

1	TABLE OF CONTENTS		
2	AGENDA ITEM NO. 1		PAGE
3	Chairman Anderson		3
4	AGENDA ITEM NO. 2		3
5	Chairman Anderson		
6	AGENDA ITEM NO. 3		5
7	Jonathan Babiak		
8	AGENDA ITEM NO. 4		16
9	Jonathan Babiak and Daryl Steglich		
10	AGENDA ITEM NO. 5		22
11	Janet Quesnel		
12	AGENDA ITEM NO. 6		32
13	Jonathan Babiak		
14	AGENDA ITEM NO. 7		25
15	Vickie Covington		
16	AGENDA ITEM NO. 8		33
17	Chairman Anderson		
18	AGENDA ITEM NO. 9		34
19	Chairman Anderson		
20	AGENDA ITEM NO. 10		38
21	Chairman Anderson		
22	AGENDA ITEM NO. 11		40
23	Chairman Anderson		
24	REPORTER'S CERTIFICATE		41
25			

P R O C E E D I N G S

TUESDAY, JANUARY 19, 2011

(9:07 a.m.)

AGENDA ITEM NO. 1

09:07AM

CHAIRMAN ANDERSON: Good morning, Everyone. And welcome to the Texas Commission on Human Rights, January 19th, 2011 meeting, and we'll welcome everybody. We do have a full agenda, but we're hoping to dispatch it promptly. Commissioner James will not be here. He's at Grand Jury, and probably Commissioner Michalka is stuck up in traffic. There seems to be some traffic in the Houston -- I mean, the Austin area from time to time.

09:07AM

AGENDA ITEM NO. 2

09:07AM

CHAIRMAN ANDERSON: So we do have one speaker, Marilou Morrison from Austin, Texas, wants to talk about the progress made. Be mindful of the prohibitions we've had in the past as far as your topic and what you say and how you say it, and let's keep to the items on the agenda. Ms. Morrison.

09:08AM

MS. MORRISON: Thank you. Good morning. I'm Marilou Morrison, and I'm glad to say that this is a new year, a new beginning, I hope. The CRD has begun the new year free of two of its incompetent managers. An interim director is in place; although due to

09:08AM

1 statements made at a conference in Houston, his
2 appointment is somewhat controversial. However, he has
3 to be an improvement. I just hope the Chair will give
4 him the leeway to make the changes critical to the
09:08AM 5 agency's success. I was given to understand that he
6 actually has a grasp of the problems. Hopefully you
7 will believe him when he tells you that nothing has been
8 done in the past five years. Because of the Chair's
9 embarrassment and reluctance to admit that hiring the
09:09AM 10 previous director was a colossal mistake --

11 CHAIRMAN ANDERSON: Are you directing that
12 to me?

13 MS. MORRISON: -- I would hate for --

14 CHAIRMAN ANDERSON: Ms. Morrison.

09:09AM 15 MS. MORRISON: -- if anyone's efforts --

16 CHAIRMAN ANDERSON: Ms. Morrison.

17 MS. MORRISON: -- were to stem the CRD's
18 downhill slide.

19 CHAIRMAN ANDERSON: Ms. Morrison.

09:09AM 20 MS. MORRISON: I'm asking you to be
21 extremely concerned that housing investigations with a
22 year --

23 CHAIRMAN ANDERSON: Your time is over.

24 MS. MORRISON: -- investigators with a
09:09AM 25 year and more tenure are unable to meet their load --

1 CHAIRMAN ANDERSON: Stop the recording.
2 (At this time, there was a brief period
3 off the record, after which time the
4 proceedings continued as follows:)

09:10AM

5 AGENDA ITEM NO. 3

6 CHAIRMAN ANDERSON: Okay. Mr. Babiak,
7 No. 3.

09:10AM

8 MR. BABIAK: Good morning, Chair Anderson,
9 Commissioners. I'm Jonathan Babiak, interim director.
10 First and foremost, I would like to thank the Commission
11 for the opportunity to serve as interim director since
12 November. Since I arrived on November 8, primarily I
13 have talked to staff, staff at every level, and an
14 attempt to get them to talk to me so I can listen to
15 them and understand, one, what do they do, what do they
16 need, what are their challenges.

09:10AM

17 I've begun a review of operations.
18 Certainly in two months I haven't completed substantial
19 amount of work on any one particular thing, but I've
20 reviewed statutory authorities, regulatory authorities,
21 our agreements with our federal oversight agencies, both
22 HUD and EEOC, and I've reviewed a number of case files,
23 including three fair housing case staffings. And just
24 for clarification, a case staffing is where the
25 investigator assigned to the case and the manager and

09:11AM

1 the supervisor come and discuss the work on the case
2 from beginning to end.

3 As a result of the observations and from
4 listening to staff, one common challenge that I have
09:12AM 5 observed so far is that staff are required to remain
6 objective, neutral and impartial during investigations,
7 and, in fact, we provide them with training; and the
8 training is simply to tell them be objective, impartial
9 and remain neutral. And the reality in my observation
09:12AM 10 has been that we bring our own personal biases to the
11 work, and then in addition we can have biases that arise
12 in the context of any individual case; and the training
13 that we provide really isn't sufficiently comprehensive
14 to meet the need. As a result, I have spoken to Louis
09:12AM 15 LeDoux, the director of Training, and I think last week
16 signed a charter to have the Training and Development
17 Department at TWC create a custom-made training for our
18 investigators to give them concrete tools to recognize
19 their own biases, to control those biases and, in
09:13AM 20 addition, to recognize when they may be losing
21 objectivity during the course of an investigation and,
22 again, concrete tools to regain that objectivity when it
23 begins to go off center.

24 We are undergoing an audit of our
09:13AM 25 investigation process by the Office of Internal Audit.

1 We expect the report of that audit in February. I don't
2 have anything significant to report at this time, and
3 I'll know more in February. I am hopeful that our
4 auditors will bring us recommendations that'll assist us
09:13AM 5 in finding efficiencies or creating opportunities for
6 efficiency in our investigation process. I can tell you
7 that from my time in the Unemployment Insurance Division
8 the staff of auditors is extremely competent, extremely
9 experienced, and they have a very high level of
09:14AM 10 competence, a quick understanding of business process
11 and giving you a perspective that you may not have seen.
12 And so I'm very optimistic about the outcome of the
13 audit.

14 I met with Mr. Steglich and Mr. Dixon in
09:14AM 15 Budget to discuss the subject of how our actual costs of
16 the training and monitoring function compare to the
17 amounts that we currently charge for those activities.
18 We think that we did detect some time-charging by staff
19 that was not completely accurate. We corrected that for
09:15AM 20 the month of December. And our next step is to review
21 the actual time charges to those different activities
22 for the month of December to ensure that we do have
23 accurate information before we review how that compares
24 to our costs.

09:15AM 25 CHAIRMAN ANDERSON: The time spent for

1 training and monitoring, are we fully utilizing those
2 individuals? I mean, I don't see very much training
3 being conducted during the course of the year. I know
4 you did the monitoring, the reviews, but that doesn't
09:15AM 5 seem to be sufficient to use all those employees' times
6 adequately.

7 MR. BABIAK: Chair Anderson, at this
8 point, I haven't done a substantial in-depth review of
9 the activities of the two staff assigned to training and
09:16AM 10 monitoring with the departure of Tony Robertson, the
11 manager in that area. I intend to begin a more
12 substantial review. Today I'm really not able to
13 address your question. I hope that the time they spend
14 is -- is productive work, but I don't have substantial
09:16AM 15 detail to respond to that question right now.

16 CHAIRMAN ANDERSON: I don't know what the
17 time frame would be, but if you and Daryl and Gene
18 can -- or Gene's team look at that to see if they could
19 be utilized doing other things or if they're fully
09:16AM 20 utilized for the 2,080 hours per year, 4,000 hours for
21 the two of them, to do the monitoring, apparently the
22 little bit of training that we're doing and then the
23 policy reviews. I guess you also do the fire fighter
24 reviews, too.

09:17AM 25 MR. BABIAK: Yes, sir, that is correct.

1 And I do know that before I arrived there was discussion
2 of having the two training and monitoring staff take on
3 employment and housing cases. We have not made
4 substantial progress on that. Again, I do want to have
09:17AM 5 an opportunity to perform a substantial review of
6 exactly what these two individuals do. We do need to
7 update their job expectations to make sure that the
8 written job performance expectations can include the
9 duties of investigations.

09:17AM 10 With the legislature in session, I've been
11 doing some work on analyzing bills that impact our
12 operations. One is House Bill 68. This bill is new and
13 has not been previously filed in another legislative
14 session as far as we can tell. The bill requires notice
09:18AM 15 from an employer to a job applicant who is not selected
16 for a job opening if the employer used criminal history
17 information to make the nonselection decision. The bill
18 also provides for the rejected job applicant to be able
19 to file a Chapter 21 employment discrimination complaint
09:18AM 20 if the notice is not provided. So far we do not believe
21 that this bill would involve substantial additional or
22 new costs if it's passed.

23 The next significant bill is Senate
24 Bill 280. This is the state law analog to the Lilly
09:19AM 25 Ledbetter Fair Pay Act of 2009. Senate Bill 280 was

1 filed during the 2009 legislative session. It did not
2 pass. If it does pass, we do not expect any substantial
3 new or additional costs. And just as background, the
4 Lilly Ledbetter Fair Pay Act was a statutory overruling
09:19AM 5 of a Supreme Court case. In 2007 the United States
6 Supreme Court ruled that the event for a fair pay
7 complaint is the date on which the agreement is entered
8 into. Lilly Ledbetter was employed by Goodyear and
9 after working for several decades filed an equal pay
09:20AM 10 complaint, and the Supreme Court said that she waited
11 too long to file the complaint. The result of the
12 federal legislation is that each paycheck is considered
13 a new event, and you have 180 days from the most recent
14 paycheck. And I believe that the bill also creates a
09:20AM 15 two-year recovery period, and Senate Bill 280 would
16 simply create a state law equivalent to that Lilly
17 Ledbetter Fair Pay Act.

18 CHAIRMAN ANDERSON: Jonathan, both of
19 those bills seem to -- that they would have a work
09:20AM 20 impact for you-all, that you would be investigating or
21 could be investigating new claims for which we haven't
22 done in the past.

23 MR. BABIAK: After the legislation was
24 filed -- and I'll first address House Bill 68 -- we
09:21AM 25 monitored the calls that we take from our main number.

1 We already process these complaints. In addition, the
2 bill does not create a new protected class. It merely
3 requires notice when a job applicant is not selected
4 based on criminal history information and provides for
09:21AM 5 the opportunity to file a Chapter 21 complaint if that
6 notice is not provided.

7 In discussions with John Moore in
8 Regulatory Integrity, we think that there may be some
9 difficulty in understanding exactly how this bill will
09:22AM 10 operate for employers. I believe that there will be
11 some difficulty in the interpretation of which factor an
12 employer used not to select a given job applicant
13 because employers use a range of factors, only one of
14 which is the criminal history information. And, again,
09:22AM 15 because the bill does not create a new protected class
16 and we are already taking substantial calls and when one
17 of those calls includes an allegation that "I believe
18 that I was not selected because of my protected status,"
19 we are already processing these complaints.

09:23AM 20 And as far as Senate Bill 280, within the
21 work share agreement, we currently defer all of the
22 equal pay complaints to the EEOC, and in addition with
23 the passage of the federal legislation in 2009, we
24 believe that the public is already aware of the ability
09:23AM 25 to file a complaint on this basis. And we don't expect

1 that the state legislation would increase the number of
2 complaints that we're seeing.

3 CHAIRMAN ANDERSON: Okay.

4 MR. BABIAK: Next is House Bill 665. This
09:23AM 5 was also filed in the 2009 session. It did not pass at
6 that time, and this would add a protected class in
7 employment discrimination for sexual orientation, gender
8 identity or expression. And we have not yet -- well,
9 we -- based on the analysis from the 2009 session, we do
09:24AM 10 anticipate that this would have a substantial additional
11 and new cost associated with it. And we haven't yet
12 completed the analysis for this session, but we expect
13 it to be substantially the same as it was in 2009. And
14 I think the analysis was that it would add approximately
09:24AM 15 \$400,000 to \$500,000 in costs.

16 CHAIRMAN ANDERSON: Which we don't have.

17 MR. BABIAK: Not unless they give it to us
18 to process the anticipated complaints.

19 CHAIRMAN ANDERSON: Is that normal -- I
09:24AM 20 see Gene coming up.

21 MR. CRUMP: Commissioners, for the record,
22 Gene Crump, deputy executive director. In terms of our
23 fiscal note process -- and all we're doing is, if you
24 will, costing out bills0. The way that we do that
09:25AM 25 within the TWC is, each division that's responsible for

1 a specific bill that's assigned will go through an
2 analysis along with Legal, Procurement, HR, whoever else
3 is involved. We'll generate a cost analysis. If
4 there's going to be a cost in the bill, we will usually
09:25AM 5 informally go notify the bill sponsor. And in this case
6 when it's not covered in this case under a federal
7 reimbursement, it'll be a general revenue cost. You
8 could speculate that during the session because of the
9 lack of general revenue, if a bill has a GR cost on it,
09:25AM 10 it could be considered, to use the term, "dead on
11 arrival."

12 So it's something that the legislators
13 certainly understand. But we do work with them
14 informally so they're not surprised when we process it
09:26AM 15 because our cost analysis goes to the Legislative Budget
16 Board, and they actually draft a formal cost analysis
17 that goes back to the leg. We always informally work
18 with the bill sponsor so no one is surprised.

19 CHAIRMAN ANDERSON: Okay.

09:26AM 20 MR. BABIAK: And then there are several
21 bills that indirectly impact the housing side. I
22 haven't yet performed any substantial analysis on those;
23 although, I can say that they have only indirect impact
24 on what we do.

09:26AM 25 Were there any questions about the pending

1 bills?

2 CHAIRMAN ANDERSON: Could you provide at
3 least on those three employment cases -- or employment
4 bills a short summary, kind of just like you ran
09:26AM 5 through, and provide it to each of the Commissioners?

6 MR. BABIAK: Yes, sir. Moving on, I met
7 with Mr. Valdez from the EEOC to discuss substantial
8 weight review. During that discussion, Mr. Valdez
9 expressed an interest in seeing more cause cases on the
09:27AM 10 employment side from Texas. I expressed to him that I
11 understand what he's communicating. And certainly, as
12 you know, any cause cases from CRD will first go through
13 review by TWC Regulatory Integrity and -- before they
14 are presented to this commission for review.

09:27AM 15 I met with Mr. David Mintz from Texas
16 Apartment Association. I guess he somehow heard of my
17 interim appointment, and he paid us a visit accompanied
18 by their General Counsel. Mostly they wanted to welcome
19 me. And they expressed a general concern about the
09:28AM 20 processing time in some housing cases, and I expressed
21 to him that I shared his concerns. And certainly
22 processing cases as promptly as possible is something
23 that we always want to do.

24 We have a letter from HUD to notify us
09:28AM 25 that we are recertified. However, the agreement has

1 requested that we provide additional attorney training
2 before this agreement is signed. It's under review by
3 General Counsel.

4 Next week I'll be traveling to Dallas for
09:29AM 5 a continuing legal education seminar in fair housing and
6 after that to go over to Fort Worth to introduce myself
7 to the folks at HUD. As you know, Tony Robertson, our
8 manager on the employment side, has left, and I'm
9 working with HR right now to finalize the job posting
09:29AM 10 for that opening. And I'd like to just take an
11 opportunity to say congratulations to Tony. He was
12 selected to a position with City of Austin.

13 And in wrapping up, again, I'd like to
14 thank the Commission for the opportunity to serve as
09:29AM 15 interim director, and I'd also like to thank all of the
16 CRD staff for their hard work, their professionalism and
17 their support.

18 And with that I'm available for your
19 questions.

09:29AM 20 CHAIRMAN ANDERSON: Filling Tony's
21 position, is that -- do you envision that to be
22 internalwide or external or just what?

23 MR. BABIAK: Right now I would plan to
24 post that both internally and externally. The reason
09:30AM 25 for that is that with the job market as it is right now

1 there are substantial numbers of highly experienced,
2 highly qualified people looking for work. And the
3 external posting would allow us access to that applicant
4 pool.

09:30AM 5 CHAIRMAN ANDERSON: What's the time frame
6 you're looking at this?

7 MR. BABIAK: I think I can get it posted
8 this week. It'll be posted for 10 days after which we
9 go through the process of interviews, any other
09:30AM 10 background checks and selection. I would suspect that
11 it could be four to six weeks before we get somebody in
12 the position and producing.

13 CHAIRMAN ANDERSON: What are you doing in
14 the interim?

09:31AM 15 MR. BABIAK: In the interim, the employees
16 who reported to Tony now report to me, and I'm working
17 with the supervisor on that side and the employees
18 directly simply to continue operations and, in addition,
19 to gain a better understanding of exactly what we do in
09:31AM 20 those areas.

21 CHAIRMAN ANDERSON: Any Commissioners have
22 any other questions?

23 COMMISSIONER DIGGS: No.

24 AGENDA ITEM NO. 4

09:31AM 25 CHAIRMAN ANDERSON: Okay. Item No. 4,

1 budget, first quarter fiscal year results.

2 MR. STEGLICH: Good morning, Chair

3 Anderson, Commissioners. For the record, my name is

4 Daryl Steglich, Texas Workforce Commission, Finance

09:31AM

5 Department. I'm going to provide you with a little bit
6 of information on the performance for the first quarter.

7 We're going to start out with case closures. For the

8 first quarter, out of the 804 cases we have for

9 employment, we have anticipated one-fourth, of course,

09:32AM

10 for each quarter to be closed. We had 201 employment

11 cases estimated. We are at 220 cases closed. For

12 housing, out of the 358 cases for the year, we estimated

13 90 for the first quarter. There have been 93 closed.

14 So we're ahead of pace on both of those case closure

09:32AM

15 items. And that's --

16 CHAIRMAN ANDERSON: The --

17 MR. STEGLICH: Yes, sir.

18 CHAIRMAN ANDERSON: -- number of cases are

19 down from 2010 and 2009. Is there any particular reason

09:32AM

20 for that on the employment side? They're up on the

21 housing side.

22 MR. STEGLICH: There was an anticipated --

23 I'm sorry. I don't have a total for that. We had

24 anticipated a larger number of housing cases to be

09:33AM

25 closed in 2010.

1 CHAIRMAN ANDERSON: Is that what we got
2 from EEOC? Is that what you're saying, that the number
3 of cases that they -- that we -- were authorized by the
4 EEOC was greater than they are this year?

09:33AM

5 MR. STEGLICH: Are you talking about EEOC
6 or HUD? I'm sorry.

7 CHAIRMAN ANDERSON: EEOC.

09:33AM

8 MR. STEGLICH: EEOC? There is a contract
9 for EEOC cases. If memory serves me correctly, the 2010
10 contract was 1,003 cases. The 2011 contract is 804
11 cases.

12 CHAIRMAN ANDERSON: Okay.

09:33AM

13 MR. STEGLICH: We can and have in the past
14 requested and received an upward modification on the
15 contracts to the extent that there are available --
16 available cases to be closed. That generally doesn't
17 happen till later in the year. It's my understanding --
18 Mr. Babiak, I'll rely on my experience. It's my

09:34AM

19 understanding that EEOC basically sets contracts out for
20 the total number of cases for the funding that they have
21 and so that there isn't a pool that can be drawn on
22 easily. What they do is, late in the year in the third
23 quarter or so will allow us, being TWC, to go to them if
24 we can close more cases than the contract and do an
25 upward modification. The offset of that is someone else

09:34AM

1 has to get -- has to release those cases. It generally
2 has not been an issue over the last few years.

3 Any other questions?

4 CHAIRMAN ANDERSON: So we're ahead of
09:34AM 5 pace, and you anticipate that'll be continuing
6 throughout the year, right?

7 MR. BABIAK: Yes, sir, that's correct.

8 CHAIRMAN ANDERSON: Both housing and
9 employment?

09:35AM 10 MR. BABIAK: Yes.

11 MR. STEGLICH: The next slide is
12 comparison of revenues and projected expenditures to the
13 budget with comparison to the prior years. I'd like to
14 direct your attention to the left schedule. The bottom
09:35AM 15 line, which is the 2011 projected line, it appears that
16 at this point in time based on our projections from the
17 first quarter, along with our projections of revenue,
18 that we're going to be at a breakeven point at the very
19 least. So we -- we'll be -- if everything kind of falls
09:35AM 20 in place, we'll be fully funded for the entire year.

21 The next slide is a presentation of just
22 the first quarter expenditures compared to the budgeted
23 number, and then, of course, you have '10 and '9 for
24 reference. We're slightly ahead of pace as far as the
09:35AM 25 salaries and benefits for the first quarter, but in

1 total we're below the level of expenditure we would
2 expect from a budgetary standpoint.

3 COMMISSIONER DIGGS: I have one question
4 for you. Back one previous slide where you think --
09:36AM 5 your projection is that you think we will break even.
6 Is that without the upward modification?

7 MR. STEGLICH: That is -- that would be
8 based on the current revenue projections. An upward
9 modification may be necessary.

09:36AM 10 COMMISSIONER DIGGS: To hit the hundred
11 percent?

12 MR. STEGLICH: Yes, ma'am.

13 COMMISSIONER DIGGS: Okay.

14 MR. STEGLICH: Yes, ma'am.

09:36AM 15 COMMISSIONER DIGGS: That's what I needed
16 to know. So the fact that we're ahead of schedule
17 doesn't -- based on the schedule presented wouldn't hit
18 our number. We'd require the upward modification to hit
19 that?

09:36AM 20 MR. STEGLICH: That is correct, all these
21 being equal, yes, ma'am.

22 COMMISSIONER DIGGS: Okay.

23 CHAIRMAN ANDERSON: Why are we \$15,000
24 more on salaries and benefits if we are down a couple
09:37AM 25 of -- I think we're down a couple of employees, aren't

1 we? We're not fully staffed. So how can we be over in
2 salaries and benefits?

3 MR. STEGLICH: For the first quarter,
4 we've got 32 funded FTEs. The average is 31.87. So
09:37AM 5 we're -- we're effectively -- the number of FTEs is
6 effectively pretty close to what we had anticipated the
7 expenditure rate to be.

8 CHAIRMAN ANDERSON: Aren't we down an
9 employee or two?

09:37AM 10 MR. BABIAK: Sir, I don't think that the
11 numbers that Daryl is reporting for September and
12 November take into account the vacancies that we have
13 today.

14 CHAIRMAN ANDERSON: No. I thought we had
09:37AM 15 vacancies last quarter -- or the first quarter, too.
16 Aren't we down an investigator -- at least one
17 investigator?

18 MR. CRUMP: Commissioners, for the record,
19 Gene Crump. Yes, sir. You're down one investigator,
09:38AM 20 but as you recall when the budget was put together,
21 Mr. Gomez had decided not to fund one position. So
22 you're talking -- Daryl is talking about 32 funded
23 positions. But there is another FTE, and that position
24 is being posted.

09:38AM 25 MR. BABIAK: We have the applications in.

1 We're in the process right now of selecting.

2 MR. CRUMP: So that would increase the
3 budget, and hopefully the production would also go up to
4 match that.

09:38AM 5 CHAIRMAN ANDERSON: Okay.

6 MR. STEGLICH: Any other questions? If
7 not, thank you.

8 CHAIRMAN ANDERSON: Commissioners.

9 (No audible response.)

09:38AM 10 AGENDA ITEM NO. 5

11 CHAIRMAN ANDERSON: All right. Item
12 No. 5, and that's the report concerning the Texas
13 Workforce Commission Civil Rights Division employment
14 enforcement and training and monitoring for the first
09:39AM 15 quarter.

16 MS. QUESNEL: Good morning, Chair Anderson
17 and Commissioners. For the record, my name is Janet
18 Quesnel. I'm taking Tony's place right now. I'll be
19 giving the report for Team 2. You've all been given the
09:39AM 20 slide. So you have the information. So I'll just give
21 a short summary.

22 In regard to employment inventories and
23 closures, we are on track with the employer --
24 employment investigators meeting or exceeding their
09:39AM 25 closure numbers. In regard to the EEO compliance

1 training conducted, EEO housing and presentations
2 conducted, personnel policies and procedures systems
3 reviews and fire fighters reviews, we are on track with
4 nothing significant to report.

09:39AM

5 Does anyone have any questions?

6 CHAIRMAN ANDERSON: Any of the numbers
7 jump out at you as being off or need to be reviewed?

8 MS. QUESNEL: Not to my knowledge, sir.

09:40AM

9 CHAIRMAN ANDERSON: And how many FTEs are
10 on the employment side? I know you send us a monthly
11 report, Jonathan, but --

12 MR. BABIAK: Janet, how many investigators
13 do you have in --

14 MS. QUESNEL: We have five investigators.

09:40AM

15 CHAIRMAN ANDERSON: Is that sufficient --
16 obviously that's significant to meet the needs because
17 you're exceeding the budgeted number of closures,
18 correct?

19 MR. BABIAK: Yes, sir.

09:40AM

20 MS. QUESNEL: Yes, sir.

21 CHAIRMAN ANDERSON: Okay.

22 MS. QUESNEL: Thank you.

09:41AM

23 CHAIRMAN ANDERSON: I did have one
24 question. I'm sorry. The age of the cases, 250 to 300
25 days, seems to be much larger or double than what

1 they've been in the past. Any particular reason for
2 that at the end of the first quarter? The other seem to
3 be fine. It's just that one -- that one period.

4 MS. QUESNEL: Right.

09:41AM

5 CHAIRMAN ANDERSON: And obviously -- well,
6 maybe it's not obvious. But it seem like it would kind
7 of flow through and we'd have a bulge going through all
8 the way through the age of the cases.

09:41AM

9 MS. QUESNEL: Right, yes, sir. In regards
10 to those over 300 days --

11 CHAIRMAN ANDERSON: No, the 250 to 300.

12 MS. QUESNEL: Oh, 250 to 300. Oh, I don't
13 have those exact statistics with me, sir. I can get
14 those for you.

09:42AM

15 CHAIRMAN ANDERSON: Is there anything that
16 anybody can offer of why that bulge is there?

09:42AM

17 MS. QUESNEL: The files fluctuate during
18 the year, and sometimes it can get a little higher and
19 sometimes a little lower. It's not really a
20 possibility -- it's hard to explain exactly why. I can
21 do a review and see if I can figure it out for you.

09:42AM

22 CHAIRMAN ANDERSON: Yeah. Just look at it
23 and send us -- send the Commissioners a note. I don't
24 know that it's anything startling, but if you find
25 something there, let us know why that's there.

1 MR. BABIAK: We'll review the age of the
2 cases to see what action is necessary.

3 MS. QUESNEL: Any other questions?

4 (No audible response.)

09:42AM 5 MS. QUESNEL: Thank you.

6 AGENDA ITEM NO. 7

7 MS. COVINGTON: Good morning, Chair,
8 Commissioners, TWC staff and guests. For the record, my
9 name is Vickie Covington, manager of the Housing ADR and
09:43AM 10 Outreach. This morning I want to share with you the
11 work that we've done with our ADR staff, our mediators
12 and also our housing staff. For the first quarter of
13 2011, our mediators resolved 42 cases. If you'll
14 recall, last year at this time we had three mediators.
09:43AM 15 We are now down to two.

16 Are there any questions on this
17 information?

18 CHAIRMAN ANDERSON: And we're down to two
19 on a long-term basis, or are you looking for another
09:43AM 20 mediator?

21 MS. COVINGTON: To my knowledge, we're
22 down to two. We -- there's no projection to fill that
23 position.

24 CHAIRMAN ANDERSON: Is that something we
09:44AM 25 need to -- you need to review to see if that's -- I

1 mean, don't mediators provide a substantial service to
2 resolving some of these cases more quickly before they
3 get into a long, drawn-out investigation?

4 MS. COVINGTON: That's -- that's accurate.
09:44AM 5 Right now the mediators that we do have are contributing
6 to ensure that the cases do not age significantly. That
7 is something surely that I can have a discussion with
8 Jonathan about to see if that would be cost effective
9 for us to fill that position.

09:44AM 10 COMMISSIONER DIGGS: Can you compare --
11 good morning. I'm sorry.

12 MS. COVINGTON: Good morning.

13 COMMISSIONER DIGGS: Can you compare last
14 year first quarter to this year first quarter? Were you
09:45AM 15 at three mediators? I don't remember last year first
16 quarter.

17 MS. COVINGTON: Last year first quarter we
18 had three mediators.

19 COMMISSIONER DIGGS: And how many did you
09:45AM 20 close; do you know?

21 MS. COVINGTON: I'll have to get that
22 information.

23 COMMISSIONER DIGGS: Okay. I'd be curious
24 just to see.

09:45AM 25 MS. COVINGTON: Okay. Were there any

1 other questions?

2 CHAIRMAN ANDERSON: Take a look at that --
3 filling that mediator position, and obviously you have
4 to do that with your finance people to make sure we have
09:45AM 5 the funds to be able to do it. But if we can -- if they
6 can generate enough revenue to pay their salary plus a
7 little, that would be worth -- worth the investment,
8 another mediator. Do you have anybody internally that
9 has the potential to be a mediator?

09:46AM 10 MS. COVINGTON: The requirement is that
11 they be a certified mediator, and I don't believe we
12 have --

13 CHAIRMAN ANDERSON: Anybody?

14 MS. COVINGTON: We may have some of our
09:46AM 15 senior employment investigators who are certified
16 mediators, but other than that, I don't -- to my
17 knowledge, we don't -- we do not have any certified
18 mediators. I'd also like to let you know that our
19 mediators in their resolutions were able to gather
09:46AM 20 \$240,000 in individual relief. And two scenarios are
21 shared with you in your booklets behind the "ADR" tab.

22 Next slide: We are slightly ahead of
23 cases filed and cases resolved when we look back at the
24 first quarter. Now, that information I did compare with
09:46AM 25 last year. Twelve more cases were filed, and eight more

1 cases were resolved.

2 Are there any questions?

3 (No audible response.)

4 MS. COVINGTON: Next slide: This shows
09:47AM 5 the type of case closures. At the end of the year, our
6 conciliation withdrawal with resolution rate was 58
7 percent compared with 55 percent last fiscal year.
8 There are also two case scenarios in your booklets
9 behind the "Housing" tab.

09:47AM 10 Complainants have received more than
11 \$40,000 in monetary relief. And nonmonetary and public
12 relief has consisted of respondents agreeing to publish
13 advertisements that do not violate the Texas Fair
14 Housing Act, free advertising space for the complainant
09:47AM 15 and retrofitting of property so that they comply with
16 the act.

17 Are there any questions?

18 (No audible response.)

19 MS. COVINGTON: Next slide: The cases
09:48AM 20 that are over 100 days are 33 percent of our pending
21 inventory compared to 33 percent the first quarter of
22 last year. This is one area that we continue to work on
23 in reducing our age inventory. The HUD standard is to
24 close 50 percent of the cases filed within the fiscal
09:48AM 25 year, and we are at 47 percent. If you take into

1 account the eight complex cases that were filed this
2 year, we're at 51 percent.

3 Are there any questions?

09:48AM 4 CHAIRMAN ANDERSON: Those eight complex
5 cases, where are they now? Where do they reside?

6 MS. COVINGTON: The eight cases that were
7 filed this year? Some of them have actually been
8 resolved already. The ones that are still open, we have
9 300 days to actually resolve those. That's -- I'm
09:49AM 10 sorry. Per the HUD payment schedule, we have 300 days
11 to get those resolved unless there are extenuating
12 circumstances. And I will tell you that these cases are
13 tracked on a weekly basis, the actual monitoring of the
14 cases and feedback and dialogue with both the team leads
09:49AM 15 and the investigator regarding moving towards resolution
16 of these cases.

17 CHAIRMAN ANDERSON: Are you doing that
18 with employment, also, Jonathan?

19 MR. BABIAK: I'm sorry?

09:49AM 20 CHAIRMAN ANDERSON: Tracking those on a
21 weekly basis, are you doing that with employment, also,
22 the closures and the status of the --

23 MR. BABIAK: As of yet, no, I have not
24 been substantially tracking the employment cases.
09:50AM 25 However, with just now being aware of the increase in

1 the aged cases, that'll certainly be something that we
2 look at for action immediately after this meeting.

3 CHAIRMAN ANDERSON: Is that something new,
4 tracking the housing cases on a weekly basis? Were you
09:50AM 5 doing that previously, or is that something that
6 started --

7 MS. COVINGTON: We began about a year ago
8 to track them on a weekly basis, Chair.

9 Are there any questions?

10 09:50AM COMMISSIONER MICHALKA: Hi. Good morning.

11 MS. COVINGTON: Good morning.

12 COMMISSIONER MICHALKA: How many
13 investigators do you-all have in Housing?

14 MS. COVINGTON: We have nine investigators
09:50AM 15 and one investigator/outreach coordinator.

16 COMMISSIONER MICHALKA: Okay. Thanks.

17 MS. COVINGTON: Next slide: I had the
18 opportunity to be one of the presenters for the
19 Brownsville fair housing seminar. It was hosted by the
09:51AM 20 Fair Housing Council of Greater San Antonio. The
21 executive director is Sandra Tamez. Not counting the
22 presenters, we had 121 participants. Most of them were
23 property managers and assistant property managers. And
24 it was a very good outing. I had fun, and I believe
09:51AM 25 that the audience learned a lot. We actually had some

1 of the people in the audience share some of their
2 experience with certain scenarios that had come up that
3 involved maybe people making allegations that they were
4 discriminated against because of protected status and
09:51AM 5 how the property managers actually handle that
6 situation. And so I thought it was a pretty good
7 outing.

8 We are also in the process of developing
9 an outreach plan for Fiscal Year 2011, and we'll
09:52AM 10 basically look for opportunities that are cost
11 effective, meaning it won't cost us very much money
12 because we do not have an outreach budget. But it is
13 important that we get out there and we let the public
14 know that we're here and that we provide them -- we can
09:52AM 15 provide them with assistance in outreach.

16 Are there any questions?

17 CHAIRMAN ANDERSON: Are you saying that's
18 something you can do when you go out and do an
19 investigation or you go out and make a presentation?
09:52AM 20 You can couple that with some outreach?

21 MS. COVINGTON: That is certainly
22 something we can look at, Chair.

23 CHAIRMAN ANDERSON: To go back on
24 earlier -- I'm sorry -- the one bill dealing with sexual
09:52AM 25 orientation, is that also for Housing or is that already

1 part of Housing?

2 MR. BABIAK: That bill is limited to
3 employment discrimination, and currently there is no
4 equivalent protected status on the housing side and no
09:53AM 5 bills filed at this time to create that protected status
6 on the housing side.

7 CHAIRMAN ANDERSON: Okay.

8 MS. COVINGTON: Thank you.

9 CHAIRMAN ANDERSON: We jumped over --
09:53AM 10 thank you, Vickie.

11 AGENDA ITEM NO. 6

12 CHAIRMAN ANDERSON: We jumped over No. 6,
13 possible -- discussion, consideration, possible action
14 regarding the annual report pursuant to Texas Labor
09:53AM 15 Code, Section 21.504 and 301.156. Is there anything we
16 need to do on that?

17 MR. BABIAK: Well, yes, sir. Thank you
18 again. For the record, Jonathan Babiak. In your
19 materials, you have a tab for "Annual Report," and today
09:54AM 20 I am presenting for your approval the annual report
21 required by Texas Labor Code, Section 21.504 and Texas
22 Labor Code, Section 301.156. This report combines the
23 state agency minority hiring practices report and the
24 statewide data relating to filed and closed housing
09:54AM 25 discrimination cases. I don't think there's anything

1 significant or noteworthy in the report.

2 I'm available for your questions and
3 request your approval to move forward on publishing the
4 report.

09:54AM 5 CHAIRMAN ANDERSON: We've already approved
6 the report. So you just want to go forward with
7 publishing. Is that --

8 MR. BABIAK: I think it's in this meeting
9 that you would approve the report and then we would
09:55AM 10 publish.

11 CHAIRMAN ANDERSON: Do I have a motion?

12 COMMISSIONER STIDVENT: So move.

13 CHAIRMAN ANDERSON: Seconded?

14 COMMISSIONER MICHALKA: Seconded.

09:55AM 15 CHAIRMAN ANDERSON: It's been moved and
16 seconded. All in favor say aye.

17 THE COMMISSION: Aye.

18 CHAIRMAN ANDERSON: Opposed?

19 (No audible response.)

09:55AM 20 CHAIRMAN ANDERSON: And it's so ordered.

21 MR. BABIAK: We will publish the report.

22 AGENDA ITEM NO. 8

23 CHAIRMAN ANDERSON: All right. No. 8,

24 Possible -- discussion, consideration and possible

09:55AM 25 action regarding the Commission on Human Rights duties,

1 roles and responsibilities concerning agenda development
2 procedures. I don't believe there's anything there.

3 Becky, do you know of anything?

4 MS. SMITH: Huh-uh.

09:55AM

5 AGENDA ITEM NO. 9

6 CHAIRMAN ANDERSON: Okay. The next
7 meeting is on April 19th; is that correct?

8 MS. SMITH: I think it's the 20th.

09:56AM

9 CHAIRMAN ANDERSON: 20th. That could
10 present a problem for me. I could be in Europe. Would
11 any of the Commissioners that would like to move it to
12 earlier, or if we keep it the same, will we have enough
13 for a quorum?--because I probably will not be able to
14 attend. And all the Commissioners who are currently on
15 the Commission remain on the Commission until they've
16 been replaced. So those of you whose terms are
17 ending -- and I think there's two -- would still remain
18 on until they were replaced, is my understanding.

09:56AM

19 Do you want to -- will everybody be here
20 as far as you know for the April 20th meeting?

09:56AM

21 COMMISSIONER STIDVENT: I don't have a
22 problem moving it earlier.

23 COMMISSIONER DIGGS: I don't either.

09:57AM

24 CHAIRMAN ANDERSON: You want to do it a
25 week earlier?

1 COMMISSIONER DIGGS: Okay.

2 CHAIRMAN ANDERSON: Okay. We have a
3 motion to move the next meeting to April 13th.

09:57AM

4 COMMISSIONER MICHALKA: I can be here that
5 week.

6 CHAIRMAN ANDERSON: Can everybody else?

7 COMMISSIONER DIGGS: Yes.

8 CHAIRMAN ANDERSON: So do I have a motion?

9 COMMISSIONER DIGGS: So move.

09:57AM

10 CHAIRMAN ANDERSON: Second?

11 COMMISSIONER STIDVENT: Second.

12 CHAIRMAN ANDERSON: It's been moved and
13 seconded. All in favor say aye.

14 THE COMMISSION: Aye.

09:57AM

15 CHAIRMAN ANDERSON: Opposed?

16 (No audible response.)

09:57AM

17 CHAIRMAN ANDERSON: And so moved. The
18 next meeting will be April 13th, 2011. Let's discuss
19 the action items before we go into closed session,
20 research the possibility of having training and
21 monitoring reviewers investigate and close complaints of
22 employment discrimination. So Becky's notes indicate
23 currently two housing complaints have been assigned to
24 Dennis Swinney and two employee -- employment complaints
09:58AM 25 to Richard Webb; is that true?

1 MR. BABIAK: Yes, sir, that's correct.
2 And as I mentioned earlier, I'll be doing more
3 substantial review and discussion with staff to
4 determine the best way to proceed. Certainly any
09:58AM 5 available time that they have that we can make them
6 productive on cases, we'll -- we'll utilize that.

7 CHAIRMAN ANDERSON: So that will be an
8 ongoing?

9 MR. BABIAK: Yes, sir.

09:58AM 10 CHAIRMAN ANDERSON: Okay. The next item
11 is provide to Commissioners each month the closure trend
12 report which indicates the monthly number of closures
13 per mediator/investigator and continue to include in the
14 packets the reports completed from Employment, ADR and
09:59AM 15 Housing. And we all should be receiving those reports
16 now. I'm receiving them. Is everybody else getting
17 them?

18 (No audible response.)

19 CHAIRMAN ANDERSON: Okay. Are they
09:59AM 20 helpful, Commissioners?

21 COMMISSIONER DIGGS: Yes.

22 CHAIRMAN ANDERSON: One of the notes from
23 the last meeting was that the next training session
24 would be held on -- well, now April 13th and be how to
09:59AM 25 investigate employment discrimination complaints. Will

1 you be prepared for doing a quick briefing for the
2 Commissioners on that?

3 MR. BABIAK: Oh, yes, sir.

4 CHAIRMAN ANDERSON: Okay. CRD staff is to
09:59AM 5 continue to notify Commissioner Diggs and Commissioner
6 Stidvent concerning budget meetings. Are we still
7 conducting those budget meetings, and do we need to
8 continue doing this?

9 MR. BABIAK: We have not had budget
10:00AM 10 meetings. And, Chair Anderson, I was made aware of this
11 this morning.

12 However, Commissioner Stidvent,
13 Commissioner Diggs, if you would like to have a meeting
14 just to be brought up to speed on exactly where we stand
10:00AM 15 with the budget, then we can certainly schedule that
16 meeting at your convenience.

17 CHAIRMAN ANDERSON: I'll leave that up to
18 the two commissioners who are in the Austin area,
19 what -- whether that's something they would want to
10:00AM 20 continue to do.

21 COMMISSIONER DIGGS: We'll give you a
22 call.

23 MR. BABIAK: Thank you.

24 CHAIRMAN ANDERSON: All right. Is there
10:00AM 25 anything else that we need to discuss in open session

1 before we go into closed executive session?

2 (No audible response.)

3 AGENDA ITEM NO. 10

4 CHAIRMAN ANDERSON: The Commission on
10:00AM 5 Human Rights executive session, January 19th, 2011: We
6 are now going into executive session pursuant to
7 Government Code, Section 551.074(A)(1), to discuss the
8 appointment, employment, evaluation, reassignment,
9 duties, accomplishments, performance, goals, and
10:01AM 10 responsibilities of the Texas Workforce Commission Civil
11 Rights Division director. I'd like to have Brenda
12 Nichols also come in when we discuss that particular
13 item.

14 We are now going in executive session
10:01AM 15 pursuant to Government Code, Section 551.074 to discuss
16 the appointment, employment, evaluation, reassignment,
17 duties, accomplishments, performance, goals, and
18 responsibilities of the executive staff and other
19 personnel.

10:01AM 20 Additionally, we're going into executive
21 session pursuant to Government Code, Section 551.071(1)
22 and (2) concerning contemplated litigation or the
23 pending litigation of the following cases: Texas
24 Commission on Human Rights, Texas Workforce Commission,
10:01AM 25 David Powell and Robert Gomez v. Marilou Morrison, John

1 Benavides, et al v. Texas Commission on Human Rights,
2 Texas Workforce Commission-Civil Rights Division v.
3 Cameron Overstreet, et al, Texas Workforce
4 Commission-Civil Rights Division v. Raymond Henshaw and
10:02AM 5 Mark Henshaw, Texas Workforce Commission-Civil Rights
6 Division v. Spiros Tsokos and Anthony G. Petrello and
7 Matthew W. Prucka, et al.

8 And the last agenda item is Agenda 10(c)
9 where the Commissioners seek the advice of their
10:02AM 10 attorney as privileged communications under the Texas
11 Disciplinary Rules of Professional Conduct of the State
12 Bar of Texas.

13 And the Commission on Human Rights is now
14 closed -- in closed session on January 19th, 2011. The
10:02AM 15 time is 10:02 a.m.

16 (At this time, the Texas Commission on
17 Human Rights went into executive
18 session from 10:02 o'clock a.m. until
19 10:56 o'clock a.m., after which time the
10:59AM 20 proceedings continued as follows:)

21 CHAIRMAN ANDERSON: Back on the record.
22 The executive session concluded at 10:56 on January
23 19th, 2011, and there was no action items coming out of
24 the executive session.

10:59AM 25

1 AGENDA ITEM NO. 11

2 CHAIRMAN ANDERSON: So do I have a motion
3 to adjourn?

4 COMMISSIONER MICHALKA: So move.

10:59AM 5 CHAIRMAN ANDERSON: Second?

6 COMMISSIONER STIDVENT: Second.

7 CHAIRMAN ANDERSON: It was seconded.

8 Without objection we'll just adjourn the meeting for
9 today, and we adjourn on April 13th, 2011 at 9:00 a.m.

11:00AM 10 Thank you very much.

11 (At this time, the proceedings were
12 adjourned at 11:00 o'clock a.m.,
13 Wednesday, January 19, 2011.)

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1 STATE OF TEXAS)

2 COUNTY OF TRAVIS)

3 I, LYDIA L. EDWARDS, certified shorthand
4 reporter for the State of Texas, do hereby certify that
5 the above-captioned matter came on for hearing before
6 the TEXAS COMMISSION ON HUMAN RIGHTS as hereinafter set
7 out.

8 I FURTHER CERTIFY that the proceedings of said
9 hearing were reported by me, accurately reduced to
10 typewriting under my supervision and control, and, after
11 being so reduced, were filed with the TEXAS COMMISSION
12 ON HUMAN RIGHTS.

13 GIVEN UNDER MY OFFICIAL hand of office at
14 Austin, Texas, the _____ day of January, 2011.

15
16
17
18

Lydia L. Edwards
Certification No. 2567
My Commission Expires 12/31/12

Certified Shorthand Reporter
State of Texas

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