

JIM GIBBONS  
Governor  
LARRY J. MOSLEY  
Director  
DENNIS A. PEREA  
Administrator



COMMISSIONERS  
Dennis Shipley, Chair  
Lee Plotkin  
Aileen Martin  
Nadia Jurani  
Tiffany Young

## Nevada Equal Rights Commission

### **DRAFT**

#### Minutes

#### Of the NEVADA EQUAL RIGHTS COMMISSIONERS'

MEETING on April 29, 2008

#### **I. Call to Order**

Dennis Shipley, Chair, called the meeting to order at 2:08 p.m.

#### **II. Roll Call and Confirmation of Quorum**

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

Members present: Dennis Shipley, Chair; Aileen Martin; Tiffany Young.

Members absent: Lee Plotkin and Nadia Jurani.

Staff present: Dennis Perea, Administrator, Nevada Equal Rights Commission (NERC); Maureen Cole, Deputy Administrator, NERC; Billie Bailey, Chief Compliance Investigator, NERC; Rose Marie Reynolds, Deputy Attorney General (DAG); Ardell Galbreth, Deputy Director, Department of Employment, Training and Rehabilitation (DETR); Jessie Mosley, Compliance Investigator II, NERC; Shelley Chinchilla, Compliance Investigator II, NERC; Ted Watkins, Compliance Investigator I, NERC; Lynn Duncan, Administrative Assistant I, (Reno) NERC; and Norma Delaney, Administrative Assistant III, NERC.

#### **III. Verification of Posting**

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

#### **IV. Introduction of Guests**

N/A

#### **V. Discussion/Possible Action on the Approval of the February 8, 2008 Meeting Minutes of the Nevada Equal Rights Commission**

Tiffany Young moved to approve the minutes. Aileen Martin seconded the motion and it carried unanimously.

**VI. Discussion//Possible Action Regarding NERC Agreement with the US Department of Housing and Urban Development (HUD) to Process Housing Discrimination Complaints**

Maureen Cole, Deputy Administrator, NERC, advised that through discussion with Dennis Perea, Administrator, NERC, and Larry Mosley, Director, DETR, NERC would explore the possibility of trying to work out arrangements with the federal HUD to do housing discrimination investigations in Nevada. She stated that when HUD was contacted in San Francisco, they were very receptive and supportive; stated that there was money available whenever NERC was deemed substantially equivalent; and that NERC can begin the certification process at that point. Ms. Cole stated that the response from the San Francisco office of HUD was very positive.

She stated that she and Mr. Perea had a telephone conference with the Director of the Fair Housing Agency Program (FHAP) in Washington, D.C., and he asked if he could review NERC's proposed legislative changes; that the information has been forwarded to him for a legal analysis and that it may take approximately six weeks to get a response. Ms. Cole advised that the Commissioners will be kept apprised of the status for NERC to become substantially equivalent.

Ms. Cole also advised that NERC is using legislation which was introduced in the 2005 legislative session as a basis for the proposed changes; that there were some comments/suggestions from the legal division of HUD that NERC was able to incorporate, and that NERC should be very close to the mark.

Commissioner Young asked Ms. Cole what the benefit would be for NERC to take housing complaints. Ms. Cole responded that to the people of the state, property owners/developers, that having investigations done locally is a big benefit as there is an actual person to speak/deal with. She added that HUD is very responsive; however, they are located in San Francisco and the travel back and forth is not something HUD can do at will. She added that she believes NERC could provide service at least as good, if not better, to people who have housing discrimination complaints.

Ms. Cole added that if NERC were substantially equivalent and were able to investigate housing complaints, it would generate revenue for the agency, advising that this would be important right now when NERC is looking at budget cuts and reductions in funding. She added that the remedies that under

state law are not sufficient to address housing discrimination and most people opt to go into the federal system or take their case privately into court, where there are better remedies available.

Ms. Young asked if NERC has the staff to take on more cases, to which Ms. Cole advised that HUD is handling about 100 cases in Nevada and that with the budgeted staff NERC currently has, believes that NERC can absorb those 100 cases.

Dennis Perea, Administrator, NERC, advised that when housing was first addressed in 2005, there was an addition to staff of one investigative position. He stated that in the first year, there is approximately \$125,000 provided to the state to get started and that would cover an additional staff member, but that if NERC could absorb the additional caseload, it, that would be the best scenario; however, NERC would still have the ability to add staff under their funding. He stated that initially HUD advised they have approximately 100 housing complaints from Nevada, but during the telephone conference after looking at statistics, it was between 80 – 85 cases.

Ms. Cole added that HUD pays \$2,400 for a case that is fully investigated and brought to resolution within the 100 day time frame; that there is a sliding scale should the investigation take longer without their approval, the less you would get paid.

Mr. Shipley, Chair, asked what EEOC pays for a case brought to resolution, to which Ms. Cole advised \$550.00.

Mr. Perea stated that there are a couple of issues that arose and are asking for clarification; one is that HUD has a 20% requirement – that 20% of the money NERC receives from the state's general fund would have to be spent on housing, which he stated is not reasonable, with approximately 800 employment and 80 housing cases, so NERC is asking for some clarity from Washington, D.C.

Mr. Perea stated that basically what it comes down to is if the Director is willing to go forward with the current fiscal situation NERC is going through, can we ensure that it would not cost the state "another dime" so that it does not die at the legislature, if it gets that far.

Mr. Perea stated that another issue that came up in 2005 was litigation costs, paying out litigation fees if NERC lost a case. He stated that California built it into their statute that the state would not receive any/give any; Arizona had one instance since 1994 where they had to pay court fees (one time in 13 years) – that this was the big concern in 2005, exposing the state to litigation fees and whether the Attorney General's office could handle it. He added that the statistics show that 4% per year actually make it to litigation, which would be an additional 4 cases the Attorney General's office would have to agree to absorb.

Commissioner Martin asked what the actual breakdown of the fees would be if a case was not closed within the 100 day time frame.

Ms. Cole stated that there is a sliding scale ranging from \$2,400 if closed within the 100 days, and going from \$1,800 to approximately \$1,200 depending on how long/complexity of case/extenuating circumstances; stated that you can get pre-approval from HUD to extend the investigative time period if need be.

Ms. Martin asked what would be deemed "complex." Ms. Cole responded that design/construction cases are deemed to be complex investigations; if you have multiple charging parties and one Respondent; if you have a recalcitrant Respondent where you are trying to subpoena information – stated that HUD is fairly flexible on these types of cases. Ms. Cole added that the first year is a capacity building year where NERC would work very closely with representatives of HUD to hone investigative skills, to learn policies/procedures, adding that HUD would basically walk NERC through the first year. She stated that the second/third year, depending on HUD's evaluation of the agency's progress toward being sufficiently trained and the agency's capacity to handle the cases, HUD will adjust the funding to more of a reimbursement.

Ms. Martin asked Ms. Cole if it is possible to get the definition of what HUD may consider "difficult" cases, in addition to the sliding fee scale. Ms. Cole responded that the information is in the draft agreement that HUD has with the Fair Housing agencies, which is similar to the Work Share Agreement NERC has with HUD, and that she will have the information forwarded to the Commissioners.

Mr. Shipley asked if there is sufficient equivalency between federal/state laws that may facilitate a program like this, to which Ms. Cole stated that currently

there is not as NERC's statute is not anywhere near substantially equivalent. She stated that NERC is looking at significant legislative changes before

certification, and that in taking a lesson from the attempt in 2005, NERC wants to be sure to address the concerns as they are legitimate and will probably brought up again: does the Attorney General's office have the capacity to litigate any of the cases that may come their way; does the agency have the capacity to have administrative hearings if that is the party's choice.

Ms. Martin asked that if housing goes forward, would this also be subject to an in-house audit, to which Ms. Cole stated that HUD does have the ability and obligation to review cases processing and money handling within the FHAP agency.

Mr. Shipley asked if this matter requires approval from the Commissioners for Ms. Cole to proceed in obtaining more information and the viability of NERC conducting housing investigations, to which Ms. Cole indicated that the issues were brought up before the Commissioners to see if they are interested in having this matter pursued or is this something they are opposed to.

Ms. Martin stated that from what she has heard, she could not support this as there are too many questions that are not answered; that since this issue was first pursued in 2005, and she recognizes this was put on the back burner and now resurfacing, but without further information/answers, she could not support moving forward. Ms. Martin also requested the Commissioners be provided a breakdown of costs, because if you are talking about engaging the Attorney General's office as well as the Director office, the cost analysis needs to be reviewed to see if it will balance to the possible \$2,400 or less and how are we (NERC/Commissioners') putting ourselves out again and possibly jeopardizing the monies because we are getting ahead of things – stated she does not want to experience what NERC is already experiencing with the EEOC.

Mr. Perea advised that NERC is in the process of gathering more information, in addition to the information Ms. Martin is requesting, especially to go before the legislature; stated that the Governor's office has been advised that NERC is interested in doing this, but have not made any commitments and there would be no commitments made before another Commissioners' meeting.

Mr. Shipley stated that the Commissioners' will need more information before making a recommendation.

**VII. Discussion/Possible Action Regarding Bill Draft Requests (BDR) to Make Nevada Housing Discrimination Law Substantially Equivalent to the Federal Fair Housing Act and to Align Current State Anti--Discrimination Statutes.**

Mr. Perea advised that this is virtually the same discussion as above. However, there are a few problems with statutes contradicting each other, and this is part of the bill draft request NERC is trying to straighten out.

Mr. Shipley stated that this should be an agenda item for the next meeting.

**VIII. Administrator's Report**

**A. Equal Employment Opportunity Commission Work Sharing Agreement for Federal Fiscal Year 2008**

Mr. Perea advised that NERC received the EEOC contract the beginning of April 2008, and based on the information he received at the end of February when both he and Ms. Cole went to Los Angeles, that FEPA funding had been cut at the national level, in addition to cuts at the state level, NERC's contract was not reduced. He stated the contract went from 864 cases to 904 cases. He advised that with NERC starting the year in the hole, it was a surprise as now the target is higher than before; added that with the number of closures NERC is producing and the relationship NERC has with EEOC at this time, NERC should be able to meet the 904 closures.

**B. NERC Case Statistics**

Mr. Perea advised that while NERC went backwards in regards to case closures in March, there was discussion made to change the way the investigators' Work Performance Standards were evaluated; cases were not being written up to go to the DAG because investigators were being penalized against their standards until that case was actually closed and credit given. He stated that in March, probable cause cases were being written up and forwarded to the DAG for legal analysis. Mr. Perea stated that as of April 29, NERC has 85 closures so far, so April will be a good month.

Mr. Perea advised that in NERC's pending inventory continues to increase – as the economy downtrends, business picks up. He stated that under the current Work Performance Standards for investigators, investigative staff should handle between 90-100 cases, and there are more than 100 cases coming through the door each month.

**C. Budget – State Fiscal Year 2008 to date**

Mr. Perea advised that on April 28, 2008, there was a monthly meeting with Financial Management in Carson City; stated that it is frustrating to try and figure

out how much NERC has in budget when being told NERC has none – it is based off of revenues; expenditures are projecting that NERC will have balances in the individual expense lines, but Financial Management is concerned that NERC will not have the revenues to back it up. Mr. Perea advised that NERC is not spending anything at this point; some decisions have been made to use comp time instead of overtime for pay, deferring costs into the next fiscal year. He stated that in regards to public outreach initiatives, it was decided to go back after June 30, 2008 to move forward in this area.

Mr. Perea advised that comments are coming out of Carson City that the budget cuts are not done, so NERC is looking at ideas/plans to see if NERC has to cut again - how it will be done. He stated that he has submitted to the Director a few ideas, but they are way premature and do affect people.

#### **D. Performance Indicators**

Mr. Perea stated that NERC is in the midst of an LCB audit and it was discovered that the Performance Indicators (PI) were being calculated incorrectly. He stated that an updated PI sheet was distributed at the meeting and that most of the changes are in number 3, Percent of intake inquiries received via the internet – it was being calculated incorrectly as the denominator was not the total number of intakes coming through the door, but is corrected on this sheet.

In regards to Performance Indicators 1 and 1.1, Mr. Perea advised that in a previous meeting he indicated that how these PIs were calculated would be different, as in the past NERC would take out the time a charge was out of the Commission's control. He stated that he went through this PI and is calculating the actual time it takes to get a charge formalized, including the time out of NERC's control – stated that while NERC has the ability to influence the time out of NERC's control, NERC does not have the control over it.

Mr. Perea advised that in March statistics for PI 1 and 1.1, there was one instance where there were 14 related Charging Parties who filed 42 charges; there was an attorney involved and it threw off the entire PI for that month – this is an instance where NERC did not have complete control, but probably could have been handled the situation better. He added that the numbers were put in for April, but only through April 19 to ensure that the NERC was going the right direction.

Mr. Perea stated that intake appointments are currently being scheduled for about 24 days out and that NERC is slowly getting back in line with the PI – he added that NERC is doing it without using additional investigative resources as the investigators need to be focusing on cases/closing cases, and that this is only

place NERC is using comp time so that the case age can be kept down as much as possible, without building inventory of cases in the wrong area. He added that while PI number 1 is a good measuring tool management decisions should not be based on an arbitrary number of 22 days, in his opinion.

Mr. Perea stated in regards to PI 5, he is trying to limit the training that does not influence quality of the investigation or the timeliness; stated that some training is mandatory, but this is where he is not sure NERC is trying to meet the indicator, which may be tough to explain to the legislators, but with NERC behind in closures, the investigative staff need to be working on cases.

**IX. X. Discussion/Possible Action Regarding New NERC Public Accommodations Brochure and Discussion/Possible Action Regarding Updated NERC Poster**

Mr. Perea advised that the Public Accommodation Brochure is a draft of what has been developed and is asking for opinions from the Commissioners.

Mr. Shipley advised Ms. Martin that Lee Plotkin, Commissioner, is absent as he was involved in an accident on his way to the meeting, but that he spoke with Norma Delaney, Administrative Assistant III, regarding his comments on the brochure/poster.

Ms. Delaney advised that Mr. Plotkin stated that he is again bringing up what he addressed at the last meeting – that he firmly believes that how the brochure/poster is printed now, it shows DETR as more prominent and he believes NERC should be more prominent; the wording with the logo should be NERC in the larger type, and “a division of DETR” in smaller type; stated that any feature/logo should be the entity (agency); in regards to the 800 number or the 711 number, stated that if these are numbers for the hearing impaired and/or video relay, it should reflect what each number is, as he found it confusing how it is written.

Mr. Shipley commented that when he first looked at the brochure/poster, his first reaction was that DETR was more prominent than NERC; the fact that NERC is a subsidy of DETR is irrelevant; and that he agrees with Mr. Plotkin; he also commented on the quality of the paper used for the poster/pamphlet.

Ms. Young asked about the cost and if was the same as the prior brochures. Ms. Cole responded that she has a cost estimate from the printer used last time; however, NERC will wait until after July 1 to make a decision to do comparison costs. She advised that she was also getting costs to have some of the existing

pamphlets/poster into Spanish, and has been provided cost estimates for the translation services – to translate the poster would be approximately \$317.00; Public Accommodation pamphlet would also be approximately \$317.00; and the cost to translate the various types of workplace discrimination into Spanish would be approximately \$668.00. Ms. Cole advised that the paper will be similar to that of the prior pamphlets, heavier/high gloss – copies handed to the Commissioners' today were xerox copies.

Mr. Perea advised that Financial Management stated there is a Nevada Administrative Code (NAC) that requires state agencies to go through the state printing office, unless there is a sole source contract; stated he is unclear as to why the previous printing was done outside, but he will be checking to see if using the state printer will be cheaper.

Mr. Shipley asked Mr. Perea if there is some authority that DETR should be more prominent than NERC. Mr. Perea stated that he agrees that NERC should be more prominent and that he needs to speak with the Director to see how he wants this prioritized, but added that the brochure can be redrafted to have NERC more prominent and get Director approval based on input from the Commissioners.

Ms. Martin asked how much money has been spent to date on the revisions/possible revisions of the brochures, to which Ms. Cole advised that there has been no cost to date; that the departmental cost allocation NERC is charged covers these kinds of services (layout/graphics/art work) are included in our access to the Public Information Officer for the department.

Ms. Martin stated that the printing cost is part of the budget for 07/08, to which Ms. Cole indicated it was.

Ms. Martin advised that in regards to the numbers on the brochure/poster, she stated that if the 711 is a universal code for those who are hearing impaired, she did not know if there should be another line regarding this, but stated that too much time/energy has spent regarding NV, Dept of Employment, Training & Rehabilitation. She advised of an error on the back of the Public Accommodation brochure (last paragraph should be corrected to the word States).

Mr. Perea stated that he believes a revision does need to be done to explain the numbers and a revision to the font size, and a copy will be sent to the Commissions for their review prior to the next meeting.

Mr. Shipley stated that final draft will be done and sent to the Commissioners with costs for approval.

**XI. Discussion/Possible Action Regarding Future Outreach and Public Education by NERC**

Mr. Shipley advised that this item has his name on it for discussion, but that there is a memo regarding this subject from Mr. Perea.

Mr. Perea advised that NERC was awarded and received a one-time grant of \$5,800 from EEOC to do community outreach; stated this money was lump in with NERC's other revenue and NERC needs to use the \$5,800 after July 1. He advised that EEOC requested information on how NERC intended to use this money and the memo breaks down NERC's ideas in spending the \$5,800. Mr. Perea advised that a second memo was sent to Olophius Perry, District Director of EEOC, Los Angeles office, advising how NERC intended on measuring its impact, but that the costs for updating the brochures will be out of this money.

Mr. Shipley asked if NERC has made any contacts with the Department of Labor, Labor Commission, in Nevada, and offer to do training for employees and management staff. Mr. Perea advised that contact has not been made with those agencies directly, but that Ms. Cole has conducted training for a Reno employer and that there were 250 employees in eight sessions. He advised that he has been requested to provide training for a new company in Las Vegas and he is working with that company's human resources department, working with their policy/procedures and incorporating NERC training. He stated it is a fine line as NERC advises "here are your rights as an employee," but we also have to advise the employer "what the responsibility of the company is." He added that it is important to advise employees that there are avenues within their organization they can go, because there are a lot of people who are unaware of where they can go.

Mr. Shipley stated that he brought up the subject as his employer just completed a series of mandatory meetings with every management/employee staff member on the subject of harassment in the workplace; that their own training department provided the training, but if they were to have contacted NERC to indicate they would like this type of training, does NERC have someone who can provide this, as it would save the employer the effort of putting the information together and conducting the training; that he believes the training departments would be interested if NERC were to do that for the employers.

Mr. Perea stated that the information needs to put out there regarding the fact that NERC provides this type of training; however, he worries about the capacity of being over-run by it as Ms. Cole is providing the training in Northern Nevada and he will be providing it in Southern Nevada. He added that NERC does have the capacity to provide more training than what is currently being done.

**XII. Public Comments (Discussion only)**

Ardell Galbreth, Deputy Director, DETR, stated that both the Director and he appreciate the hard work that Mr. Perea and his staff have done regarding case closure “catch up mode” as the agency started the federal year in the hole; Performance Indicators have been corrected to make them more accurate; and staff have put in a lot of work which will benefit the division.

Mr. Perea stated that he needs to advise the Commission that there is a charge filed with NERC which is against NERC, and that there has been discussion on how to handle the complaint; he stated the complaint is in regards to public accommodation in which sex-gender was not treated equally under the law.

Mr. Shipley commented that this party contacted him personally and possibly another Commissioner; he tried to get the Commissioner into a discussion over the “rightness/wrongness” and that he has been on CNN, interviewed by national publications. He added that should this person contact other commissioners, they would know immediately what the problem is as he talks about how NERC does not follow the law or how come this/that and asks questions; that when he (Mr. Shipley) stated it was inappropriate to comment, it did not stop him from talking.

Rose Marie Reynolds, Deputy Attorney General (DAG), stated that if this individual contacts any Commissioner, be polite, listen, but make no commitments as there is another underlying case. She stated that it is difficult to discuss as this could eventually be brought before the Commission. Ms. Reynolds stated that she has concerns this individual is calling Commissioners and trying to talk about his underlying case; that now the Commissioners have become an objective and there will have to be some appointments made on a related but different case. She stated that if Commissioners are contacted by the press, the appropriate response would be to send them to the Public Information Officer for DETR.

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

Next meeting tentatively scheduled for Monday, July 28, 2008 in Reno, NV.  
Ms. Delaney will contact the Commissioners to confirm date/time.

**XIV. Adjournment**

Meeting adjourned at 2:40 p.m.

Respectfully Submitted,

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Lee Plotkin  
Commissioner/Secretary

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Date