

BRIAN SANDOVAL
Governor

LARRY J. MOSLEY
Director

SHELLEY CHINCHILLA
Administrator



COMMISSIONERS
Patricia Cafferata
Swadeep Nigam
Lee Plotkin
Tiffany Young
Scott Youngs

Minutes

Of the Nevada Equal Rights Commissioners'

Meeting on April 20, 2011

I. Call to Order

Patricia Cafferata, Chair, called the meeting to order at 2:30 p.m.

II. Roll Call and Confirmation of Quorum

Norma Delaney, Administrative Assistant III, called roll and confirmed that a quorum was present.

Members present: Patricia Cafferata, Chair; Scott Young; Swadeep Nigam; Lee Plotkin.

Staff present: Shelley Chinchilla, Administrator, Nevada Equal Rights Commission (NERC); RoseMarie Reynolds, Deputy Attorney General (DAG); Dennis Perea, Deputy Director, Dept of Employment, Training & Rehabilitation (DETR); Michael J. Baltz, Chief Compliance Investigator, NERC; Maia Finholm, Compliance Investigator I, NERC; Andre Franklin, Compliance Investigator I, NERC; Andrea Mass, Compliance Investigator I, NERC; Jesse Mosley, Compliance Investigator II, NERC; Kahaterina Mallory, Administrative Assistant I, NERC; and Norma Delaney, Administrative Assistant III, NERC.

Public: Robin Hall-Walker; Dane Claussen, American Civil Liberties Union (ACLU)

III. Verification of Posting

Norma Delaney verified that the agenda had been posted and that certificates of posting are on file.

IV. Introduction of Patricia Cafferata, Chair

Ms. Cafferata advised that she was appointed to the Commission by Governor Jim Gibbons in June 2010; that Governor Brian Sandoval

appointed her to the Chair position earlier in the year (2011- added for clarification), and that this is her first meeting. She advised that she has been involved in politics in Nevada; that she had been elected to the NV Assembly and served in 1981 on Judiciary, Taxation, Labor & Management Committees; she was elected to State Treasurer in 1982, and that she was the first woman elected to a Constitutional office in the State of Nevada and served four years; that she ran against Richard Bryan for Governor and had a wonderful time doing so, but that she lost to a very popular incumbent. Ms. Cafferata stated that may not have been her smartest political move, but it gave her the opportunity to go to law school; after law school she was the District Attorney for Lincoln County, which is Pioche, Nevada; and Lander County, which is Battle Mountain and Austin, Nevada; Esmeralda County, which is Goldfield, Nevada; that since that time, she has practices law and is a part-time Hearings Officer for State Personnel regarding disciplinary matters.

V. Introduction of Swadeep Nigam, NERC Commissioner

Mr. Nigam advised that Governor Sandoval appointed him to the Commission on March 16, 2011, and that this is his first meeting also; that he has been a resident of Las Vegas for 25 years; works for Las Vegas Valley Water District; that he manages his family investments as a CFO and managing member, and; that he has been involved with the community for a long period of time.

VI. Introduction of Shelley Chinchilla, NERC Administrator

Ms. Chinchilla advised that while she is not new to NERC, she is new as Administrator; that she has been with NERC for four years, but has been a state employee for 5 years. She advised that she started with NERC as an investigator and within her first year was handling all the priority investigations, cases classified as "A" cases; that she is trained in mediation with Michael Baltz, and facilitates mediations and conciliations; that in April 2010, she was promoted to Chief Investigator, and in November 2010 was appointed as Administrator.

Ms. Chinchilla advised that she moved to Las Vegas with her husband eight years ago; has a Bachelor's degree in Communication and a Minor in Journalism from Park University which is located in Kansas City, and graduated magna cum laude; that she was in the U.S. Peace Corp and had lived in Paraguay, South America; stated that she is also bi-lingual in Spanish.

VII. *Approval of the Minutes of the March 24, 2010 Meeting of the Commission

Ms. Cafferata, in addressing RoseMarie Reynolds, Deputy Attorney General (DAG), advised that Mr. Plotkin (Commissioner) was the only current member present at the March 24, 2010 meeting, and asked if the members present can vote to approve the minutes if Mr. Plotkin indicates the minutes are accurate.

Ms. Reynolds advised that the current members can vote to approve the minutes. She advised that the Commission is in a unique situation, that of those members in attendance at the March 24, 2010 meeting, only 4 of the 5 members were present and that 2 of the members are no longer with the Commission; that if the current members did not vote, there would never be a quorum to approve the minutes.

Ms. Cafferata asked Mr. Plotkin if he had any comments on the meeting, to which Mr. Plotkin responded that the minutes are an accurate accounting/recording of the previous minutes. Mr. Plotkin made a motion to approve the minutes; Scott Youngs, Commissioner, seconded the motion; Ms. Cafferata advised the motion carried.

VIII. Administrator's Report

Ms. Chinchilla advised that as many of those present at the meeting were new, she would provide an explanation of the documents.

a. Budget Update State Fiscal Year (SFY) 2010-11

In referencing Tab 3, Ms. Chinchilla advised that **column 1, Legislative Approved Budget**, shows authority but not necessarily cash flow; **column 2, Work Program Adjustments**, are changes to the approved budget, either +/- and advised that this column also represents the 10% cut that NERC received out of the special session in 2010, a 10% cut in revenues/expenditures. She added that under **Revenues**, there are 5 categories, specifically **3436 HUD Revenue Contract**, that in the last biennium, NERC had a bill before the legislature which would allow NERC to take housing discrimination cases and to make state law equivalent to federal law; bill AB559 did not pass, therefore the money that was approved was taken back – under **2511 Balance Forward Prior Year**, that money was taken out because AB559 did not pass in the last legislative session.

In regard to **column 3, Adjusted Budget Authority**, this is what is left over after subtracting column 2 from column 1; **column 4, Year to Date Amount**, is what NERC had received/spent so far for SFY 2011. Ms. Chinchilla pointed out under miscellaneous revenue, NERC received \$15, 578.15, of this amount, NERC received a gift fund donation in the amount of \$15,000; that the money was part of a settlement agreement that the EEOC (Equal Employment Opportunity Commission) procured, which NERC was not a party to, and the money was earmarked specifically for expenses associated with outreach training for community groups and businesses. She added that the \$800 under **column 1, Legislative Approved Budget**, is what NERC receives in a year, which is costs associated in regards to copying files under subpoena. She added that the \$15,000 will be moved to a special account, currently being set up for the gift fund, so there is no chance of that that money co-mingling with general funds, and should be done within the next month.

Ms. Chinchilla continued by advising that **column 6, Balance Available**, is what NERC has spent so far in SFY 2011; **column 7, Projected Balance**, is projections for the rest of SFY 2011, which includes estimates in some areas and set obligations on other bills; under **Revenues, 3435 Federal EEOC Contract, column 4**, this is the amount NERC has already drawn, \$165,000, for FFY10 contract which is completed; under **column 7**, same **Revenue 3435** line, date report printed, February 28, 2011, NERC was expected to draw another \$175,900 to make budget; that as of April 18, 2011, the amount in **column 7** was updated to \$174,500.

Ms. Chinchilla stated that numbers were run because the projected contract that NERC is using the dollars from did not come to fruition due to losing staff members in FFY10; that NERC actually closed 599 cases for that contract year and received credit for 37 intakes - NERC gets paid \$550 per case closure, for a total of \$329,450, and \$50 per intake credit for an additional \$1,850 – that for FFY10, NERC earned \$331,300. She added that if you take what NERC has already drawn (\$165,000) and subtract it from what NERC actually earned in FFY10 contact (\$331,300), the amount remaining is what NERC can conceivably draw down/will draw down either in April/May 2011, is \$166,300 – NERC is approximately \$8,200 short making budget in regards to pulling down federal funds.

Ms. Chinchilla advised that there are salary savings due to the vacancies and money can be moved so that NERC will not be in the red, but that any money used this year will not be available next year; that it will be a domino effect, but that she is working closely with the budget office and NERC is trying to close as many cases as possible this year without sacrificing quality.

Ms. Chinchilla added that the 2 draws will be the only draws that NERC makes in the SFY and will zero out NERC's contract for FFY10 with EEOC.

Ms. Chinchilla advised that **column 8, Projected Balance**, is basically NERC's savings/loss based on NERC's authority plus projections for the rest of the year; **column 9, Actual & Projected**, is what NERC spent and projected to spend the rest of the year.

Ms. Chinchilla provided an explanation under the **Expenditures** column, Personnel Services – stated that the report shows that NERC is budgeted for 27 positions and 9 Board members; stating the report is misleading as NERC is budgeted for 18 full time positions and 5 Board members, as per NRS, and that she has been working with the budget office to correct the report as it has been showing NERC Board members as being budgeted for 9 positions for awhile.

Ms. Chinchilla added that most of the **Expenditures** are self-explanatory, but explained that:

Category 04, Operating, covers office supplies, rent, building expenses, mail services, accommodation costs

Category 81, Department Cost Allocation, is the amount NERC pays as an agency for DETR services, which may include Human Resources, computers, and that every division pays a proportionate amount;

Category 86, Reserve, is legislatively directed and NERC has nothing in reserves;

Category 87, Purchasing Assessment, similar to Category 81, assessment NERC pays State Purchasing for their services;

Category 88, Statewide Cost Allocation Plan, includes NEATS system which covers training/timekeeping/applications;

Category 93, Reserve for Reversion, the \$16,480 is a transfer of general fund allocation and is left over from the 10% cut from the Special Session in 2010 and is zeroed out.

Ms. Chinchilla advised that there were a couple of enhancements units that were cut from the budget, but that an enhancement unit that was requested was for additional monies for travel/training and is part of the Governor's budget; that the Governor's budget is on the website, and provided an explanation of some of the NERC enhancement issues:

E325 – NERC requested additional monies for travel/training due to the number of new employees NERC has, in addition to the annual EEOC/FEPA Training Conference that the federal EEOC (San Francisco/Los Angeles offices) recommends that NERC attend; that NERC prefers to send both the Administrator/Chief Compliance Investigator to the training conference;

E600 – the elimination of the Deputy Administrator position, effective July 1, 2011, if approved;

E601 – the elimination of a vacant Compliance Investigator position, effective July 1, 2011, if approved;

E600/601 are reductions that were approved out of the 2010 Special Session;

E670 – the 5% salary reduction across the board for state employees;

E671 – the salary freeze across the board for all state employees;

E690 – the general fund reduction for NERC as recommended by the Governor this year and currently being debated; NERC's portion ended up to be an approximate 14% cut from what the Governor recommended under E690; that while NERC gave up replacements for computers, Mr. Perea, DETR Deputy Director, helped NERC come up with some solutions.

E690 requests the elimination of 2 Compliance Investigator positions, one of which was filled in November 2010, however, that employee left NERC's employment – NERC had been counting on this position to meet federal contract and if the budget goes through, this position will be eliminated

and the other position was vacant; another position that was recommended for layoff was an Administrative Assistant III position with an estimated buyout of \$18,000; last, moving the Reno NERC office to the Sparks Job Connect office.

Ms. Chinchilla asked if anyone had any questions; being none, moved onto Tab 4, Commissioners' Report, advising that she has included the balance of SFY10 and SFY11 through the end of March 2011; that the report is a "snap shot" of every month as to the types of and how many cases NERC currently has in its inventory; that NERC has approximately 850-900 cases in circulation at all times; stated that in regards to state only cases, which are cases that do not have federal jurisdiction and do not count towards the federal contract, are about 8% of NERC's caseload; that employment state only cases, with sexual orientation as a basis, is about 4.3% of NERC's caseload; and public accommodation/housing combined is about 3.7% with the majority being public accommodation cases. She added that it was noteworthy to mention the total amount of settlement benefits that NERC was able to procure in SFY10 total was \$644,818, and that in SFY 11, the amount so far is \$527,060; that being able to procure this amount with being short staffed and new employees on probation, she believes NERC is doing very well.

Ms. Chinchilla advised that under Tab 4, she had put together information regarding the types of cases NERC has had over the past four years: harassment/sexual harassment complaints are both down slightly, sex as a basis is still the number one type of complaint, but down slightly; race is the number two complaint, but down slightly; disability has a slight increase. Ms. Chinchilla stated when she attended the budget hearing, she was asked when the ADAAA (Americans' with Disabilities Act as Amended) came out in January 2009, if NERC saw more disability type of complaints, and she indicated she did not.

b. Update on Federal Fiscal Year (FFY) 2010 & 2011 Equal Employment Opportunity Commission Work Sharing Agreement

Ms. Chinchilla advised that NERC is currently in FFY11, which started on October 1, 2010 and ends on September 30, 2011; contract calls for 686 case closures at \$550 each which equals \$377,300 plus 39 intakes at \$50 each equals \$1,950 – if NERC achieves contract, NERC would earn \$379,250 – to date NERC has closed 312 cases for contract credit, that while there are additional state only closures, they do not count toward the federal contract; NERC is currently short about 60 case closures for

contract credit; advised that she will provide an explanation as to why NERC may not make contract as she addresses staffing issues.

c. Personnel Issues - Staffing

Ms. Chinchilla introduced new staff members for the Las Vegas office: Michael Baltz, Chief Compliance Investigator; Andre Franklin, Compliance Investigator I; Kahaterina Mallory, Administrative Assistant I; Andrea Mass, Compliance Investigator I; Angelica Montalvo, Compliance Investigator I; and Jesse Mosley, Compliance Investigator II, advising that his last day with NERC is April 29, 2011; Compliance Investigator I, employee resigned on April 8, 2011 – Reno office: Maia Finholm, Compliance Investigator I, and Javier Fernandez, Administrative Assistant I.

Ms. Chinchilla advised that in regards to the NERC 2010 contract, 5 out of 8 Compliance Investigators were on probation; 6 are full-time investigators for the entire state, 1 performs intake duties and 1 performs mediations; that it will be a challenge to meet contract with 2 open positions and everything possible is being done to close cases as it will help with NERC's budget for the following year. She added that the Work Performance Standards for each investigator indicate they are to close approximately 10 cases per month, 120 cases a year – that losing the 2 positions at the half-way point is approximately 120 cases NERC is short and is a lot to make up.

Dennis Perea, Deputy Director of DETR, addressed the Commissioners and stated that DETR is very fortunate and it was a priority getting Ms. Chinchilla and Mr. Baltz back to the Commission; that the challenges facing NERC at this point are well documented and he believes the right individuals are in place and thanked them both for coming back to NERC.

Ms. Chinchilla, referencing Tab 5, stated that part of NERC's mission and objectives/public policy, is to provide outreach and training to try and prevent discrimination from occurring; that the document in Tab 5 indicates the various organizations that NERC has provided training to, along with the number of individuals in attendance; that NERC has provided training to 396 individuals (when packet mailed) and that since that time there has been an additional 22 individuals, for a total of 418 people; that in comparison to the last two years, NERC has had more sessions but did not reach as many people – in 2009, there were 11

sessions; 2010 there were 16 sessions; and so far in 2011, there have been 15 sessions; that NERC will continue to provide training as requested and there are a few more sessions currently scheduled.

Lee Plotkin, Commissioner, advised that since he has been a Commissioner, he has been an advocate for more outreach and education; that years ago he first questioned the gift fund and whether NERC has the ability to accept fees from the outreach that NERC provides and asked Ms. Chinchilla if there has been any discussion/development on whether fees can be accepted for places where outreach is being provided.

Ms. Chinchilla indicated that there has not been that type of discussion; that NERC is neutral and investigates some of the same employers that training is being provided, and that it would be a fine line to accept any monies as it may give the appearance of NERC being unbiased. She stated that the \$15,000 was received and negotiated by EEOC, NERC was not involved in any negotiations, and she became aware of the money when she received a telephone call from the employer involved. She added that she believes this is the best way in regards to receiving monies for the gift fund.

RoseMarie Reynolds, Deputy Attorney General (DAG), stated she agreed with Ms. Chinchilla regarding potential conflict; that she does not know if NERC can solicit contributions from the employer. Ms. Reynolds added that a few years ago there was an employer being sued in federal court and NERC had provided outreach training to the employees – the Charging Party's attorney argues there was some ulterior motive even though the case was closed, people will make that comment/insinuation.

Scott Youngs, Commissioner, asked if there was a policy in regards to who NERC provides outreach - should there be a policy if NERC has an open case being investigated as to when NERC can provide training; stated that it may be something to look into so as not to impact NERC negatively.

Ms. Chinchilla responded that she could check to see what other states do, but her opinion is that any community group/business that requests training, NERC will provide; that some of the businesses are so large it may be impossible for NERC not to have a charge against that business when training is requested; that training is a means to prevent discrimination and in an investigation it can appear that the employer is

trying to fix the problem, they are. She added that in the training session, she is very generic regarding scenarios, no names of employers and/or individuals.

d. Legislative Update Including But Not Limited to: AB90; AB 211; SB331; SB368; AB474

Ms. Chinchilla explained the bills that are related to NERC:

AB90 – presented by Richard Segerblom, regarding adding bullying as a protected category under discrimination – basically, anyone who feels they are being bullied could file for any reason; bill also added physical characteristics which would include height/weight or physical mannerism – as the bill was so broad, NERC submitted an unsolicited fiscal note of \$850,000, that she (Ms. Chinchilla) feels the workload would double as it is so broad; AB90 has died in Committee;

AB211 – adds gender identity and expression to discrimination in employment, a new category for NERC; will increase caseload somewhat; stated she submitted a fiscal note of \$10,000, but that the bill passed Committee without her fiscal note; stated she does not believe this bill would impact NERC significantly; that NERC is already turning away these type of complaints; AB211 passed in Committee and Assembly – adding gender identity under employment could very well become law;

SB331 – adds gender identity and sex as a protected category under public accommodation; of interest to NERC, NRS 233 and 651 are not congruent – 233 says NERC can investigate and hold public hearing and make findings on public accommodation with sex as a basis, whereas 651 does not include sex as a protected category which Ms. Chinchilla advised has been an issue for quite some time; if bill passes, it will add sex under public accommodation and makes 233 and 651 congruent.

Ms. Chinchilla added that NERC receives complaints based on gender based pricing, and that there was an amendment added to this bill between the Nevada Resort Association and its sponsors and makes the exception for gender based pricing.

Ms. Chinchilla read an excerpt from the amendment to this bill: "Section 1 of this bill provides that it is not unlawful or grounds for a civil action for any place of public accommodation to offer differential pricing, discounted pricing, or special offers based on sex to promote or market the place of public accommodation." She added that this bill passed Committee with the amendment and would be very beneficial to NERC and provides clarification; that the bill has not gone further than the Committee at this point – bill and amendment are posted on legislative web site;

Mr. Plotkin, addressing Ms. Chinchilla, asked if anything is being done to advocate on behalf of SB331's passage, to which Ms. Chinchilla advised that NERC had presented the Commission as neutral and went on record to say it's good public policy; however, it was prior to the amendment which NERC was not privy to the amendment, and NERC was unable to weigh in.

Mr. Plotkin advised that in the 2009 legislation, both Mr. Perea and he attempted to impact the legislative process on a couple bills that would have been in support of the mission of NERC, and asked if there was it would be beneficial to NERC if the Commissioners (board members) did something to promote/support the bill's passage. Ms. Chinchilla advised that she has attended all meetings and was prepared to speak on SB331; stated the Chair took all the testimony for and in support of the bill and closed the hearing – he did not call for oppose or neutral.

SB368 – adds gender identity and expressions as a protected category under housing, NRS 118; the bill passed Committee and has gone no further, but it looks likely that NERC will be adding the new protected category under all of NERC's statutes; the bill includes updated in 233 to match the NRS.

Ms. Chinchilla advised that in regard to SB368, discussion was going to be heard in the same meeting as SB331 and that she was going to ask the Chair if she could give testimony for both – the hearing was closed early and they did not even get to SB368 and she was not afforded the opportunity to testify.

Mr. Plotkin stated he was glad to see Ms. Chinchilla's participation and while the legislature is still in session, he would appreciate an update on the bills and Ms. Chinchilla's level of participation, versus being advised at the quarterly meeting. Ms. Chinchilla advised she would do so.

AB478 – may be of interest to the Commissioners as AB478 creates a Sunset Subcommittee of the Legislative Commission to review boards/commissions to determine the need for termination/consolidation/modification/or continuation; this bill has passed Committee and it is possible that the Subcommittee will be created to look at all state boards/commissions to determine if they want to consolidate or do away with them – something to watch for at is may effect this Commission (board members); this bill was amended also, but the amendment was not posted and she (Ms. Chinchilla) had not read the amendment – passed Committee as amended and there has been no further action.

Ms. Chinchilla concluded her presentation to the Commission.

IX. Public Comments (Discussion only)

Robin Hall-Walker identified herself and advised that while she was introduced as a state employee, she is present at the meeting as a member of the public.

Mr. Perea, Deputy Director, DETR, stated that in the last legislative session, the Commission (board members) appointed Commissioner Plotkin as liaison to the legislature to speak on behalf of bills; that while there is a new (board) composition and there may be a new direction that the Commission (board members) want to take, he encourages the Commission to have Mr. Plotkin as a liaison to the legislature so that the legislature can hear the Commission's voice and believes it would be a good idea to maintain.

Ms. Cafferata, Chair, advised that the Commission cannot take any action on this and did not know if there would be another meeting before legislative session ended.

Ms. Reynolds, DAG, advised that at the last session, if there was a bill where Mr. Plotkin needed some direction from the Commission, a

telephone conference with 3-days notice to comply with the open meeting law was done and while the telephone conference was not a full board meeting, it provides the mechanics to act should Ms. Chinchilla need input from the board members.

Ms. Cafferata, Chair, advised that the Commission cannot take action as action item not listed on agenda.

X. Schedule Next Meeting (location/time) and Agenda Items

Mr. Plotkin stated that an agenda item he has would be the signing of subpoenas – whether it should be an agenda item or whether it is allowed based on NRS 233.150.4, as most subpoenas are generated in the south.

Ms. Reynolds, DAG, advised that typically the Chair signs subpoenas; that it may add a couple days for mailing to Reno for the Chair to sign; action item can be put on the agenda to delegate someone in Las Vegas to sign subpoenas in regards to businesses in the south; that NRS 233.150.4 allows the Commission to delegate its powers to issue subpoenas to any of its members.

Ms. Chinchilla advised that the secretary position for the Commission was voted on by the members and Mr. Plotkin was elected and was unclear if there was a time frame to be in the position, and did the members want to discuss/vote on this matter. Mr. Plotkin stated that he was elected as the secretary the one time he brought it up.

Ms. Reynolds stated there is no set term and NRS 233.050 indicates members shall elect a secretary from the membership of the Commission.

Ms. Cafferata indicated to make an agenda item – discuss policy and do election.

There was discussion regarding the scheduling of the date/time/location for the next meeting – Ms. Delaney will contact board members for availability before the start of the state fiscal year (July 1, 2011).

There was discussion regarding the agenda – preparation/review; agenda to be sent to Ms. Cafferata for approval.

XI. Adjournment

Ms. Cafferata adjourned the meeting at 3:35 p.m.

Respectfully submitted

Lee Plotkin
Commissioner/Secretary

Date

1325 Corporate Blvd., Room 115 ■ Reno, Nevada 89502 ■ Phone: 775.823.6690 ■ Fax: 775.688.1292
Grant Sawyer Building ■ 555 E. Washington Ave., Suite 4000 ■ Las Vegas, Nevada 89101
Phone: 702.486.7161 ■ Fax: 702.486.7054
www.nvdetr.org