of emotional distress and negligence. Defendants asserted that GNOFHAC demanded a sum at mediation that defendants clearly could not pay, and despite actual knowledge of the emotional toll on defendants, persisted in unreasonable demands. Defendants contended GNOFHAC was informed that the husband-defendant was emotionally unstable, that he had threatened suicide over the allegations, that he was unemployed, that his spouse was raising three children on a low hourly wage part-time job, and that these allegations were straining their marriage. Furthermore Defendants claimed that GNOFHAC hired several lawyers to continue to make demands and gather information

from defendants regarding their ability to pay a settlement, which constituted an attempt to extort funds from the defendants.

The District Court dismissed the counterclaim. The Court stated that some of the pre-litigation conduct alleged by defendants commonly occurs in connection with a lawsuit. The fact that the advocacy organization had made settlement demands, hired different attorneys and requested voluntary disclosure of financial information could not be regarded as atrocious and utterly intolerable behavior, the Court opined. Furthermore, the Court concluded that the claim of extortion was not supportable, since there were no facts of “abuse by the actor of a position, or a relation with the other, which gives him actual or apparent authority over the other, or power to affect his interests.”

Inclusive Communities Project, Inc.(ICP) v. Tex. Dep’t of Housing & Community Affairs (TDHCA)

2014 U.S. App. LEXIS 5424 (5th Cir. March 24, 2014)

ICP filed a lawsuit against TDHCA claiming that the agency’s distribution of low-income housing tax credits had concentrated such developments in minority neighborhoods. The District Court ruled that there was no evidence of intentional discrimination, but found in favor of ICP on its disparate impact

claim. The District Court recognized the absence of controlling law as to what legal standards apply to a disparate impact housing claim. The Fifth Circuit noted most circuits agree that once a plaintiff establishes a prima facie case, the burden shifts to the defendant to show that the challenged practice serves a legitimate interest, but then the circuits diverge on whether the defendant or plaintiff bears the burden of proving that there are no less discriminatory alternatives to a practice that results in a disparate impact. The District Court had applied the burden to TDHCA to prove that there were no less discriminatory alternatives.

The Fifth Circuit stated that after the District Court’s decision, HUD issued regulations regarding disparate impact claims under the Fair Housing Act (FHA), and that as to the third step, HUD placed the burden on the charging party or plaintiff to show that “the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.” Consequently, the Fifth Circuit adopted HUD’s burden-shifting approach and sent the case back to the District Court to apply that standard.

Note: A petition for certiorari was filed on May 13, 2014 by the State with the U.S. Supreme Court. ■

Recent State Employment Case Summaries

Hague v. University of Texas Health Science Center (UTHSC)

2014 U.S. App. LEXIS 5744 (5th Cir. March 28, 2014)(Unpublished)

Monica Hague was a registered nurse at UTHSC who made a complaint to the hospital administration that her colleague, Dr. Manifold, sexually harassed her by reading an explicit magazine article aloud during a department meeting and that he gave a co-worker a sexually explicit doll. Later, Hague filed a second complaint that Dr. Villers, the head of her department, treated employees differently and fostered an uninviting work environment.

The Court ruled that UTHSC was not vicariously liable because Dr. Manifold was not her supervisor and did not have the power to take a tangible employment action against her. The Court also stated that the facts did not constitute quid pro quo sexual harassment (“something for something”) because the allegations did not involve a grant or denial of advancement conditioned on acquiescence to a sexual advance, requests for sexual favors or other verbal or physical conduct of a sexual nature. Furthermore, the Court held that Hague’s allegations did not meet the test for co-worker hostile work

environment on the element of whether the harassment affected a term, condition or privilege of employment, since the two incidents, though wholly inappropriate, were not sufficiently pervasive hostility toward her as a matter of law. The Court also analyzed issue of pretext involving the reason for termination of her contract. The Court focused on the fact that UTHSC did not renew the contract of two other female employees who had supported the allegations of Hague’s complaint during the investigation and found that this evidence could support pretext.

Cardiel v. Apache Corp.

2014 U.S. App. LEXIS 4434 (5th Cir. March 10, 2014)(Unpublished)

Cardiel is a Hispanic male who sued for race, age and disability discrimination after being terminated for failing a random drug test. He tested positive for propoxyphene, a prescription narcotic. Cardiel admitted he took the drug and that he did not have a prescription for it. Cardiel alleged that he was treated less favorably than three other employees outside of his protected classes. The Fifth Circuit Court of Appeals has held that employees are generally not similarly situated if they have different supervisors, different work responsibilities, different divisions of a company in which they work, dissimilar violations, or adverse employment actions that were too remote in time from that taken against the plaintiff. The Court stated that there must be nearly identical circumstances for nearly identical conduct. The Fifth Circuit held that none of Cardiel's comparators were similarly situated.

The first comparator was involved in an incident that was ten to eleven years before Cardiel's. The subject drug policy under which Cardiel was terminated was not even promulgated until at least nine years after the alleged comparator's incident. The comparator confessed to management that he had consumed alcohol on the job and drove a company vehicle, but Cardiel was caught with a random drug screen.

The second comparator was in an accident in a company vehicle where prescription pill bottles were found, but there was no evidence that the comparator did not have a prescription. In fact, the company put on evidence that the comparator passed a drug test that day. The Court pointed out that the comparator did not violate the drug policy.

The third comparator had an arrest for driving while intoxicated (DWI). When the company learned of the arrest, it gave the comparator the option of resigning or being terminated, and he chose resignation. Cardiel urged that this comparator had previously been involved in an accident on company property while driving a company vehicle, but that he probably was not required to submit to a drug test. The Court stated that the DWI arrest did not actually violate company policy, as contrasted with Cardiel, who failed a drug test.

City of Austin v. Chandler (UPDATE)

2014 Tex. App. LEXIS 4235; 428 S.W.3d 398 (April 18, 2014)

This case was previously reported in the Civil Rights Reporter, Issue 03, April 2014. A three-judge panel of the Third Court of Appeals of Texas rendered the initial decision, and then the case was reconsidered en banc (by the whole court). The full Court withdrew the prior opinion and substituted a new opinion with revisions to the some of the reasoning; however, the rulings on the appellate issues remained the same.

The Court held: the employees' letter complaints sufficiently alleged a disparate impact claim, so that they exhausted their administrative remedies for those claims; there was sufficient statistical evidence for a jury to conclude that a consolidation agreement caused the disparate impact alleged; given that the jury returned a verdict in favor of the employees, it could be assumed that the jury believed the testimony of the employees' expert—rather than the employer's expert—who stated that stripping public safety officers of their years of service effectively resulted in younger officers receiving raises three times higher than those of older officers.

Reed v. Cook Children's Medical Center, Inc. (CCMC)

2014 Tex. App. LEXIS 5760 (Tex. App. – Fort Worth, 2nd Dist. May 29, 2014)

Reed, an African-American female, worked at CCMC as a lead tech in the Sterile Processing Department. She sued CCMC for racial discrimination and retaliation.

Reed made an internal complaint of discrimination and the Employee Relations (ER) Manager took notes during the investigation interviews, which included statements indicating racial issues in the department. The Court, however, said that the statements were double hearsay and no exceptions were present. The subject employees' statements constituted hearsay, and the notes themselves were hearsay.

Reed relied upon a refusal of certain training and a lack of a special assignment to support her claim of discrimination. The Court stated that ultimate employment decisions which are actionable include decisions to hire, discharge, promote, compensate, or grant leave, but not such events as disciplinary filings, supervisor's reprimands, or even poor performance reviews. Furthermore, Title VII and Chapter 21 of the Texas Labor Code were designed to address ultimate employment decisions, not every action that occurs in the workplace that makes an employee unhappy, said the Court.

On Reed's retaliation claim, she argued that the close timing of her complaint and a demotion was evidence of pretext for CCMC's reason that she had engaged in disruptive behavior. The Court stated that even though close timing may provide a causal connection for a prima facie case, Reed had already established a prima facie case. The Court concluded that temporal proximity alone is insufficient to establish an issue of fact as to pretext. ■

TCHR Commissioner Veronica Vargas Stidvent Joins WGU Texas as Chancellor

Texas Commission on Human Rights Commissioner Veronica "Ronnye" Vargas Stidvent has been appointed as the new Chancellor of the Texas branch of Western Governors University (WGU), an online university



Stidvent

offering bachelor's and master's degrees to working adults. A native Texan and graduate of The University of Texas at Austin, Stidvent joins WGU Texas with extensive experience in education, job training, and policy development, both at the state and national levels.

A prominent figure in Texas higher education, Stidvent most recently served

as President of CEA Consulting, LLC, and as a lecturer at The University of Texas at Austin McCombs School of Business.

"We are thrilled to have Ronnye join us as Chancellor," said WGU President Dr. Robert Mendenhall. "Her impressive background and record of success in higher education and government will help us sustain the growth and success of WGU Texas." ■