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P R O C E E D I N G S

WEDNESDAY, APRIL 13, 2011

(9:03 a.m.)

AGENDA ITEM NO. 1

09:03AM

1 CHAIRMAN ANDERSON: Good morning,
2 Everyone. Welcome to the April 13th TWC CRD meeting,
3 the Texas Commission on Human Rights. I want to welcome
4 our new commissioner, Toni Glover, from -- where are you
5 from?
6

09:03AM

7 COMMISSIONER GLOVER: Fort Worth --

8 CHAIRMAN ANDERSON: Fort Worth. Okay.

9 COMMISSIONER GLOVER: -- the real Texas.

10 In case you didn't hear that, that's the real Texas.

11 CHAIRMAN ANDERSON: That's the real Texas.

09:04AM

12 The Commissioners -- I got seven, but Commissioner
13 Michalka is -- wasn't going to be able to come to this
14 one. I think she told us last time. And I believe
15 Commissioner Morris should be here soon.
16

AGENDA ITEM NO. 2

09:04AM

17 CHAIRMAN ANDERSON: We'll go ahead and --
18 even though it's not on the agenda go ahead and have
19 comments from the floor, Marilou Morrison from Austin.
20 And you have three minutes. Please keep them on point.
21

22 MS. MORRISON: Okay. Good morning. I'm

09:04AM

23 Marilou Morrison. I'm going to surprise you this
24

1 morning. I want to congratulate the new director for
2 being able to somewhat stem the last nearly decade of
3 just continual deterioration of the Commission and
4 consequently the rights of the people in the State of
09:05AM 5 Texas. But despite the lack of cooperation from one,
6 possibly more members, of the Commission, he has been
7 able to actually have an impact on the quality of the
8 Commission. So I want to congratulate you on that.

9 And I have no criticisms at all today
09:05AM 10 except I hope somebody will rethink this Anthony
11 Petrello case. It is not -- it's not in the best
12 interest of the Commission. Thank you.

13 CHAIRMAN ANDERSON: Thank you,
14 Ms. Morrison. Mr. Robertson who was formerly one of the
09:05AM 15 managers for the CRD and he's also from Austin.

16 MR. ROBERTSON: Thank you kindly.

17 CHAIRMAN ANDERSON: You have three
18 minutes, Mr. Robertson.

19 MR. ROBERTSON: Thank you, sir. Good
09:06AM 20 morning, Commissioners, Chair Anderson, and welcome to
21 the new commissioner. I wanted to take a few minutes
22 this morning and simply come to you this morning with
23 praise and accolades for the leadership and staff of the
24 Civil Rights Division for the State of Texas.

09:06AM 25 Oftentimes -- and I say this again. Oftentimes you are

1 quarterly bombarded with negative comments from a
2 distraught citizen who sees fit to always provide
3 misplaced and untrue facts and information.

4 Well, I'm here this morning as a citizen
09:06AM 5 of Texas to say that the leadership and staff of the
6 Civil Rights Division has done and continues to do and
7 provide a great service for the people of Texas and
8 should be commended for a great job well done. This has
9 always been a source of pride from customer service
09:06AM 10 surveys and evaluations that always show an outstanding
11 or higher rating on the services provided whether there
12 were no cause findings, settlements, mediations or
13 conciliations. Now, granted, this office will not
14 please every customer at times, but they do provide
09:07AM 15 exceptional professionalism and customer care all the
16 time. This has been reflected and shown through their
17 constant commitment to listen and really educate the
18 customer on their process and how this process works.

19 Again, you are often bombarded with
09:07AM 20 negative feedback and comments about how this office has
21 no leadership and is ineffective at best. Well, I'm
22 here to tell you I disagree with that and so do the
23 citizens of Texas. I'm here this morning to tell you
24 that I will bank on them any day and know for a fact
09:07AM 25 that others in this great State of Texas will also do

1 the same. I'm in a position to feel the pulse of the
2 state of -- of the state and the community and know that
3 most citizens truly appreciate the services rendered by
4 staff, the leadership and will continue to support their
09:08AM 5 mission and vision by continuing to understand their
6 process, receive trainings that are necessary to
7 their -- to their work and to their daily needs and that
8 have a -- and this training will have a great impact on
9 their understanding of EEO law and fair housing laws.

09:08AM 10 I would like to close by saying thank you
11 for allowing me a few minutes to speak with you, and
12 please know that the only thing necessary for evil to
13 prevail is when good men and women do nothing. The CRD
14 has good men and good women who will provide a great
09:08AM 15 service. As a citizen of Texas, it is important that
16 you know that and that they are doing a great work, and
17 we are truly and forever grateful for their service and
18 good work. Thank you.

19 CHAIRMAN ANDERSON: Thank you,
09:08AM 20 Mr. Robertson, for those kind words. We appreciate it;
21 appreciate the work you did while you were at the CRD.
22 And good luck in your new position.

23 MR. ROBERTSON: Thank you, sir.

24 CHAIRMAN ANDERSON: Commissioner Michalka
09:08AM 25 is here. So got some good news for us?

1 AGENDA ITEM NO. 3

2 MR. BABIAK: For the record, Jonathan
3 Babiak. Good morning, Chair Anderson, Commissioners. I
4 think the next item on the agenda, if I can proceed, is
09:09AM 5 the oath of office for the new commissioner.

6 CHAIRMAN ANDERSON: Yes. Who's -- who's
7 going to administer the oath? Did you have somebody?

8 MR. BABIAK: We have someone here from the
9 Office of the General Counsel to administer the oath.

09:09AM 10 CHAIRMAN ANDERSON: Okay. Ms. Glover --
11 Commissioner Glover.

12 MS. HOLT: Chairman Anderson,
13 Commissioners, I'm Susanna Holt Cutrone with the Office
14 of General Counsel, and Kimberly Bergmann, our executive
09:09AM 15 assistant, will be administering the oath to
16 Commissioner Glover.

17 CHAIRMAN ANDERSON: Does Commissioner
18 Michalka have to -- Susanna, does Commissioner Michalka
19 have to be readministered the oath or --

09:10AM 20 MS. HOLT: Yes, sir, after Commissioner
21 Glover.

22 (At this time, Commissioners Toni Glover
23 and Shara Michalka were sworn into office
24 by Kimberly Bergmann.)

09:12AM 25 CHAIRMAN ANDERSON: Thank you very much.

1 Welcome Commissioner Glover and not welcome -- or glad
2 that you've been reappointed, and we're pleased that
3 you're still with us, Commissioner Michalka.

4 Commissioner James is not able to be with
09:13AM 5 us. He is going to be receiving a plaque that says,
6 "Human Rights Commission, Commissioner John H. James, in
7 appreciation for your years of dedication and service in
8 making Texas a better place to work and live, 2005 to
9 2011," and we will be sending that off with a letter.

09:13AM 10 If any of the commissioners want to attach a note or
11 letter or something to Commissioner James, please feel
12 free to give it to Becky, and we will send that whole
13 package to Commissioner James. He was a wonderful
14 addition to the Commission. I talked with him on many
09:13AM 15 occasions. We gave him many assignments which he
16 faithfully discharged, and he was a great -- great asset
17 to the Commission on Human Rights. But we welcome
18 Commissioner Glover in his place.

19 AGENDA ITEM NO. 4

09:14AM 20 CHAIRMAN ANDERSON: Now we've got some
21 items, right?

22 MR. BABIAK: Yes, sir. Again, good
23 morning. For the record, Jonathan Babiak. I want to
24 start by thanking Chair Anderson and the Commission for
09:14AM 25 their guidance and the opportunity to serve as interim

1 director for the last several months. It has been one
2 of the most exciting periods of my career.

3 My activities since our last meeting in
4 January: The primary focus of my energies has been to
09:14AM 5 work with Vickie Covington, the manager in the housing
6 side to ensure that the housing cases are being
7 processed appropriately and promptly. We have done
8 intensive training of the investigators working through
9 the supervisors. We have renewed a focus on the on-site
09:15AM 10 investigations. I -- Vickie will have more detail about
11 the actual case closure numbers during her item on the
12 agenda. However, I will say that in my opinion I think
13 that we are performing satisfactorily and that there is
14 still opportunity for improvement moving forward, and we
09:15AM 15 expect to see that performance continue to improve.

16 In other activities, I have spent some
17 time analyzing legislation, and on the second page of
18 your director's report memorandum, you'll see a list of
19 the bills that I've analyzed, and I'll go over them
09:15AM 20 briefly. There's not a substantial amount of new
21 information since our last meeting.

22 At the last meeting, I covered House Bill
23 68 and House Bill 665, and there's nothing new to report
24 on those two bills.

09:16AM 25 House Bill 1178, you may be familiar with

1 USERRA, which is the Uniform Service Members Employment
2 Rights and Reemployment Rights Act. It is federal law,
3 and it protects military forces serving on federal duty
4 from being discharged when their called up to active
09:16AM 5 duty. Texas law currently protects State Guard and
6 National Guard when on state duty by providing a cause
7 of action for certain adverse employment practices.
8 House Bill 1178 does two important things. One, it
9 extends the protections to employees of state agencies
09:17AM 10 who are not protected right now. In addition, it
11 creates an administrative process for CRD to take
12 complaints arising under those protections.

13 To analyze this bill, I met with staff in
14 TWC Veteran Services, Department of Labor Veteran
09:17AM 15 Services who are stationed here at TWC, and the
16 executive director of Texas ESGR, which is the Employer
17 Support of Guard Reserve. This is a volunteer
18 organization under the United States Department of
19 Defense. The executive director reported to me that in
09:17AM 20 the last two years they have had a total of three
21 inquiries arising from individuals who believe their
22 rights under the existing law have been violated. We
23 believe that if this bill passes there will not be a
24 significant impact on workload.

09:18AM 25 In addition, ESGR has a memorandum of

1 understanding with DOL vets to mediate the complaints
2 that now arise under USERRA. And if this bill passes,
3 then we would pursue a similar memorandum of
4 understanding so that ESGR could perform a similar
09:18AM 5 mediation service for any complaints that would arise
6 under the new law. And I looked this morning, and the
7 current status of this bill is that it was left pending
8 in committee, and I do not know the likelihood of this
9 bill passing.

09:18AM 10 The remainder of the bills do not have
11 significant impact, but let me go over them briefly. A
12 number of these bills provide for collective bargaining
13 either under municipalities or sheriff's departments,
14 and I'll list them for you. That includes House Bill
09:19AM 15 1447, House Bill 1659, House Bill 3276, Senate Bill
16 1268, and Senate Bill 1284. Each bill has a similar
17 provision to state only that the collective bargaining
18 arrangement under the bill neither diminishes nor
19 increases the right of any individual employee to file a
09:19AM 20 complaint of discrimination. And as a result of those
21 bills, we do not expect to have any significant impact
22 if they pass.

23 A number of the bills are what I would
24 describe as government reorganization. They take
09:20AM 25 existing agencies and abolish them and in many cases

1 create new agencies, and I'll list those government
2 reorganization bills. They are House Bill 2543, House
3 Bill 3166, House Bill 3426, House Bill 3617, Senate Bill
4 1785, and Senate Bill 1824. Each of these bills has a
09:20AM 5 similar provision to require the new agency created
6 under the bill to file a personnel policies and
7 procedures statement with the Civil Rights Division and
8 other information for review on an annual basis. Right
9 now we believe that that work can be performed with
09:21AM 10 existing resources, and we don't expect any significant
11 impact if any of those bills pass.

12 CHAIRMAN ANDERSON: Question, Jonathan --
13 well, two questions: FMLA has provisions in -- the new
14 FMLA -- the modified FMLA has provisions for veterans,
09:21AM 15 people who -- employees who need time off because their
16 servicemember has either gone overseas or has been
17 injured and needs treatment. Do -- have you had any of
18 those cases, and with that -- is that provision also in
19 Texas law? It's federal law, part of FMLA.

09:21AM 20 MR. BABIAK: FMLA is federal law, the
21 Family Medical Leave Act. There is no state law analog
22 to the federal law, and I believe that FMLA does not
23 have any administrative complaint process. If it does,
24 I believe it is administered by the United States
09:22AM 25 Department of Labor and private cause of action, and

1 right now CRD does not administer any complaints arising
2 directly under FMLA. The complaint that we might
3 administer arising out of this type of fact setting
4 would be a complaint of discrimination based on
09:22AM 5 disability, and there is a lot of overlap between FMLA
6 and disability law.

7 CHAIRMAN ANDERSON: Well, that's
8 disability for the employee and not disability for the
9 servicemember which is what the FMLA, the new
09:22AM 10 provisions, cover. So there's nothing -- there's no
11 house or senate bill that you know of that would address
12 those issues?

13 MR. BABIAK: There is no bill that we're
14 tracking right now, no, sir.

09:23AM 15 CHAIRMAN ANDERSON: Under 1747 that talks
16 about retaliation, that's already part of the law. What
17 exactly is 1747 addressing; do you know?

18 MR. BABIAK: I was going to get to 1747 --

19 CHAIRMAN ANDERSON: All right.

09:23AM 20 MR. BABIAK: -- House Bill 1747. The bill
21 sets out how damages and other relief are assessed in an
22 employment discrimination suit arising under Texas Labor
23 Code Chapter 21. I did have this bill reviewed by staff
24 and EEOC, and the provisions of the bill are consistent
09:23AM 25 with the view that EEOC already takes and the view that

1 we already apply in administering our complaints. As a
2 result, we do not see that a passage of this bill will
3 have any impact on our operations.

4 CHAIRMAN ANDERSON: Okay.

09:23AM

5 MR. BABIAK: Continuing, there is House
6 Bill 3591 which is an identical companion to Senate Bill
7 1327. And just to go backward for a moment, House Bill
8 3276 is an identical companion to Senate Bill 1268.
9 House Bill 3426 is an identical companion to Senate Bill
10 1785.

09:24AM

11 Returning to House Bill 3591 and its
12 companion, Senate Bill 1327, these bills are identical.
13 The bill restates provisions relating to confidentiality
14 and exceptions from disclosure under the Texas Public
15 Information Act. The bill amends existing provisions
16 authorizing release of confidential information and
17 information excepted from disclosure into law
18 enforcement by adding TWC Civil Rights Division and the
19 United States Equal Employment Opportunity Commission.

09:24AM

09:25AM

20 We don't expect any significant impact as a result of
21 this bill. If anything, we would now receive -- we
22 would receive information that today we don't receive
23 and perhaps make our investigations a little easier.

24 Any questions on the pending legislation?

09:25AM

25 COMMISSIONER DIGGS: Yes. House Bill

1 3617, will that have an impact on the audits we do --
2 the fire department audits that we do?

3 MR. BABIAK: No, no. That's merely a
4 government reorganization bill.

09:25AM 5 COMMISSIONER DIGGS: Okay.

6 MR. BABIAK: And, no, it does not amend
7 any of the portion of the statute under which we review
8 the initial testing riders.

9 CHAIRMAN ANDERSON: Does it give us any
09:26AM 10 money?

11 MR. BABIAK: Excuse me?

12 CHAIRMAN ANDERSON: Does it give us any
13 money for doing the reviews?

14 MR. BABIAK: No. And the reviews provided
09:26AM 15 for under these bills are -- we can perform this work
16 within our existing resources.

17 Some other highlights from my activities
18 since our last meeting: I did observe in one mediation
19 session. It was eye opening. I had really no
09:26AM 20 experience in mediation, and it was interesting to watch
21 the process as the mediator worked to bring the parties
22 to agreement. There was no resolution on the day of the
23 mediation; although, I believe that an agreement was
24 achieved shortly after the parties met.

09:27AM 25 And in addition to the items in your

1 materials, I have begun working with the supervisor in
2 the employment side to improve and streamline some of
3 the business processes that we use from beginning, the
4 intake stage, through the investigation and intend to
09:27AM 5 continue that moving forward.

6 Were there any questions about any of my
7 activities since our last meeting?

8 CHAIRMAN ANDERSON: Commissioners.

9 COMMISSIONER MICHALKA: No.

09:28AM 10 CHAIRMAN ANDERSON: Okay.

11 MR. BABIAK: And I guess I should mention
12 that we did have a telephone conference call with
13 Commissioners Diggs and Stidvent to just brief them on
14 the status of the budget, and I think it was productive.
09:28AM 15 I was supported in that meeting by Daryl Steglich from
16 Budget and Finance.

17 CHAIRMAN ANDERSON: Okay.

18 COMMISSIONER DIGGS: I have one quick
19 question. A, yes, thank you for that phone call. The
09:28AM 20 process was noted, and we appreciate it. But the
21 question I have is, I don't see any information on the
22 audit that is ongoing. And do you have an update, and
23 if you don't at the moment, can you send us one?

24 MR. BABIAK: Forgive me. Yes. On the
09:28AM 25 audit, we have received the draft report from the

1 auditors. I am in discussion with them to work on the
2 final report, and I expect that we will have that before
3 the next commission meeting.

09:29AM 4 COMMISSIONER DIGGS: To go over those
5 findings, it may take longer than our standard meeting
6 time. So we might have to either get a copy of that
7 ahead of time or figure out how we review that
8 information.

09:29AM 9 MR. BABIAK: I'll -- I'll talk with the
10 auditors and see what the -- the protocol is for
11 distribution, and as soon as it's ready to be
12 distributed, we will get it to each of the
13 Commissioners.

14 COMMISSIONER DIGGS: Thank you.

09:29AM 15 CHAIRMAN ANDERSON: Is this a -- is this
16 the issues and then recommendations, or is it just --
17 I'll say just the report but a report; do you know?

18 MR. BABIAK: The format of the draft is a
19 number of specific recommendations, and the final report
09:29AM 20 will include a management response for each of the
21 recommendations. And in addition to those specific
22 recommendations in the draft at least, there are other
23 observations for which there probably will not be
24 specific management responses.

09:30AM 25 CHAIRMAN ANDERSON: And with the normal

1 time for replying to these recommendations, do you have
2 any idea?

3 MR. BABIAK: I fully expect that we will
4 have it well before the next commission meeting.

09:30AM

5 CHAIRMAN ANDERSON: Okay. All right.
6 Move on to -- is that all from you from Item No. 4 of
7 the agenda, or do you have some more that you wanted to
8 cover?

09:30AM

9 MR. BABIAK: I didn't have anything more
10 to report on Item No. 4 unless the Commission has any
11 further questions?

12 AGENDA ITEM NO. 5

09:30AM

13 CHAIRMAN ANDERSON: Let's go ahead and
14 move on to No. 5 which is the discussion concerning
15 quarterly report for the second quarter fiscal report.
16 We've got a new format on the fiscal report?

09:31AM

17 MR. BABIAK: Yes, sir. We looked at the
18 previous presentation. We did discuss whether we
19 thought that the graphics that were used before had
20 meaning. We believe that the graphics did not assist in
21 providing any additional meaning to the numbers.

09:31AM

22 Certainly if the format we've presented to you now is
23 not satisfactory, please let us know, and we will
24 certainly explain what we have here today. And if you
25 prefer a different format moving forward, we can

1 certainly do that.

2 CHAIRMAN ANDERSON: Okay.

3 MR. BABIAK: Okay. If you look at the
4 first chart, I would like to essentially start with the
09:32AM 5 conclusion. If you look in the section at the top and
6 go over all the way over to the column at the right,
7 you'll see the heading is percent of revenue, and the
8 final line is labeled total expended. Today based on
9 the first six months of the fiscal year, we project that
09:32AM 10 we will spend 97.71 percent of our revenue by August 31.
11 And having said that, I will now back up.

12 The first three columns are totaled in the
13 column labeled "Total," and at this point in the year,
14 we have expended \$1,372,368. Our projection for the
09:33AM 15 fiscal year based on what we have spent is the
16 \$2,520,400. And if you look at the upper left, you will
17 see our total projected revenue for 2011 is \$2,579,591
18 which is how we derive the 97.71 percent.

19 And before I go any further, are there any
09:33AM 20 questions on just that portion?

21 CHAIRMAN ANDERSON: And you'll probably
22 get there, but that -- that doesn't equate with the
23 number on Page 3, which is \$78,200. Is there -- am I
24 reading something wrong, or should I just wait till you
09:34AM 25 get there.

1 MR. STEGLICH: For the record, Daryl
2 Steglich, Texas Workforce Commission, Finance
3 Department. The \$78,200 on the second page that you're
4 looking at, that's a revenue differential. It's not
09:34AM 5 the -- it's not the variance --

6 CHAIRMAN ANDERSON: Okay.

7 MR. STEGLICH: -- between expenditures.
8 Does that answer your question?

9 CHAIRMAN ANDERSON: Yes.

09:34AM 10 MR. BABIAK: Going back to the first
11 slide, in addition to presenting where we are now with
12 respect to our original budget, we have also provided
13 information of where we ended up for each of the two
14 preceding fiscal years, and as you can see, we report to
09:35AM 15 you there what were the expenditures in those two
16 previous fiscal years. The significant information to
17 take from this is that our current projection is to
18 expend less than we have expended in each of the two
19 previous fiscal years.

09:35AM 20 And are there any questions on that
21 portion of the information before we proceed?

22 COMMISSIONER STIDVENT: I have a question,
23 and I imagine you'll get to it when you start looking at
24 the closure cases in employment and housing. But
09:35AM 25 obviously this is a very different picture than we've

1 seen in the past with regard to projected revenues and
2 expenditures. And is the difference here because
3 you-all are on pace, on target with your case closures,
4 or is this a cost cutting or both?

09:35AM

5 MR. BABIAK: I'm afraid I can't really
6 give you a lot of insight on how we stand today versus
7 where we were in previous years only because I wasn't
8 here in previous years. I --

09:36AM

9 COMMISSIONER STIDVENT: And you don't have
10 to compare it, but the difference I'm seeing is, we're
11 on target to be on -- on budget or doing better than the
12 budget. And so the question in my mind is just, are you
13 cutting your costs, or is this a function of better case
14 closures?

09:36AM

15 MR. BABIAK: I don't know what I can
16 attribute it to other than --

17 COMMISSIONER STIDVENT: Okay.

18 MR. BABIAK: -- just coming to work every
19 day and -- and managing the operation.

09:36AM

20 COMMISSIONER STIDVENT: All right. Well,
21 whatever it is, thank you.

22 MR. BABIAK: Are there any other
23 questions?

09:36AM

24 CHAIRMAN ANDERSON: The \$147,000, is that
25 from 2009 to what you're projecting this year? Is that

1 right? Decreased cost each of the last -- well, 2009,
2 2010 and then projected for 2011. So I get that about
3 \$147,000 in -- I guess that would be cost cutting.

09:37AM 4 MR. STEGLICH: Some of the -- some of the
5 reduction in the expenditures has to do with the number
6 of FTEs -- the average FTEs throughout the year. So
7 there is some -- there is some savings in the -- in the
8 salary line that precipitates into benefits, and there
9 are other costs associated -- I don't want to get too
09:37AM 10 far into -- based on cost allocations for the agency.
11 So as your salary dollars decrease, that impacts some of
12 the other agencywide costs that are -- that are
13 allocated to the program.

14 MR. BABIAK: Any other questions about the
09:37AM 15 first slide?

16 (No audible response.)

17 MR. BABIAK: Okay. Moving to the second
18 side, which is the case closure information, on the
19 left, you have the information expressed in terms of
09:37AM 20 number of cases and on the right the revenue dollars
21 from closing those cases. I'll move to the bottom-line
22 number and start with housing on the left. We budgeted
23 358 case closures. As of February 28, we are six cases
24 ahead of pace. And on the employment side and moving to
09:38AM 25 the right, we budgeted 804 case closures, and as of

1 February 28, we are 39 cases ahead of budget. Moving to
2 the dollar amount presentation to the right, we are
3 \$15,600 ahead of our budget amount as of February 28 on
4 the housing side, and we are \$21,450 ahead of the budget
09:38AM 5 on the employment side as of February 28.

6 Any questions on the case closure
7 information?

8 CHAIRMAN ANDERSON: Well, we're at the
9 13th of April. What -- can you tell us what happened in
09:39AM 10 March? I know that's not the number that we actually
11 asked you to --

12 MR. BABIAK: I'm going to have Vickie tell
13 you the results that we saw for the month of March.

14 CHAIRMAN ANDERSON: Okay. You're smiling.
09:39AM 15 So it must be a good -- a good surprise that you have.

16 MR. BABIAK: I'll wait until I see your
17 reaction when you hear the information.

18 CHAIRMAN ANDERSON: Okay.

19 MR. BABIAK: Moving to the next slide --
09:39AM 20 and this is the one that I still struggle with, but I'm
21 going to give it a try; and I've got Daryl here to
22 support me if I fumble. First I want to again point you
23 to the right hand of the slide where you will see that
24 our projection for total revenue is \$2,579,591, and that
09:40AM 25 is based on actual results through February 28. And our

1 total expended projection, again based on actual results
2 through February 28, is \$2,520,400, leaving us with a
3 projection that we will expend 97.71 percent of the
4 budget. And now I'll back up and fill in the individual
09:40AM 5 detail, how we arrived at that conclusion.

6 If we start on the left under HUD revenue,
7 you will see \$1,054,224. That is the original budgeted
8 amount of revenue. Below that, \$1,090,624, is our
9 projected revenue based on actual results through
09:41AM 10 February 28th. And if you look directly below that, the
11 difference of our projection over the budgeted revenue
12 is \$36,400.

13 Now, moving across our budget
14 expenditure -- no. We do not have a budget expenditure.
09:41AM 15 We have the amount that we have actually spent on the
16 HUD cases through February 28, which is the \$589,973.
17 From that we project that we will spend \$1,179,946, or
18 108 percent, of the HUD budgeted revenue. And before
19 anybody gets concerned, right now the plan is that we
09:42AM 20 make that up with general revenue as we work across and
21 arrive ultimately at the 97.71 percent. And Daryl is
22 going to stop me and help out.

23 MR. STEGLICH: These are again projected
24 numbers. They're projected on current performance. All
09:42AM 25 of it is done on straight line. So the numbers are

1 relative to -- relative to where we are as far as the
2 current year. The fact that we may be a little bit over
3 on the HUD revenue, we are comparing the current year
4 production of HUD revenue to the current year
09:42AM 5 expenditures. There is a small amount of HUD money that
6 is unspent from last year, a very small amount.

7 However, that is not factored into this. This is
8 performance. Now, should we come up short, Jonathan is
9 absolutely correct, that there is -- there is general
09:43AM 10 revenue that can be used to support those efforts. I
11 don't believe that's necessarily going to be the case.

12 MR. BABIAK: Any questions about that
13 portion so far?

14 (No audible response.)

09:43AM 15 MR. BABIAK: Okay. In our discussions, we
16 decided to report the EEOC training and monitoring and
17 general revenue together because those activities,
18 unlike the HUD cases, require general revenue. And so
19 for lack of a better term, we are considering those
09:44AM 20 general revenue supported activities, and so the three
21 columns, "EEOC," "Training and Monitoring," and "General
22 Revenue" are subtotaled in the column to the right where
23 you see the heading, "GR Supported." And without
24 reading each of the numbers to you, you see the budgeted
09:44AM 25 and projected amounts for each of those and the subtotal

1 in the column for GR Supported where you see that based
2 on our actual results through February 28 we expect to
3 expend 90 percent of the budgeted amounts for those
4 three activities taken together.

09:45AM

5 CHAIRMAN ANDERSON: Without drilling down
6 too far into the weeds, why is the EEOC -- I mean, we've
7 almost -- we've expended almost all what we're going to
8 project for this fiscal year.

9

09:45AM

10 MR. BABIAK: The reason for that, Chair
11 Anderson, is that we are paid \$550 per case closure on
12 EEOC cases, and my understanding is that that amount has
13 never been expected to cover the actual cost of those
14 cases.

14

CHAIRMAN ANDERSON: Right.

09:45AM

15 MR. BABIAK: And as a result, we apply the
16 general revenue to make up the difference between our
17 actual cost and the reimbursed revenue from EEOC.

18

09:45AM

19 CHAIRMAN ANDERSON: Well, that wasn't
20 exactly my question. The revenue -- we're almost at the
21 projected revenue for EEOC for this year, \$40,000
22 difference, and yet we've expended -- we're going to go
23 up to \$843,000.

23

09:46AM

24 MR. BABIAK: I'll explain. The EEOC
25 revenue amount, \$443,400, is the budget amount from
September 1 of 2010. The amount directly below that of

1 \$485,200 is a projection based on our results for the
2 six months -- the first six months of the fiscal year.
3 So our actual revenue through February 28 -- and I don't
4 think we present this -- no. We do present it. In
09:46AM 5 fact, if you go back to the previous slide under the
6 2011 in revenues, you will see employment actual -- you
7 will see the amount, \$242,550. That's the amount of
8 actual revenue for the cases we closed through
9 February 28.

09:47AM 10 COMMISSIONER STIDVENT: I think the
11 question, though, is getting -- go back to the next
12 slide. You're doing well on your projected revenue, but
13 we're way beyond the projections for expenditures. And
14 so if I'm correct, Chair Anderson is asking about what
09:47AM 15 you do about being so off base -- obviously we're doing
16 better on the projected revenues, but way off base on
17 the projected expenditures for EEOC and for HUD as well.
18 I think you mentioned that with HUD we have some -- we
19 have some money left over from the previous fiscal year.
09:47AM 20 But with EEOC I understand that you're saying some of
21 this is going to be GR supported. But are we setting
22 our projections wrong if our EEOC expenditures are
23 almost -- they are double essentially from what our
24 projections were.

09:47AM 25 MR. STEGLICH: From an operational

1 standpoint, we charge the expenditures directly to the
2 EEOC grant. At -- at times during the year, usually on
3 a quarterly basis, we will transfer those expenditures
4 and fund them with general revenue. So the -- the
09:48AM 5 comparison that you -- that -- and that's one reason
6 Jonathan put these things together. The comparison is
7 really over at the GR supported revenue schedule where
8 you have the aggregate of all the expenditures. It's an
9 internal -- it's internally -- internal accounting.

09:48AM 10 COMMISSIONER STIDVENT: But I guess I'm
11 still confused because if you look at the subtotal on
12 the GR supported for expenditures you have as a total
13 there \$670,227, but your -- okay. So your projections
14 are on the line below, and we're doing okay, then, if we
09:49AM 15 look at that number?

16 MR. STEGLICH: Yes, ma'am. The
17 projections that we put in there, we're projecting the
18 expenditures directly on the -- on the funding source
19 that's in the accounting system.

09:49AM 20 COMMISSIONER STIDVENT: Okay.

21 MR. STEGLICH: Those -- those -- the
22 excess between the \$485,200 for the EEO revenue --
23 projected revenue and EEOC expended, that difference is
24 made up with general revenue.

09:49AM 25 COMMISSIONER STIDVENT: Okay. Should we

1 be changing our expenditure line at all? I mean, should
2 we be changing that line at all in terms of what we're
3 expecting? If your original projection was \$421,000 and
4 your -- what's coming up, your projection for the rest
09:49AM 5 of the year, should we change that at all?

6 MR. STEGLICH: Well, at some point in
7 time, that \$421,000 number will -- part of that will
8 become expenditures for general revenue.

9 COMMISSIONER STIDVENT: Okay.

09:49AM 10 MR. STEGLICH: So it will not be under
11 this particular --

12 COMMISSIONER STIDVENT: It won't be under
13 EEOC. Okay.

14 MR. STEGLICH: It won't be under EEOC.
09:50AM 15 It'll be EEOC general revenue, is where it will be. And
16 we didn't -- we didn't separate those two pieces out, so
17 to speak.

18 CHAIRMAN ANDERSON: Well, I'm not quite
19 sure how to phrase this, but obviously the more
09:50AM 20 employment cases we close, the more we lose -- I mean,
21 the more money we're losing because we're not going to
22 get anymore GR revenue.

23 MR. STEGLICH: From a revenue generation
24 standpoint, if we -- if we anticipated revenue at 804
09:50AM 25 cases, which is what we did this year, and let's say we

1 do 900 cases, the amount that is supplemented for those
2 additional cases -- since we're not hiring additional
3 people, doing additional work, the amount of general
4 revenue to supplement those EEOC cases gets smaller
09:51AM 5 because we're going to spend -- we have "X" number of
6 people that -- and resources that we put to EEOC.

7 How many investigators do we have,
8 Jonathan? I'm sorry.

9 MR. BABIAK: We have five investigators on
09:51AM 10 the EEOC cases.

11 MR. STEGLICH: So if we've got five
12 investigators and you don't add investigators and they
13 do more cases, then your -- your costs are going to be
14 pretty stable for the year. So the amount of general
09:51AM 15 revenue that is -- that is required to supplement
16 those -- those costs -- those fixed costs, so to speak,
17 would become smaller, and those additional resources
18 would be available.

19 COMMISSIONER STIDVENT: So there's a point
09:51AM 20 at which you reach maximum efficiency that you
21 weren't -- there should be a point where the more cases
22 they close there's a certain amount of supplement that
23 has to be for GR. And then is there a point -- a
24 breakeven point? I mean -- and it may be impossible to
09:51AM 25 reach. It may be that they have to close so many that

1 we never break even on that, but --

2 MR. STEGLICH: I don't know that there
3 is -- I don't know if it's physically possible for the
4 investigators -- the number of investigators without
09:52AM 5 increasing the number of investigators to do enough
6 cases to where you would not need some general revenue.

7 CHAIRMAN ANDERSON: If you could add more
8 investigators, that's more cost, and that's -- the ratio
9 is still going to keep on --

09:52AM 10 MR. STEGLICH: That is correct.

11 CHAIRMAN ANDERSON: Mr. Crump.

12 MR. CRUMP: I apologize, Commissioners.
13 I've just been dying to say something. What we're
14 talking about -- excuse me. For the record, Gene Crump,
09:52AM 15 deputy executive director. What we're talking about is
16 the average cost per case over time based on the budget
17 versus what we're going through till the end of the
18 year. So as you-all finally -- as you-all have got to,
19 if you're not going to add investigators, then the
09:52AM 20 average cost per case if you're completing more EEO
21 cases is going to go down over the year. So the
22 marginal increase is not -- is not moving upward as long
23 as you're not adding investigators.

24 CHAIRMAN ANDERSON: You got a fixed cost
09:53AM 25 for investigators --

1 MR. CRUMP: Yes, sir.

2 CHAIRMAN ANDERSON: -- as they enter more
3 cases.

4 MR. CRUMP: So the average cost per case
09:53AM 5 that we've budgeted on is going to go down. We budget,
6 as we said, the cost to close a case for EEOC, the cost
7 to close a case for HUD at the beginning of the year,
8 and if you don't add staff and the investigators, as
9 they have been, are more efficient, the cost per is
09:53AM 10 going down. And so that's the discussions he's having
11 right now.

12 CHAIRMAN ANDERSON: So from the HUD side.
13 We're looking to have enough revenue to kind of fund,
14 well, all of HUD, but on the EEOC side, we're looking to
09:53AM 15 close enough cases so they can close that margin?

16 MR. CRUMP: We always knew going into the
17 year that if the cost per case closure doesn't change
18 then there is a cap upon which we will reach. However,
19 if the investigators are more efficient, then the cost
09:53AM 20 per is going down --

21 CHAIRMAN ANDERSON: Okay.

22 MR. CRUMP: -- which is -- going back,
23 sir, that was your first question, is there a cap
24 because of GR. If the cost per -- average cost that we
09:54AM 25 budget is accurate, the answer is yes. GR caps the

1 number of EEO cases that can be completed. But if the
2 investigator is more efficient because you're not adding
3 more staff and increasing salary, the cost per is going
4 down, and the cap extends further out. And as Daryl
09:54AM 5 said, at some point, you probably -- you probably reach
6 that number which they can physically do, but we don't
7 know what that is yet.

8 CHAIRMAN ANDERSON: So -- okay.

9 MR. CRUMP: Did that assist at all?

09:54AM 10 MR. BABIAK: Well, let me see if I can
11 address the original question, which was --

12 CHAIRMAN ANDERSON: Thanks, Gene.

13 MR. BABIAK: -- will we incur a loss if we
14 simply continue to increase the number of cases because
09:54AM 15 the actual cost per case exceeds the EEOC revenue per
16 case, and no. And that is because to do more cases than
17 we budgeted means that we are actually achieving a lower
18 cost per case, and -- and, really, beyond a -- beyond
19 the budgeted amount, any additional cases really gives
09:55AM 20 you a dollar-for-dollar -- you're relieving the load on
21 the general revenue.

22 CHAIRMAN ANDERSON: Yeah. That's what I
23 was going to say. We've been focusing for the last year
24 or two on housing, which is important because they bring
09:55AM 25 in so much money or revenue. But we also should have

1 been equally focusing to some extent on employment to
2 increase the number of cases closed there so that gap in
3 -- the margin gap will be closed as much as possible.

09:55AM

4 MR. BABIAK: And, yes, sir, that is the
5 next task.

6 CHAIRMAN ANDERSON: So if the
7 investigators double their -- their goals, we can make
8 it, right?

09:56AM

9 MR. BABIAK: Well, if we get the five to
10 produce the work of 10, then yes.

11 CHAIRMAN ANDERSON: Some of these
12 investigators in the back and the front row looked
13 scowling at me when I said that.

09:56AM

14 MR. BABIAK: I'm afraid what's going to
15 happen to me when I go back to work.

09:56AM

16 CHAIRMAN ANDERSON: Based on this, they're
17 doing a great job, and they're to be commended. I
18 hope -- and I know that you have. From the
19 Commissioners -- and they can speak for themselves, but
20 they're doing a great job, both the housing side and the
21 employment side closing the cases.

22 I look forward to hearing what March
23 brings, Vickie.

09:56AM

24 COMMISSIONER OSTERHOUT: Is there a
25 chance -- is there an upward modification at the end of

1 the year or anything that they do on EEOC cases?

09:56AM

2 MR. BABIAK: Yes. Is there an upward
3 modification? I have spoken to our regional coordinator
4 from EEOC to find out about the upward modification,
5 and, yes, we are on course for where we need to be to
6 make that request when the time comes. We make that
7 request, I believe, in July or August.

8 COMMISSIONER OSTERHOUT: Okay.

09:57AM

9 MR. BABIAK: And we -- that is one of our
10 priorities to make sure that we are in the best position
11 possible well in advance of when the time comes to make
12 that request.

13 COMMISSIONER OSTERHOUT: Okay.

09:57AM

14 MR. BABIAK: And just to finish this third
15 slide, the numbers along the bottom are a comparison
16 between budgeted revenue and projected revenue. Those
17 numbers do not take into account expenditures, and the
18 bottom line number over at the far right is that we
19 project the actual revenue to exceed the budgeted
20 revenue by \$78,200.

09:57AM

21 CHAIRMAN ANDERSON: I like this
22 presentation of financials better. My old eyesight
23 can't read the numbers on the tiny charts here;
24 although, they come out fine here (indicating). But
25 good thing I'm not flying -- never mind. Go ahead. Can

09:58AM

1 you make those bigger?

2 MR. BABIAK: We will get bigger numbers.
3 We have some toner over at the office to do that with.
4 Were there any questions about this slide or any of the
09:58AM 5 financial and budget information?

6 (No audible response.)

7 MR. BABIAK: Other than making the numbers
8 bigger, do you have any guidance for us on how you would
9 like to see the presentation changed going forward to
09:58AM 10 making it more informative or better?

11 COMMISSIONER GLOVER: Being the new guy on
12 the block, I would just like to say that I really
13 appreciate the way this is presented. I'm not a numbers
14 person myself, and I can get it. So that should say
09:59AM 15 something.

16 MR. BABIAK: Thank you, Commissioner.

17 And Commissioners Diggs and Stidvent, we
18 will be setting up another conference call shortly to
19 give you another briefing for the actual results that
09:59AM 20 we've seen beginning March 1.

21 And, Chair Anderson, unless there's
22 anything further than that, that concludes that agenda
23 item.

24 CHAIRMAN ANDERSON: Okay. Thank you,
09:59AM 25 Daryl and Jonathan.

1 AGENDA ITEM NO. 6

2 CHAIRMAN ANDERSON: Item No. 6,
3 Discussion, consideration and possible action regarding
4 the quarterly report for employment enforcement and
09:59AM 5 training, Ms. Quesnel.

6 MS. QUESNEL: Good morning, Everyone. For
7 the record, I'm Janet Quesnel -- oops! I forgot my
8 instructions. For the record, my name is Janet Quesnel.
9 I am the supervisor of the employment investigators, and
10:00AM 10 I'm standing in for the manager that's being replaced
11 soon.

12 Our employment investigators and mediators
13 have continued to meet or exceed their numbers. They
14 completed 91 closures this month. At the end of March,
10:00AM 15 we have actually met 66 percent of our contract, putting
16 us ahead of where we expected to be at this point. In
17 January we discussed your concern regarding the
18 increased number of complaints over 250 days old. The
19 total number of these files fluctuates during the year,
10:01AM 20 but I reviewed our inventory history and found our
21 average per month in 2009 was 53. In 2010 it was 38,
22 and in the first six months of this year, 2011, they've
23 gone down to 26. So we're continuing working with the
24 older files. They're set as a priority, and we're
10:01AM 25 working with the investigators to keep the number down

1 as to the minimum.

2 Since our last commission meeting, I just
3 wanted to let you know that I've worked with the Office
4 of Internal Audit staff, assigned to the employment area
10:01AM 5 and assisted them with learning our procedures. Our
6 intake staff, our investigators and mediators also
7 assisted them just to make sure that they had a full
8 understanding of our process. I have been working on
9 redrafting the employment investigation in the ADR
10:01AM 10 procedures manual to incorporate the changes that we've
11 had since the last time it was updated in 2008. And,
12 finally, I am setting up a monitoring system for our
13 intake investigators and developing training for them so
14 that we can be better organized and increase their
10:02AM 15 productivity and customer service.

16 Does anyone have any questions?

17 CHAIRMAN ANDERSON: On the age of the
18 cases, they're coming down. But why is there -- and I
19 guess the same question on the housing. The 250 to 300
10:02AM 20 days is two percent, and then it jumps up to 4.3 for
21 365, and now the 365 jumps back down to 1.5. Is there
22 any kind of reasoning on why that jump there in the
23 middle? It's not a lot of cases overall, but -- I mean,
24 they are coming down, but --

10:03AM 25 MS. QUESNEL: I'd have to check on that

1 just to be able to give you an honest answer, but I can
2 take care of that if you'd like.

3 CHAIRMAN ANDERSON: It just may be an
4 aberration. I don't know.

10:03AM

5 MR. BABIAK: Chair Anderson, I -- based on
6 my limited knowledge, I can say that just the variation
7 that you see from individual cases over time is going to
8 account for that -- that -- why you see that bulge for
9 those older cases. I mean, the important thing is that
10 we -- we are making those a priority and we do have a
11 handle on where we stand and they're going to continue
12 to get our attention.

10:03AM

13 CHAIRMAN ANDERSON: Any Commissioners have
14 any questions for Ms. Quesnel?

10:03AM

15 (No audible response.)

16 MS. QUESNEL: Thank you very much.

17 AGENDA ITEM NO. 7

10:04AM

18 CHAIRMAN ANDERSON: Ms. Covington, you're
19 going to speak on the housing and enforcement and
20 ultimate ADR, right?

21 MS. COVINGTON: Yes, Chair. Good morning,
22 Commissioners and TWC staff and guests. For the record,
23 my name is Vickie Covington. I'm the manager for the
24 ADR unit, for fair housing and also for outreach.

10:04AM

25 CHAIRMAN ANDERSON: And ADR is got to come

1 under Vickie because it can't come under the employment
2 side because that's what ADR handles, is employment
3 cases.

4 MR. BABIAK: Yes, sir. That's correct.

10:04AM

5 CHAIRMAN ANDERSON: The fire wall.

6 MR. BABIAK: Yes. We maintain a fire wall
7 between the mediators and the investigators, and as a
8 result, the mediators have a different reporting channel
9 with respect to the investigators to maintain that fire
10 wall.

10:05AM

11 MS. COVINGTON: If you look at the
12 performance through second quarter Fiscal Year 2010 for
13 the ADR unit in comparison with the second quarter
14 through Fiscal Year 2011, one of -- there was a question
15 that came up during our training yesterday with
16 Commissioner Glover. She had asked what was the
17 mediation success rate. So we did a calculation and
18 compared the number of cases that were resolved through
19 no-fault settlements as well as withdrawals with

10:05AM

20 benefit, and the mediation conference was held. And we
21 found that through last year this time the mediation
22 success rate was 74 percent compared to 80 percent this
23 year. If you'll remember, last fiscal year -- well,
24 some of you will remember last fiscal year we had three
25 mediators compared with two mediators currently.

10:05AM

10:06AM

1 We also compared the number of cases that
2 were returned to investigations to the cases assigned to
3 mediation or to the mediators, and we found that last
4 year through the second quarter it was at 63 percent
10:06AM 5 compared to 51 percent this fiscal year. So the
6 mediators continue to do and even show improvement even
7 with reduced staffing.

8 COMMISSIONER STIDVENT: I have a question
9 on that. Can you explain how you get that success rate
10:06AM 10 number? I see the cases assigned to mediators. And,
11 now, what -- how are you measuring success? Do the
12 cases close or no-fault settlements or --

13 MS. COVINGTON: The mediation conferences
14 that are actually held compared with the number of cases
10:07AM 15 that are resolved through no-fault settlements as well
16 as withdrawals with resolution. We do not include in
17 that number cases that are closed as to dismissals such
18 as the person requested their notice of right to file a
19 civil action or some other reason such as lack of
10:07AM 20 jurisdiction. Sometimes when the cases are referred to
21 mediation, during the process of contacting the
22 respondents, we discover that the respondents have less
23 than the requisite number of employees. So we don't
24 have jurisdiction.

10:07AM 25 COMMISSIONER STIDVENT: Okay.

1 MS. COVINGTON: Does that answer your
2 questions?

3 COMMISSIONER STIDVENT: So for the number
4 of cases assigned to mediators, was that 374? Of those
10:07AM 5 374, only 98 result in actual mediation conference?
6 Between 374 and 98, we may not have jurisdiction over or
7 other reasons that would preclude an actual mediation
8 conference?

9 MS. COVINGTON: Yes.

10:08AM 10 COMMISSIONER STIDVENT: Okay.

11 MS. COVINGTON: That's correct.

12 CHAIRMAN ANDERSON: And maybe you'll get
13 to this, Jonathan, but with the success of the
14 mediators, should we be looking at going back to having
10:08AM 15 three mediators, or what does your employment -- what
16 are you looking for right now as far as adding to the
17 staff?

18 MR. BABIAK: Well, right now we did add
19 one housing investigator as we reported to you at the
10:08AM 20 last meeting. That individual is in training and
21 already starting to produce. We had another existing
22 housing investigator leave last Friday to take a new
23 position in Regulatory Integrity. And we have extended
24 an offer to another individual from the earlier job
10:09AM 25 posting, and we expect that individual to start as soon

1 as possible.

2 In terms of the mediators, now that I can
3 reduce the amount of energy on putting on the housing to
4 look at operations in the employment investigations and
10:09AM 5 mediation, I'd like to see if there's any opportunity
6 for efficiencies that would let these mediators produce
7 more before hiring one and trying to then see what the
8 opportunities for efficiencies are. But I would like
9 just the opportunity to assess how we're doing business
10:09AM 10 and if we can give any kind of support to the mediators
11 that will simply let them do more cases.

12 CHAIRMAN ANDERSON: Well, on vacation or
13 sick, I mean, it's not like the other areas where you
14 have several investigators. So you're down to one
10:10AM 15 mediator. That pretty much cuts into your production.
16 But you think that that's a good number right now, and
17 you'll take a look at that -- increasing that in the
18 future. Do we have to go back to TWC to ask them for
19 additional head count, Brenda or Jonathan?

10:10AM 20 MR. BABIAK: I think I'd have to see what
21 our budgeted and funded FTE positions are before I'd be
22 able to make a decision?

23 CHAIRMAN ANDERSON: Okay.

24 MS. COVINGTON: On the case resolutions, I
10:10AM 25 would like to let the Commissioners know that during the

1 month of March we resolved 41 cases. The housing staff
2 was very efficient during the month of March. We also
3 have one case that we waived to the Department of
4 Justice. The Department of Justice had opened a similar
10:11AM 5 investigation to the one that we were conducting here
6 within the Civil Rights Division, and they wanted as a
7 matter of efficiency for us to turn over all of their
8 investigative materials to them. And the director in
9 the Fort Worth office thanked us for the great job that
10:11AM 10 we had done on gathering the information and
11 documentation because it's going to save them a lot of
12 work.

13 We also requested and we were told that we
14 would receive payment for that case. So at the end of
10:11AM 15 the year, we're hoping that we will be able to say that
16 we closed 42 cases in the month of March. And as
17 Jonathan has reported already, we are ahead through the
18 end of February of our budgeted resolutions for fair
19 housing resolutions.

10:12AM 20 CHAIRMAN ANDERSON: The way I see it,
21 we're supposed to have -- our budget is, what, 30 cases,
22 and we average 31 for the first six months. This is 10
23 above that. That's outstanding.

24 MR. BABIAK: This is Chair Anderson.

10:12AM 25 MS. COVINGTON: Thank you.

1 CHAIRMAN ANDERSON: It's really wonderful.
2 Great, all of them. And I know we focused on housing,
3 but employment has done equally -- equally as well. So
4 the whole team is doing outstanding work.

10:12AM

5 MS. COVINGTON: Next slide, the type of
6 case resolutions continues to be -- well, let me back
7 up. Last fiscal year through the second quarter, our
8 case resolutions as no cause for 30 -- consisted of 30
9 percent of our cases, and it's a little bit higher

10:13AM

10 through the second quarter of this year at 34 percent.
11 We continue to have great success in our withdrawals
12 with settlement as well as our conciliation agreements.
13 Through the second quarter, complainants received more
14 than \$37,000 in monetary relief. In addition, they

10:13AM

15 received nonmonetary relief as well. And we had at
16 least two complainants that received benefits in actual
17 housing.

18 The age of the pending cases, as Jonathan
19 stated earlier, our age cases continue to be a priority.

10:13AM

20 At the end of the second quarter, we had 47 cases that
21 were over 100 days. I will tell you that 13 of these
22 cases are what we classify as complex. These are our
23 design and construction cases as well as our mortgage
24 lending cases. We do have at least two cases where we

10:14AM

25 have issued more than one subpoena -- well, we've issued

1 a friendly subpoena and ended up having to issue a
2 subpoena that was served on the respondent so that we
3 can actually get the information from them.

4 As of today, we have 39 cases that are
10:14AM 5 over 100 days, and of those 11 of those cases are
6 complex cases. And oftentimes -- I think Jonathan
7 alluded to this earlier -- even the simple cases turn
8 out to be a little bit more than simple. We sometimes
9 lose track of the complainant, we lose track of the
10:15AM 10 respondent, and we have to use our internal resources to
11 try to locate the complainants and/or the respondents.

12 CHAIRMAN ANDERSON: That's a good
13 question. What's our obligation under those
14 circumstances, just due diligence, do the best you can
10:15AM 15 and move on?

16 MS. COVINGTON: There are procedures in
17 place, that if we cannot locate the complainant, we can
18 dismiss the complainant. But we have to go through a
19 series of efforts to try to locate them, similarly with
10:15AM 20 the respondents.

21 I want to tell you that on yesterday we
22 attended the Dare to Be Fair conference that was hosted
23 by the City of Austin Equal Employment and Fair Housing
24 Office. All the CRD housing staff attended to include
10:16AM 25 me and Jonathan, and it was very successful. We

1 actually were one of the sponsors for the conference.
2 There were 91 people in attendance. They came from
3 local government, state government, and we had public
4 and private housing stakeholders there as well. It was
10:16AM 5 also attended by representatives from HUD, and I
6 believe -- I know I did -- everyone in attendance
7 learned something new.

8 Because of budgetary constraints, we
9 continue to look for cost effective ways to conduct
10:16AM 10 outreach activities, and we continue to collaborate with
11 other fair housing partners to conduct outreach
12 activities within the state. We also continue to use
13 in-house services that are available. The press release
14 that was released on April the 11th, 2011 is a good
10:17AM 15 example of no cost activities that we can utilize. And
16 I want to thank Governmental Relations for helping us be
17 able to put that press release out on the anniversary of
18 Title VIII. Are there any questions?

19 CHAIRMAN ANDERSON: Thank you. Do you
10:17AM 20 have a question?

21 COMMISSIONER GLOVER: No, just a quick
22 comment. Thank you for putting that information
23 together and giving us an opportunity to look at the
24 differences that does make. Thank you very much.

10:17AM 25 MS. COVINGTON: Thank you.

1 CHAIRMAN ANDERSON: The -- this is off the
2 housing topic. The budget, issues with benefits, things
3 like this going to have an impact on our budget at this
4 point? Have you had any conversations with Gene and
10:18AM 5 Daryl?

6 MR. BABIAK: And just to --

7 CHAIRMAN ANDERSON: I'm talking about
8 CRD -- excuse me -- CRD budget.

9 MR. BABIAK: Just to make sure I
10:18AM 10 understand, you're asking about the reports in the media
11 about the state of the budget for the State of Texas.

12 CHAIRMAN ANDERSON: Right.

13 MR. BABIAK: Right now there is no
14 information to indicate that the budgeted amounts for
10:18AM 15 CRD will be substantially different from what they have
16 been in the past.

17 AGENDA ITEM NO. 8

18 CHAIRMAN ANDERSON: Okay. How to Conduct
19 an Employment Investigation I think is one of the items
10:18AM 20 that we've asked you-all to provide us -- all the
21 commissioners, but obviously particularly Commissioner
22 Glover. But all of us will learn from that. So --

23 MR. BABIAK: Yes, sir. At this point, I
24 will move to the podium. Janet will come to the table,
10:19AM 25 and she will be accompanied by one of our mediators,

1 Mike Minton, and one of our investigators, Patricia
2 Powell. So please give us just a moment, and we'll get
3 set up.

4 And as introduction I would like to point
10:19AM 5 out that one reason I've moved over here to the podium
6 is that I don't really belong at the table with these
7 three individuals. I have five months of experience.
8 Look at the table, and the three individuals in front of
9 you represent 57 years of collective CRD experience.

10:20AM 10 And it's really a privilege to be just a moderator as
11 they present this training to you. As you see in your
12 materials, Janet will address the issues related to
13 intake and administration. Mike will cover mediation,
14 and Trish will cover the investigation.

10:20AM 15 And with that I am going to turn it over
16 to Janet.

17 MS. QUESNEL: Thank you. For the record,
18 I'm Janet Quesnel. We're just going to give a brief
19 synopsis here, and if you have any questions, please let
10:20AM 20 us know. First off our office actively enforces the
21 Texas Commission on Human Rights Act as amended,
22 Title VII of the Civil Rights Act of 1964 as amended,
23 the Age Discrimination in Employment Act, the Americans
24 with Disabilities Act as amended under which we
10:21AM 25 investigate complaints of discrimination based on race,

1 color, national origin, religion, sex, age or
2 disability. We have two intake staff, we have five
3 investigators and one clerical that works with us.

4 Our investigation process begins when an
10:21AM 5 inquiry is received in the office. Inquiries can be
6 from three different sources. We have the mail-in
7 inquiries which can be correspondence, intake
8 questionnaires or completed charges of discrimination.
9 When -- then we have intake calls which are screened and
10:21AM 10 verified by the -- the receptionist. They check in --
11 they ask if -- I'm sorry, a little nervous.

12 When they receive the call, the
13 receptionist asks what city they physically work in, do
14 they have 15 or more employees, is the last date of
10:22AM 15 discrimination within the last 180 days, have they filed
16 with the EEOC, and what type of discrimination are they
17 filing under, race, color, national origin, religion,
18 sex, age or disability.

19 MR. BABIAK: And, Janet, if I may, let me
10:22AM 20 just interject. The reason that we ask those questions
21 up front is to screen out the types of disputes over
22 which the law does not give us jurisdiction to
23 investigate a complaint. And one example that we do see
24 from time to time is an individual who will claim that
10:22AM 25 they are suffering discrimination because they have a

1 record of a criminal history. Today a person with a
2 criminal history is not considered in a protected class,
3 and we do not investigate those allegations.

4 MS. QUESNEL: Thank you. If a complaint
10:23AM 5 does not meet the requirements, an explanation is
6 provided to the complainant either in writing or by
7 phone. If it is sufficient to file, the caller is sent
8 an intake questionnaire or they can go to our web site
9 and find the forms there. And if the situation is more
10:23AM 10 complicated, the call may be directed to an intake
11 investigator. With walk-ins we have an inquiry document
12 that we now give them that asks these basic questions so
13 that the receptionist isn't tied up asking them while
14 they're there. If the information does not meet the
10:23AM 15 requirements as judged by the receptionist, an
16 explanation is provided to them, and if it does, then
17 they are given an intake questionnaire to fill out and
18 complete. They then meet with an intake investigator
19 who sits down and explains the situation, gives them all
10:23AM 20 the details and verifies if the information is correct.

21 Once we have an inquiry that qualifies,
22 it's given to the intake investigators, and they receive
23 the complaint and verify if all the information on it is
24 correct just to be sure we don't miss anything. If the
10:24AM 25 complaint information disqualifies the allegations, for

1 example, further inquiry of the complainant raises
2 conflicting information, verification of the company
3 reveals that they have less than 15 employees,
4 complainant comparisons are similarly situated,
10:24AM 5 employees on the same basis as being treated fairly, the
6 complainant states in the documentation that their
7 treatment was because of other reasons other than the
8 ones that they're trying to file under, like "The
9 supervisor didn't like me, and so they fired me," and
10:24AM 10 that type of information, if it does not qualify, a
11 dismissal letter is sent to them explaining why.

12 If the complaint is jurisdictional, the
13 information is put into our Integrated Mission System,
14 which is called the IMS, and we draft a charge of
10:25AM 15 discrimination which is sent to the complainant to have
16 them review it. If it's true, they sign and notarize.
17 Once the -- if the charge is not returned, then we go
18 ahead and dismiss it by the deadline given to them to
19 return it to us. If we do receive the signed notarized
10:25AM 20 charge, it's given to the investigator who completes the
21 file, gives it to the team lead, which is me, and I
22 assign TWC CRD numbers to it.

23 Once that is done, it's given back to the
24 investigator, and they send out the invitation to
10:25AM 25 mediate to both the complainant and the respondent and

1 with a copy of the charge of discrimination. And the
2 file is tabbed and given to me, and it's moved over to
3 the mediation unit at that stage. At this point, I will
4 let Mike take over since he's our mediator specialist.

10:26AM

5 MR. MINTON: Thank you, one of our
6 mediators, Michael Minton, for the record. Chairman
7 Anderson, thank you, sir. Commissioners, appreciate
8 your interest in our employment investigation process.
9 Briefly about mediation, as Janet indicated, all of the
10 cases that are officially filed with the agency are
11 assigned to our mediation unit which now consists of two
12 mediators. Those cases are split between myself and
13 Evelyn Smith. We work initially to contact both parties
14 and discuss with them our role as mediators and to
15 describe them the specific steps in mediation, what our
16 role is and what we expect of them. So it's a homework
17 assignment for both parties to prepare them for that
18 decision.

10:26AM

19 Once a decision has been made on whether
20 or not to mediate, I believe the first example that
21 you're going to have is a rejection notice. We find
22 about 60 percent of employers are not interested --
23 maybe a little less than that are not interested in
24 participating in mediation. And so at that point a
25 rejection notice is sent to the parties stating that one

10:27AM

1 or both parties were not interested in mediation and
2 sent back to Janet in Investigations, and Trish, to
3 follow through with the investigation.

4 If the parties are interested in
10:27AM 5 mediating, then the mediators work to schedule a
6 mediation conference which takes place either here in
7 our Austin office or via phone conference. Mediators
8 work with both parties to work towards a mutually
9 acceptable settlement agreement. The reason that you
10:27AM 10 find many of these cases are identified as a withdrawal
11 with settlement is because the parties reach their own
12 settlement agreement that are, in other words, a larger
13 fold release that is not as limited as a Workforce
14 Commission settlement agreement. Otherwise, the
10:28AM 15 settlement agreement language would seem to have a much
16 higher percentage. Most of the cases are settled
17 through a private settlement between the parties, and,
18 thus, the withdrawal form is utilized. If we are not
19 successful in resolving a case, which apparently doesn't
10:28AM 20 happen that often, the parties will receive a similar
21 notice indicating that mediation was unsuccessful, and
22 the case will be reassigned to an investigator.

23 That was very brief, so questions, please.

24 CHAIRMAN ANDERSON: Yes. Do you notice
10:28AM 25 any differences between telephone mediations and in

1 face-to-face because it seems in face-to-face you can
2 see the intensity of the other parties that may drive
3 you a little bit quicker to settle.

4 MR. SPARKS: When I was advised, and
10:29AM 5 Evelyn Smith as well, five or six years ago -- and we no
6 longer have a travel budget -- I really thought that I
7 would be applying for unemployment benefits. I have
8 been delighted at the success of phone conference
9 mediations. And while I appreciate the attitude and the
10:29AM 10 willingness of the parties to commit themselves to a
11 face-to-face mediation, which often means driving to
12 Austin from Lubbock or Houston or the Valley, I have
13 found that I actually appreciate phone conference
14 mediations more because, several reasons, No. 1, the
10:29AM 15 parties don't know that I'm not 250 and 6'3".

16 As well, I find that I do not have to
17 spend as much time smoothing feathers from parties who
18 have become upset at the body language which is
19 demonstrated in the open face-to-face process. Parties
10:29AM 20 are more tuned in to listen to each other, and I think
21 we've probably all read studies about how much our body
22 language demonstrates our attitudes towards each other.
23 It's considerable. And when you do not have to deal
24 with that aspect of it, I find it's more
10:30AM 25 business-oriented and some of the emotions taken out of

1 it.

2 CHAIRMAN ANDERSON: Okay.

3 MR. MINTON: Any questions?

4 MS. QUESNEL: You can tell Mike is
10:30AM 5 extremely good at his job. Okay. When the complaint is
6 reassigned to me, I go ahead and assign them to the
7 investigators, and once they receive it, it's over to
8 Trish.

9 MS. POWELL: Good morning. For the
10:30AM 10 record, I'm Trish Powell. I'm an employment
11 investigator. I'll be presenting just a brief overview
12 of what happens in an employment investigation. When
13 conducting a routine employment investigation, there are
14 four basic steps. After the investigator reviews the
10:31AM 15 charge, the first step is to start gathering evidence
16 from both parties, and I'll get back to that in more
17 detail in just a minute. The second step is to analyze
18 the evidence. The third step is to conduct a
19 predetermination interview with -- with the respondent
10:31AM 20 or the complainant. And the fourth step is to make a
21 recommendation on the merits of the complaint.

22 So Step 1, gathering evidence, what an
23 investigation will do is mail a complainant contact
24 letter, which is Document No. 1 in your packet. The
10:31AM 25 investigator may also contact the complainant to clarify

1 the allegations and to get, you know, more information
2 by phone, but basically they're requested to provide
3 documentation to support their allegations. And these
4 documents can include policies, personnel records,
10:32AM 5 medical records, notes, email, video or audio
6 recordings, anything that they have that they feel
7 supports their position.

8 MR. BABIAK: Trish, let me stop you for a
9 moment, and maybe we dropped the ball and didn't give
10:32AM 10 you the correct number for your attachments. But for
11 the benefit of the Commission, when Trish a moment ago
12 referred to Document No. 1, that's actually Attachment
13 No. 13 in your materials, and it is labeled correctly
14 "Complainant Contact Letter." So as Trish identifies
10:32AM 15 the remaining attachments, they should come through in
16 order if you want to follow along in your material. So
17 right now we're at Attachment 13. Thanks, Trish.

18 MS. POWELL: Okay. The complainants
19 also -- and this should have been done in intake, but
10:32AM 20 may also be asked to clarify -- identify comparators,
21 people that were treated more favorably under like or
22 similar circumstances, and also to identify any
23 witnesses that can substantiate their allegations.
24 Witnesses should be people that were present when the
10:33AM 25 act took place, familiar with any of the policies at

1 issue or anyone that can verify any of the facts that
2 are in dispute.

3 The respondent is mailed a request for a
4 position statement and supporting documentation, and an
10:33AM 5 example of that is Document No. 2. The respondent is
6 asked to articulate a legitimate nondiscriminatory
7 reason for the action that was taken and to submit any
8 evidence that they have to support the action taken.
9 Again, that can include policies and procedures,
10:33AM 10 personnel records, comparative data of other similarly
11 situated employees that were treated the same under
12 similar circumstances and also witnesses that can
13 support the respondent's version of the events.

14 The investigator will then contact
10:34AM 15 witnesses, and this can be done either by telephone or
16 they can be sent a witness contact letter. And those
17 are your Attachments 3A and 3B. The investigator should
18 state the purpose of the interview, state the role of
19 the investigator as a neutral fact-finder, not an
10:34AM 20 advocate for either side, determine what the witness'
21 relationship is to the complainant or the respondent,
22 and identify what firsthand information the witness has.

23 Does anyone have any questions so far?

24 CHAIRMAN ANDERSON: This correspondence,
10:34AM 25 is that sent certified or --

1 MS. POWELL: No.

2 CHAIRMAN ANDERSON: Just regular mail?

3 MS. POWELL: Regular mail. Sometimes what

4 I like to do -- I don't know if this is something all

10:34AM 5 investigators do. But for the position statement, I

6 usually send it certified and either also email if I

7 have an email address to the respondent or fax it

8 because that gives them a little extra time because

9 there are time lines. And if they receive it the same

10:35AM 10 day, that gives them, you know, a few extra days to

11 respond.

12 Step No. 2 is to conduct an analysis of

13 the evidence. The investigator will determine, you

14 know, whether additional information is necessary to --

10:35AM 15 to make a final decision, and, if so, the -- they will

16 send a request for additional information to either the

17 complainant or the respondent as required, and that's

18 your Document No. 4. And we would also need to assess

19 the credibility of any witnesses that were interviewed.

10:35AM 20 The witness should have personal knowledge about the

21 matters covered in their statements. They should not be

22 biased towards one or the other party, and the

23 investigator should look to see if any documents exist

24 that would support or rebut their testimony.

10:36AM 25 Step No. 3, once all the evidence has been

1 analyzed, the investigator will conduct what's called a
2 predetermination interview either by letter or by
3 telephone, and your examples are Documents 5A and 5B.

10:36AM 4 MR. BABIAK: And just to interject, that's
5 actually Attachments 18 and 19 in your materials. Okay.
6 Sorry about that.

7 MS. POWELL: That's okay. If the facts in
8 the case indicate that a no-cause recommendation will be
9 made, the predetermination letter is mailed to the
10:36AM 10 complainant. If the facts indicate that a cause
11 recommendation may be made, then the predetermination
12 letter is mailed to the respondent. And what a
13 predetermination letter is, it's a summary of the
14 evidence that's been gathered so far.

10:37AM 15 CHAIRMAN ANDERSON: Who has the authority
16 to make that? Does each individual investigator --

17 MS. POWELL: Yes.

18 CHAIRMAN ANDERSON: -- have the authority
19 and responsibility?

10:37AM 20 MS. POWELL: Yes. The complainant or the
21 respondent are given an opportunity to submit a rebuttal
22 and any additional evidence that they want considered
23 before we make a final decision. So whatever additional
24 information is submitted, the investigator would need to
10:37AM 25 analyze that information and contact any additional

1 witnesses that were identified.

2 Step No. 4 would be to prepare what's
3 called an investigator's memorandum, Document 6, and in
4 that give your rationale and make your recommendation
10:37AM 5 either for cause or no cause. The case is then
6 submitted to the team lead for review, and if the
7 cause -- I'm sorry. If a no cause is recommended on the
8 case, then the case will -- the file will be closed by
9 issuing a dismissal notice and a notice of right to file
10:38AM 10 a civil action. And at that point, the complainant has
11 the option to request to review by the EEOC. If a cause
12 recommendation is made, the recommendation is submitted
13 to the director for further processing.

14 And that's beyond the scope of my
10:38AM 15 presentation today unless you have any questions, you
16 know, I can certainly answer them.

17 CHAIRMAN ANDERSON: The complainant has
18 180 days with -- with us. They have 300 days with the
19 EEOC. How does that -- how do those time lines
10:38AM 20 coordinate? I mean, once they make a determination,
21 they are filed with CRD, and they no longer have an
22 option to say, "I'm going to stop. I'm going to go to
23 EEOC now"?

24 MS. POWELL: No. If I understand that
10:38AM 25 question correctly, the -- when a complaint is filed

1 with us, it is still filed with the EEOC. We can only
2 go back 180 days from the day the complaint was filed.
3 So we would only investigate those issues that are
4 jurisdictional. Once we close the case, if the
10:39AM 5 complainant requests a review, the EEOC will -- will
6 look at the file and either concur with our findings and
7 either close out -- they'll -- they'll issue the
8 complainant -- I believe it's a -- their finding saying
9 that they concur with us and issue the federal notice of
10:39AM 10 right to file a civil action. And then the complainant
11 has a choice whether to file in state court or federal
12 court.

13 Now, if there are issues that go beyond
14 the 180 days but are within 300 days, my understanding
10:39AM 15 is that, you know, once investigators -- it should
16 happen at intake. If there are issues outside the 180
17 days but within EEOC's jurisdiction, we wouldn't take
18 the case. We would refer them to EEOC. If by some
19 chance that it gets through and the investigator, once
10:39AM 20 it's gone through mediation and gets to the investigator
21 side to conduct the investigation, determines in
22 interviewing the complainant that there are other issues
23 that weren't cited on the complaint or that they were in
24 there and they just went -- you know, it got missed at
10:40AM 25 intake, which happens sometimes --

1 CHAIRMAN ANDERSON: Right.

2 MS. POWELL: -- then we would probably
3 waive the case to EEOC or just investigate the part
4 that's jurisdictional to us, close it. And then EEOC,
10:40AM 5 once we've closed it, if they want to continue on, then
6 they can at that point. That's my understanding.

7 MS. QUESNEL: Yeah.

8 COMMISSIONER STIDVENT: I have a question.
9 Do you -- are there many cases where you reach a
10:40AM 10 decision and then complainant wants an EEOC review and
11 the EEOC essentially disagrees with your conclusion?

12 MS. QUESNEL: Yes, ma'am. What they do
13 is, they send it back to us as a rework, and then we
14 complete whatever additional action they want us to take
10:40AM 15 and then resubmit it back to them with a summary of what
16 we've done. And if it's satisfactory, then they go
17 ahead and it's closed out. If not, they send it back
18 again. We don't have very many of those, thank
19 goodness.

10:41AM 20 CHAIRMAN ANDERSON: Right to sue -- right
21 to file civil action, right to sue letter which is a
22 federal -- which is basically the same thing, right,
23 just one is in state court and one is in federal?

24 MS. POWELL: Right.

10:41AM 25 MS. QUESNEL: Yes. Okay. Once the

1 investigator has submitted their closure to the team
2 leader, it is reviewed to make sure that the
3 investigation was complete, everything is correct, the
4 file is tabbed properly, and the proper documentation is
10:41AM 5 prepared, then it's signed off on by the team lead. And
6 once that's done, we give it to our administrative
7 assistant, and she goes ahead and mails out the
8 documentation. The dismissal, notice of right to file
9 civil action, is sent out regular mail and certified to
10:42AM 10 make sure that they receive it, and then a copy is also
11 sent out to the respondent by regular mail. Once that's
12 done, then our skeleton file is created and sent to the
13 EEOC so they can review that information and see if
14 there's anything they find wrong. And the file is
10:42AM 15 closed and put into our file cabinets, and we hope it
16 doesn't come back and haunt us.

17 But basically that's the -- that is the
18 process. We also do have the training, reviewing and
19 policy monitoring. They are a part of our
10:42AM 20 responsibilities, but you as commissioners don't really
21 have --

22 MR. BABIAK: Janet --

23 MS. QUESNEL: -- anything to do with it.

24 MR. BABIAK: -- I think you may have your
10:42AM 25 notes from our --

1 MS. QUESNEL: Oh, okay; don't need to do
2 that. Good.

3 MR. BABIAK: -- introduction yesterday
4 with out commissioner. And I think that that portion of
10:42AM 5 yesterday's presentation is outside the scope of the
6 agenda item for today.

7 MS. QUESNEL: Thank you.

8 COMMISSIONER OSTERHOUT: Excuse me. I've
9 got one more question to ask. When this is first taken
10:43AM 10 in the intake and it is turned over to mediation, now
11 anything said in the mediation, is it allowed to be
12 presented to the investigators?

13 MR. MINTON: Let me be very specific about
14 that. Things that are spoken between the parties at
10:43AM 15 mediation are confidential except for information that's
16 otherwise known to the parties. So Janet's story or my
17 story and what we believe happened, that's not
18 confidential, and, of course, that would be utilized and
19 discussed with an investigator.

10:43AM 20 COMMISSIONER OSTERHOUT: Okay.

21 MR. MINTON: If, for example, I told Janet
22 that I enjoyed violating women at mediation, she could
23 not use that testimony as I only said it in mediation.
24 So any kind of incriminating statement or otherwise that
10:43AM 25 was solely stated in mediation but not otherwise known

1 is confidential.

2 COMMISSIONER OSTERHOUT: Okay.

3 MR. MINTON: I do not turn over nor does
4 Evelyn -- do we turn over any documents because we
10:44AM 5 REALLY don't have any -- the great thing about this job
6 IS, I don't have a bunch of paper work to lay out to
7 you. Nothing is turned over to the investigating unit
8 other than a notice that would reflect that we were --
9 the case was rejected or was unsuccessful.

10:44AM 10 COMMISSIONER OSTERHOUT: Everything that
11 was mentioned there that was already known is fair game
12 for the investigator --

13 MR. MINTON: Yes, sir.

14 COMMISSIONER OSTERHOUT: -- to have?
10:44AM 15 Okay.

16 MS. QUESNEL: Any other questions?

17 CHAIRMAN ANDERSON: No. I think they did
18 a great job. We appreciate it.

19 MR. BABIAK: And, Chair Anderson, these
10:44AM 20 are the last three people in the world that want any
21 personal attention, but I'll tell you that putting
22 together this training for me was one of the easiest
23 assignments I've ever performed because I called them in
24 my office and in less than ten minutes told them what I
10:44AM 25 needed. And the three of them worked with Becky and put

1 together the training that you just got, and I can't
2 express enough appreciate for having the level of
3 experience that these three exemplify. And we see it
4 all the time in CRD.

10:45AM

5 CHAIRMAN ANDERSON: They don't -- I don't
6 see the 57 years of experience there, but I'll take your
7 word for it. That's -- this is really informative, very
8 effective. You did a great job. We appreciate it. And
9 if the other commissioners agree, we'd like to see the
10 housing in July or October, whatever time frame is
11 appropriate for you or your staff.

10:45AM

12 MR. BABIAK: We will put it together and
13 get it onto the agenda the first opportunity.

10:45AM

14 MS. QUESNEL: If anyone would like any
15 more detailed information about the process or anything,
16 please let us know. We'll be glad to help you.

17 COMMISSIONER DIGGS: Thank you.

18 AGENDA ITEM NO. 9

10:46AM

19 CHAIRMAN ANDERSON: Before we go to
20 executive session, I don't think there's anything else
21 on the agenda other than we have a meeting on July 20th
22 and October 19th. Is there any reason why those dates
23 should not be maintained by the Commissioners? Is that
24 good for everybody?

10:46AM

25 (No audible response.)

1 CHAIRMAN ANDERSON: So that will be --
2 we'll continue to go on that route. The items in red,
3 the action items, request for Mr. Babiak to provide a
4 list -- or a short summary on pending or proposed
10:46AM 5 employment discrimination legislation which he took care
6 of today. Is there anything else we need to -- the
7 Commissioners need to have from that, maybe an update in
8 July? Hopefully they'll be through by then if they're
9 not in special session, and you can outline anything of
10:47AM 10 significance that was -- actually became law.

11 There's no reorganization in mind for TWC
12 that's been proposed or anything, is there?

13 MR. BABIAK: And you're asking with
14 respect to the pending legislation related to
10:47AM 15 governmental reorganization?

16 CHAIRMAN ANDERSON: The governmental
17 reorganization, I was just wondering if there was
18 anything going on there.

19 MR. BABIAK: No, sir. I'm not aware of
10:47AM 20 any reorganization legislation impacting TWC.

21 CHAIRMAN ANDERSON: Okay. If I don't say
22 it now, I'll probably forget it. I saw Brenda back
23 there. Are we at some point where we can continue to do
24 training for the CRD staff? We kind of put it on hold
10:47AM 25 for a while, Brenda.

1 MR. BABIAK: And for what -- and I guess I
2 didn't mention it in my report earlier in the agenda.
3 Training and Development continues to work on the
4 training module for the investigators related to
10:48AM 5 establishing, maintaining and recovering objectivity
6 during the investigation process. That is -- that is
7 ongoing.

8 CHAIRMAN ANDERSON: So that has not been
9 fully developed or it is developed and is ready for a
10:48AM 10 time to do it or what?

11 MR. BABIAK: They are -- they are still in
12 development on that. They expressed to me that it was a
13 little more difficult than they had originally
14 anticipated.

10:48AM 15 CHAIRMAN ANDERSON: Becky, the audit --
16 report on the audit for the action item will probably be
17 there anyway and then an update on the training -- this
18 module training for an action item. CRD review, the
19 employment cases, the 251- to 300-day age range or a
10:48AM 20 report as to why those numbers are increased, did we get
21 a report on that?

22 MR. BABIAK: In Janet's report, she
23 included the information on the status of the aged
24 cases.

10:49AM 25 CHAIRMAN ANDERSON: Commissioner Diggs

1 asked that a comparison be done on the last year's
2 fiscal first quarter to this year's fiscal first quarter
3 for ADR and then provide a report to the Commissioners.

10:49AM

4 MR. BABIAK: And I think Vickie included
5 that --

6 COMMISSIONER DIGGS: She did.

7 MR. BABIAK: -- in her report.

10:49AM

8 CHAIRMAN ANDERSON: Evaluate the mediator
9 position, I would hope to increase that or -- to all
10 positions that you think might be -- that you might need
11 to complete the mission of the CRD. So what's the
12 status of the mediator position?

10:49AM

13 MR. BABIAK: Well, as I explained earlier,
14 I'd like an opportunity just to assess the status and
15 see what opportunities there are to perhaps provide them
16 with additional resources that they don't have now that
17 will allow them to work more efficiently. Adding a
18 mediator incurs a fixed cost, and I'm a little bit
19 apprehensive to commit to that until I know exactly
20 where we stand and also know that we would succeed going
21 forward in that direction.

10:50AM

22 CHAIRMAN ANDERSON: When do you anticipate
23 that decision or that --

10:50AM

24 MR. BABIAK: I can be prepared to report
25 that to you at the next commission meeting.

1 CHAIRMAN ANDERSON: Okay. Those are all
2 the action items. Is there anything else from the --
3 any of the Commissioners they want to bring up before we
4 adjourn to executive session?

10:50AM 5 (No audible response.)

6 CHAIRMAN ANDERSON: Seeing none, the
7 Commission on Human Rights executive session, April
8 13th, 2011, are going into executive session pursuant to
9 Government Code Section 551.074(a)(1) to discuss the
10:50AM 10 appointment, employment, evaluation, reassignment,
11 duties, accomplishments, performance, goals, and
12 responsibilities of the Texas Workforce Commission Civil
13 Rights Division director. And in addition to that,
14 we're in executive session pursuant to Government Code,
10:51AM 15 Section 551.074 to discuss the appointment, evaluation,
16 reassignment, duties, accomplishments, performance,
17 goals, and responsibilities of executive staff and other
18 personnel. And pursuant to Government Code Section
19 551.071, Paragraph 1 and 2, concerning contemplated
10:51AM 20 legislation -- litigation -- I'm sorry -- or pending
21 litigation, and there's to be discussions for
22 Commissioner Glover on any of the cases that are listed
23 and also to -- Commissioners to seek advice of their
24 attorneys of privileged communications under Texas
10:51AM 25 Disciplinary Rules of Professional Conduct of the State

1 Bar of Texas.

2 The Commission on Human Rights now closes
3 on April 13th, 2011 to go into executive session, and
4 the time is 10:52.

10:52AM

5 (At this time, the Civil Service
6 Commissioners went into executive
7 session from 10:52 o'clock a.m. until
8 11:46 o'clock a.m., after which time the
9 proceedings continued as follows:)

11:46AM

10 CHAIRMAN ANDERSON: And the Texas
11 Commission on Human Rights has concluded its executive
12 session at 11:46. We're back on record at 11:48. Let
13 me say on the record that I really appreciate the
14 Commissioners -- the commissioners court that we have
15 now, the commissioners that are with the Commission on
16 Human Rights. Certainly Commissioner James was a
17 valuable commissioner and a tremendous individual, but
18 we've got a great commissioners court. They're easy
19 people to work with, very knowledgeable, very bright,
20 very articulate, and I enjoy working with all of them.

11:47AM

21 And at this time, I'd like to make a
22 motion. I move that the Commission on Human Rights
23 appoint Jonathan Babiak, currently serving as the
24 interim director of the Civil Rights Division, as the
25 director of the division, effective immediately, at his

11:47AM

1 current classification and salary. Do I have a second?

2 COMMISSIONER STIDVENT: Second.

3 CHAIRMAN ANDERSON: Second. Do we have
4 any discussion?

11:47AM 5 (No audible response.)

6 CHAIRMAN ANDERSON: Seeing none, all in
7 favor aye.

8 THE COMMISSION: Aye.

9 CHAIRMAN ANDERSON: Opposed?

11:47AM 10 (No audible response.)

11 CHAIRMAN ANDERSON: Seeing none, so
12 ordered. Mr. Babiak, congratulations! You are the new
13 executive director of the Texas Commission on Human
14 Rights, the Civil Rights Division, of the Texas
11:47AM 15 Workforce Division.

16 MR. BABIAK: Thank you for your confidence
17 in my ability, your guidance, and I look forward to
18 moving into the future to continue working with you.
19 Thank you very much.

11:48AM 20 COMMISSIONER DIGGS: Thank you.

21 CHAIRMAN ANDERSON: And one more thing,
22 most of the people in the TWC know that Mr. Crump is
23 retiring. And on behalf of the Texas Commission on
24 Human Rights, I want to extend my personal -- and I
11:48AM 25 think I speak for all, but they certainly can speak for

1 themselves if they want to. Mr. Crump's leadership,
2 guidance, helping, assisting us to understand some of
3 the financials of the State, TWC CRD, and all his -- and
4 all his friendship through these last -- how many years,
11:48AM 5 Gene? When did we --

6 MR. CRUMP: More than one, sir.

7 CHAIRMAN ANDERSON: Yeah, a great number
8 of more than one. So good luck. Thank you for your
9 retirement. Thank you for all you've done. We look
11:49AM 10 forward to seeing you the next time, I think, on the
11 golf course, right?

12 MR. CRUMP: Yes, sir.

13 CHAIRMAN ANDERSON: Does anyone else have
14 any -- probably shouldn't have had all that on the
11:49AM 15 record, I guess. Anybody have anything else they want
16 to add with Mr. Crump or Mr. Babiak?

17 (No audible response.)

18 CHAIRMAN ANDERSON: Okay. Seeing none, is
19 there any other business before the Texas Commission on
11:49AM 20 Human Rights?

21 (No audible response.)

22 CHAIRMAN ANDERSON: Seeing none, with no
23 objection, this meeting is adjourned.

24 (At this time, the proceedings were
25 adjourned at 11:49 o'clock a.m.,

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Wednesday, April 13, 2011.)

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 WORKFORCE COMMISSION as hereinafter set out.

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

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

14

15

16

17

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

19

Certified Shorthand Reporter
State of Texas

20

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