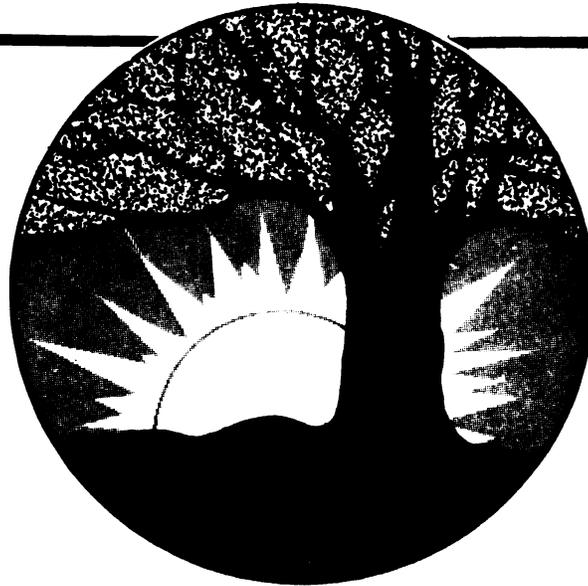


# PERFORMANCE AUDIT

**Human Rights Commission**

**February 2007**



**John G. Morgan**  
Comptroller of the Treasury



**State of Tennessee**  
Comptroller of the Treasury  
Department of Audit  
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STATE OF TENNESSEE  
**COMPTROLLER OF THE TREASURY**

State Capitol  
Nashville, Tennessee 37243-0260  
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**John G. Morgan**  
Comptroller

February 13, 2007

The Honorable Ron Ramsey  
Speaker of the Senate  
The Honorable Jimmy Naifeh  
Speaker of the House of Representatives  
The Honorable Thelma M. Harper, Chair  
Senate Committee on Government Operations  
The Honorable Mike Kernell, Chair  
House Committee on Government Operations  
and  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is the performance audit of the Human Rights Commission. This audit was conducted pursuant to the requirements of Section 4-29-111, *Tennessee Code Annotated*, the Tennessee Governmental Entity Review Law.

This report is intended to aid the Joint Government Operations Committee in its review to determine whether the Human Rights Commission should be continued, restructured, or terminated.

Sincerely,

John G. Morgan  
Comptroller of the Treasury

JGM/dww  
06-023

State of Tennessee

# Audit Highlights

Comptroller of the Treasury

Division of State Audit

Performance Audit  
**Human Rights Commission**  
February 2007

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## AUDIT OBJECTIVES

The objectives of the audit were to determine the effectiveness of the mediation process for resolving housing and employment cases without having to go to court; to determine whether laws, rules, and policies are consistent with each other and contribute to the effectiveness of the commission; to determine if services being provided by the Department of Finance and Administration are covered under a Memorandum of Agreement; to determine if the conflict-of-interest statements are appropriate and are being signed by commissioners and employees annually; to review commissioners' meeting attendance; to determine if the commission complies with state policies with regard to part-time and interim employees and salary adjustments; to determine the timeliness of processing Department of Housing and Urban Development and Equal Employment Opportunity Commission cases and the effect internal case reviews have had on this processing time; to determine whether the commission adheres to Title VI requirements; and to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the commission.

## FINDINGS

### **The Commission Did Not Comply With the Records Disposition Authorization Policy for Discarding Investigated and Closed Cases**

The destruction of state government records must be covered by a Records Disposition Authorization approved by the Public Records Commission and filed with the Department of General Services. The commission destroyed some files prematurely (page 33).

### **The Commission Does Not Provide Title VI Training to Its Employees, as Stated in Its Title VI Plan, or Provide Information on Title VI to Complainants**

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance. Commission staff have not received training about Title VI requirements in recent years. Citizens who file complaints with the

commission are not given information about the act (page 34).

### **The Commission Fails to Comply With Notice of Vacancy and Appointment Requirements**

State law requires commissions and boards to notify the Secretary of State's office of the appointment of new members and of unscheduled vacancies within 15 days. The Secretary of State's office compiles and reports information on appointments and vacancies of all state boards and commissions (page 36).

### **The Commission Does Not Always Meet EEOC Contracting Principles Regarding Time Frames for Entering Information Into the Charge Data System After a Complaint Is Received**

The Equal Employment Opportunity Commission (EEOC) requires that complaint information be entered into its Charge Data System by the Human Rights Commission (HRC) within five days of the receipt of a complaint in order for the HRC to receive credit for it. The EEOC pays the commission for each resolved complaint (page 37).

## **OBSERVATIONS AND COMMENTS**

The audit also discusses the following issues (page 9):

- improvements in the timeliness of housing complaint investigations;
- housing complaints case-file formats and inconsistencies;
- improvements in the timeliness of employment complaint investigations;
- employment complaint case file formats and inconsistencies;
- non-jurisdictional employment complaint compensation;
- commission meeting attendance;
- conflict-of-interest statements;
- Department of Finance and Administration Services provided to the commission;
- mediation training, caseloads, and timeliness;
- part-time employees;
- and additional audit work performed.

# Performance Audit Human Rights Commission

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## TABLE OF CONTENTS

---

|                                                                   | <u>Page</u> |
|-------------------------------------------------------------------|-------------|
| <b>INTRODUCTION</b>                                               | 1           |
| Purpose and Authority for the Audit                               | 1           |
| Objectives of the Audit                                           | 1           |
| Scope and Methodology of the Audit                                | 2           |
| History and Statutory Responsibilities                            | 2           |
| Commission Composition and Staff                                  | 2           |
| Revenues and Expenditures                                         | 3           |
| Interaction With Federal Agencies                                 | 5           |
| Complaint-Handling Process                                        | 5           |
| <b>OBSERVATIONS AND COMMENTS</b>                                  |             |
| Improvements in Timeliness of Housing Complaint Investigations    | 9           |
| Housing Complaint Case-File Formats and Inconsistencies           | 10          |
| Improvements in Timeliness of Employment Complaint Investigations | 12          |
| Employment Complaint Case-File Formats and Inconsistencies        | 18          |
| Non-Jurisdictional Employment Complaint Compensation              | 19          |
| Commission Meeting Attendance                                     | 21          |
| Conflict-of-Interest Statements                                   | 22          |
| Finance and Administration Services Provided to the Commission    | 23          |
| Mediation Training, Caseloads, and Timeliness                     | 24          |
| Internal Reviews                                                  | 29          |
| Part-Time Employee                                                | 30          |
| Additional Audit Work Performed                                   | 31          |

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**TABLE OF CONTENTS (CONT.)**

---

|                                                                                                                                                                             | <u>Page</u> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| <b>FINDINGS AND RECOMMENDATIONS</b>                                                                                                                                         |             |
| 1. The commission did not comply with its Records Disposition Authorization policy for discarding investigated and closed cases                                             | 33          |
| 2. The commission does not provide Title VI training to its employees, as stated in its Title VI plan, or provide information on Title VI to complainants                   | 34          |
| 3. The commission fails to comply with Notice of Vacancy and Appointment requirements                                                                                       | 36          |
| 4. The commission does not always meet EEOC Contracting Principles regarding time frames for entering information into the Charge Data System after a complaint is received | 37          |
| <b>RECOMMENDATIONS</b>                                                                                                                                                      |             |
| Administrative                                                                                                                                                              | 39          |
| <b>APPENDIX</b>                                                                                                                                                             |             |
| Title VI Information                                                                                                                                                        | 41          |

# **Performance Audit Human Rights Commission**

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## **INTRODUCTION**

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### **PURPOSE AND AUTHORITY FOR THE AUDIT**

This performance audit of the Human Rights Commission was conducted pursuant to the Tennessee Governmental Entity Review Law, *Tennessee Code Annotated*, Title 4, Chapter 29. Under Section 4-29-228, the Human Rights Commission is scheduled to terminate June 30, 2007. The Comptroller of the Treasury is authorized under Section 4-29-111 to conduct a limited program review audit of the agency and to report to the Joint Government Operations Committee of the General Assembly. The audit is intended to aid the committee in determining whether the Human Rights Commission should be continued, restructured, or terminated.

### **OBJECTIVES OF THE AUDIT**

The objectives of the audit were

1. to determine the effectiveness of the mediation process for resolving housing and employment cases without having to go to court;
2. to determine whether laws, rules, and policies are consistent with each other and contribute to the effectiveness of the commission;
3. to determine if services being provided by the Department of Finance and Administration are covered under a Memorandum of Agreement;
4. to determine if the conflict-of-interest statements are appropriate and are being signed by commissioners and employees annually;
5. to review commissioners' meeting attendance;
6. to determine if the commission complies with state policies with regard to part-time and interim employees and salary adjustments;
7. to determine the timeliness of processing Department of Housing and Urban Development and Equal Employment Opportunity Commission cases and the effect internal case reviews have had on this processing time;
8. to determine whether the commission adheres to Title VI requirements; and
9. to recommend possible alternatives for legislative or administrative action that may result in more efficient and effective operation of the commission.

## **SCOPE AND METHODOLOGY OF THE AUDIT**

The activities of the Human Rights Commission were reviewed for the period June 2003 to December 2005. The audit was conducted in accordance with the standards applicable to performance audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and included

1. review of applicable legislation and policies and procedures;
2. an examination of commission files, documents, and policies and procedures; the work-sharing agreement with the U.S. Equal Employment Opportunity Commission; and the cooperative agreement with the U.S. Department of Housing and Urban Development;
3. a review of prior performance audit and financial and compliance audit reports and audit reports from other states; and
4. interviews with commission staff, staff of other state agencies that interact with the agency, and personnel of the Equal Employment Opportunity Commission and Department of Housing and Urban Development.

## **HISTORY AND STATUTORY RESPONSIBILITIES**

Section 4-21-202, *Tennessee Code Annotated*, provides for the Human Rights Commission to promote the creation of local human rights commissions and enter into working cooperative agreements with them; receive, initiate, investigate, seek to conciliate, hold hearings on, and pass upon complaints alleging civil rights violations; furnish technical assistance on request to help organizations further their compliance; and cooperate with the U.S. Equal Employment Opportunity Commission in its enforcement of the Civil Rights Act of 1964 and with the U.S. Department of Housing and Urban Development in its enforcement of the Fair Housing Act of 1968. Under Section 4-21-905, *Tennessee Code Annotated*, a person alleging discrimination by state agencies receiving federal funds may file a complaint with the state agency or with the commission.

## **COMMISSION COMPOSITION AND STAFF**

The commission has 15 members appointed by the Governor, five from each grand division of the state. The members are to be appointed on a nonpartisan basis and be broadly representative of employees, proprietors, trade unions, religious groups, human rights groups, and the general public. Commissioners are appointed for six-year terms and may be reappointed. The commission meets bimonthly.

Section 4-21-202(3) gives the commission the authority to appoint an Executive Director annually and set the director's compensation, as well as to maintain offices in Shelby, Davidson,

Knox, and Hamilton counties and other offices as necessary. The current Executive Director was initially appointed in June 2003.

The central office is in Nashville with regional offices in Memphis, Chattanooga, and Knoxville. The commission has 12 full-time investigators and 14 other staff providing administrative and support services. An organization chart of the Human Rights Commission is on the following page. Some investigators handle employment and housing cases, some handle employment and housing cases as well as mediations, and others handle only employment cases or only housing cases.

Turnover

We calculated the agency’s turnover by dividing the total separations during a period by the average number of employees in that same period. The calculation of average employees takes into account the separations from and appointments to the commission for each period reviewed. Our calculation found that turnover decreased from 30% in fiscal year 2004 to 15% in fiscal year 2005. The commission’s turnover rate through February 28, 2006, stands at 11%. The commission is a small agency with less than 30 employees, and having a turnover rate of 10-15% does not seem unreasonable.

**THRC  
Turnover From July 1, 2003, to February 28, 2006**

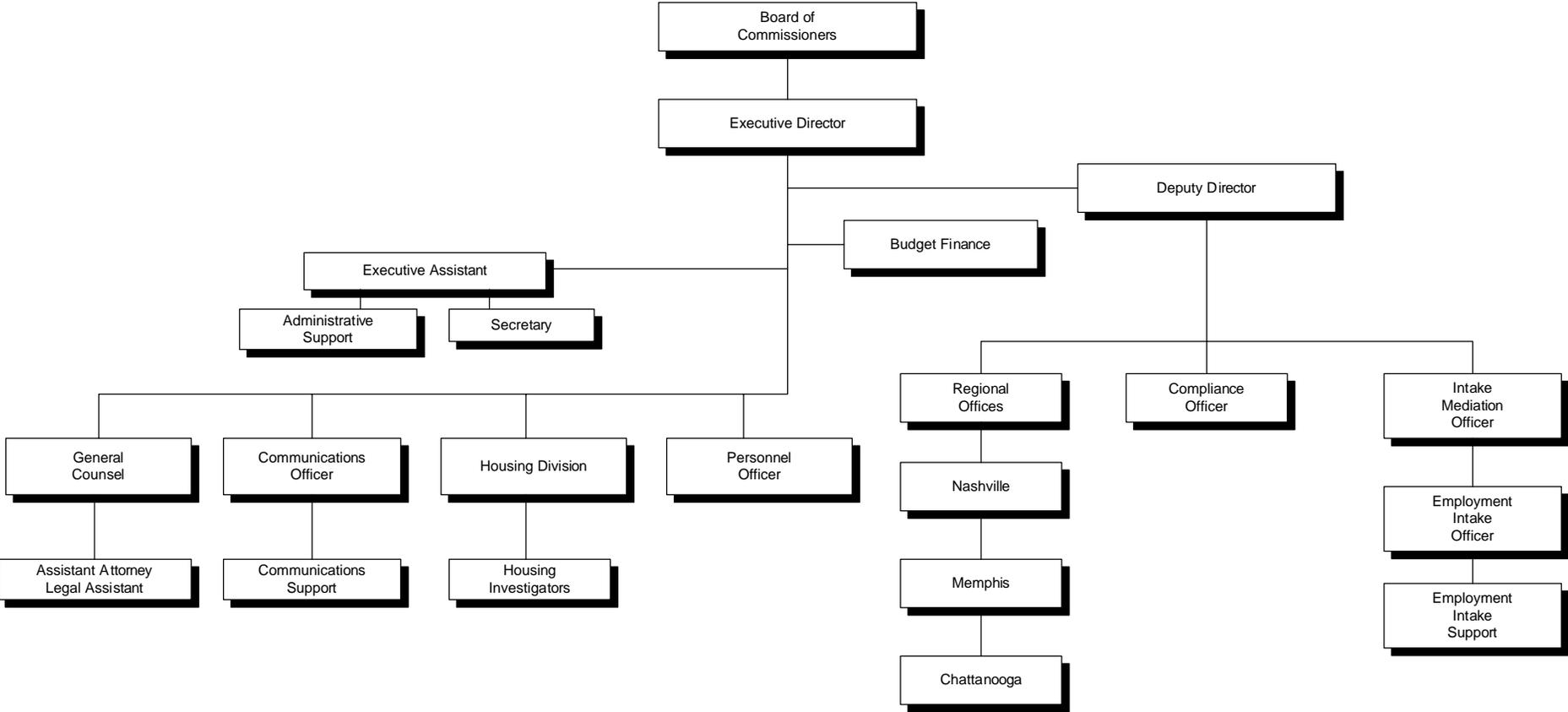
| <u>Period</u>                       | <u>Separation<br/>s</u> | <u>Average<br/>Employees</u> | <u>Turnover<br/>Percentag<br/>e</u> |
|-------------------------------------|-------------------------|------------------------------|-------------------------------------|
| July 1, 2003 - June 30, 2004        | 7                       | 24                           | 30%                                 |
| July 1, 2004 - June 30, 2005        | 4                       | 27                           | 15%                                 |
| July 1, 2005 - February 28,<br>2006 | 3                       | 28                           | 11%                                 |

The commission has provided information regarding its current compliance with Title VI of the Civil Rights Act of 1964, and this information can be found in Appendix A.

**REVENUES AND EXPENDITURES**

The commission had total expenditures of \$2,021,200 for the year ended June 30, 2005. The budget for the fiscal year ending June 30, 2006, is \$2,082,800. In that budget, \$1,533,500 (74%) will be funded from state appropriations and \$549,300 (26%) will be federal revenue under agreements with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development.

**Human Rights Commission  
October 2005**



## **INTERACTION WITH FEDERAL AGENCIES**

The staff investigate charges of discrimination under federal jurisdiction through contracts with the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. Federal jurisdiction complaints are dual-filed—one copy of the complaint is sent to the state and another is sent to the relevant federal agency.

### Equal Employment Opportunity Commission

The Equal Employment Opportunity Commission (EEOC) is responsible, under federal law, for enforcing laws against employment discrimination when the employer has 15 or more employees. Under state statute, an employer must have eight or more employees before charges of discrimination can be made. Any complaint against an employer with between 8 and 15 employees falls under state (and commission) jurisdiction only. Pursuant to a work-sharing agreement renewed annually, employment-related complaints in Tennessee against employers with 15 or more employees are filed with both the commission and the EEOC. The EEOC pays the commission \$500 for each complaint resolved and provides additional funds annually for travel expenses. The EEOC also provides the commission with \$50 for cases that make it through the intake process and are found to be non-jurisdictional for the commission. The EEOC provides guidelines for resolving and investigating complaints. Cases are reviewed by the EEOC after submission for credit against the work-sharing agreement.

### Department of Housing and Urban Development

The Department of Housing and Urban Development (HUD) is responsible for enforcing federal fair housing laws. Under a cooperative agreement, HUD pays the commission \$2,400 for each housing discrimination complaint investigated and closed, and additional amounts for training and administrative costs. HUD also provides guidelines for resolving complaints and reviews cases submitted by the commission for compliance with the guidelines.

## **COMPLAINT-HANDLING PROCESS**

Sections 4-21-302 through 311, *Tennessee Code Annotated*, describe the process for filing and handling charges of discrimination. Persons who believe they have been discriminated against may charge discrimination, or a commission member may bring charges on behalf of someone. The charge is a written, sworn complaint stating a discriminatory practice has occurred. A description of the alleged discriminatory act and facts sufficient to enable commission staff to identify the person or persons charged (respondent) are included. Statute requires a complaint to be filed within 180 days of the alleged discriminatory act and requires the commission to furnish the respondent a copy of the complaint within 10 days.

In Memphis and Nashville, where the Equal Employment Opportunity Commission (EEOC) has offices, complainants often file their employment discrimination complaints with the EEOC instead of the commission. Because the EEOC does not have an office in East Tennessee,

the number of complaints filed with the commission in East Tennessee is higher. The work-sharing agreement allows the commission to process all complaints filed in East Tennessee.

A central intake unit was opened in January 1998 in the Nashville office to handle the intake process for the commission. The intake unit is responsible for taking the initial complaint, notifying respondents, receiving position statements from respondents, and transmitting complainant and respondent rebuttals to the opposing party. Once these steps are completed, the Deputy Director assigns the case to an investigator. The Executive and Deputy Director set caseloads and closure goals and communicate this information to staff through meetings, memoranda, and individual contact with investigators.

The investigators are responsible for obtaining the necessary information to make a determination. They review the complaint and the position statement from the respondent and interview the complainant, the respondent, and any witnesses. Then the investigator makes a recommendation to the legal department regarding whether, based on the evidence gathered, discrimination has occurred. An agency attorney in the Legal Department then reviews the case for legal sufficiency. The attorney also determines if the investigator's recommendation should be upheld, overturned, or if further investigation needs to be conducted. All cases which have been recommended as reasonable cause are presented to the Executive Director to issue a final determination. Upon a finding of no reasonable cause, the complainant has the option to request a reconsideration of the case. Once a request is received, an agency attorney who did not initially review the case conducts a reconsideration and makes a recommendation to the Executive Director. The recommendation of reconsideration is then reviewed and issued by the Executive Director.

Employment and housing cases can be closed using the following types of closures:

- Administrative Closure – case closed by the commission for complainant's failure to cooperate, withdrawal of the charges by the complainant, lack of jurisdiction, or inability to locate the complainant.
- Settlement Agreement – agreement between the complainant and the respondent reached prior to the commission's investigation of the case or determination of cause.
- No-Cause Finding – the commission has determined after investigation that there is no reasonable cause to believe the respondent has engaged in a discriminatory practice.
- Conciliated Settlement – agreement between the complainant and the respondent after the commission has completed an investigation and reached a cause finding.
- Hearing – if a conciliated settlement cannot be reached, a hearing is scheduled before the commissioners. They can dismiss the complaint or issue a cease and desist order to the respondent. Either party can appeal the decision to Chancery Court if dissatisfied.

The following charts provide information on EEOC and Department of Housing and Urban Development (HUD) complaints received and resolved by the Tennessee Human Rights Commission (THRC).

**EEOC Complaints**

|            | <u>2001-2002</u> | <u>2002-2003</u> | <u>2003-2004</u> | <u>2004-2005</u> |
|------------|------------------|------------------|------------------|------------------|
| THRC Only  | 47               | 44               | 33               | 55               |
| Dual-filed | <u>486</u>       | <u>529</u>       | <u>502</u>       | <u>585</u>       |
|            | 533              | 573              | 535              | 640              |

**EEOC Resolution Summaries**

|                           | <u>2001-2002</u> | <u>2002-2003</u> | <u>2003-2004</u> | <u>2004-2005</u> |
|---------------------------|------------------|------------------|------------------|------------------|
| Settlements               | 37               | 21               | 41               | 17               |
| Withdrawals with Benefits | 15               | 3                | 5                | 2                |
| Successful Conciliation   | 0                | 1                | 0                | 0                |
| No Cause                  | 618              | 641              | 565              | 488              |
| Administrative Closure    | <u>118</u>       | <u>123</u>       | <u>89</u>        | <u>73</u>        |
| Total                     | 788              | 789              | 700              | 580              |

**Total Monetary Resolutions for EEOC Complaints**

|              |           |
|--------------|-----------|
| FY 2001-2002 | \$374,916 |
| FY 2002-2003 | \$278,823 |
| FY 2003-2004 | \$516,077 |
| FY 2004-2005 | \$115,452 |

**HUD Complaints**

|                   | <u>2001-2002</u> | <u>2002-2003</u> | <u>2003-2004</u> | <u>2004-2005</u> |
|-------------------|------------------|------------------|------------------|------------------|
| HRC Only          | 0                | 0                | 2                |                  |
| Dual-filed        | 65               | 65               | 75               |                  |
| HUD Reactivations |                  |                  |                  |                  |
| *                 |                  | 30               | 32               |                  |
| Rejected*         | <u>0</u>         | <u>3</u>         | <u>4</u>         | <u>0</u>         |
|                   | 65               | 98               | 113              | 143**            |

\*These two categories not reported prior to Fiscal Year 2003.

\*\*THRC stated that it changed its reporting format for the 2005 annual report and were unable to provide us with a breakdown of HUD data similar to previous years. The 2005 Annual report shows total charge receipts for fiscal year 2005 as 143.

**HUD Resolution Summaries**

|                         | <u>2001-2002</u> | <u>2002-2003</u> | <u>2003-2004</u> | <u>2004-2005</u> |
|-------------------------|------------------|------------------|------------------|------------------|
| Cause                   | 1                | 0                | 6                | 12               |
| No Cause                | 74               | 39               | 76               | 58               |
| Conciliation Agreement* | —                | —                | —                | 17               |
| Settlement Agreement*   | —                | —                | —                | 1                |
| Non-jurisdictional      | 2                | 0                | 0                | 2                |
| Withdrawals             | 2                | 5                | 6                | 2                |
| Mutual Agreements       | 20               | 12               | 11               | 0                |
| Administrative Hearing* | —                | —                | —                | 1                |
| Administrative Closures | <u>4</u>         | <u>2</u>         | <u>3</u>         | <u>4</u>         |
|                         | 103              | 58               | 102              | 97               |

\* These categories not used in FY 2002, 2003, & 2004

**Total Monetary Awards for HUD  
Complaints**

|              |           |
|--------------|-----------|
| FY 2001-2002 | \$0       |
| FY 2002-2003 | \$48,268  |
| FY 2003-2004 | \$104,718 |
| FY 2004-2005 | \$28,397  |

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## OBSERVATIONS AND COMMENTS

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The topics discussed below did not warrant a finding but are included in this report because of their effect on the operations of the Human Rights Commission and on the citizens of Tennessee.

### **IMPROVEMENTS IN TIMELINESS OF HOUSING COMPLAINT INVESTIGATIONS**

The May 2003 follow-up performance audit reported that the commission was improving case processing times but there was still an issue with timeliness in processing housing complaints. In 2003, the commission averaged 256 days from the commission's receipt of the complaint to a determination, 38 days to send a notification letter to the respondent named in a housing complaint after the complaint had been received by the commission, and 251 days between the commission's receipt of a complaint and complete case closure for all eight cases. In March 2003, the commission had 44 open housing cases under investigation pending a decision that were open for an average of 250 days. We recommended that management develop processing time guidelines for each phase of housing complaint casework. We also recommended that the General Assembly consider amending Section 4-21-302 through 311, *Tennessee Code Annotated*, to require the commission to close housing complaints within a specified number of days, depending on whether the case resulted in a "cause" or "no cause" finding, was being mediated, or was going before an administrative law judge. Management concurred in part.

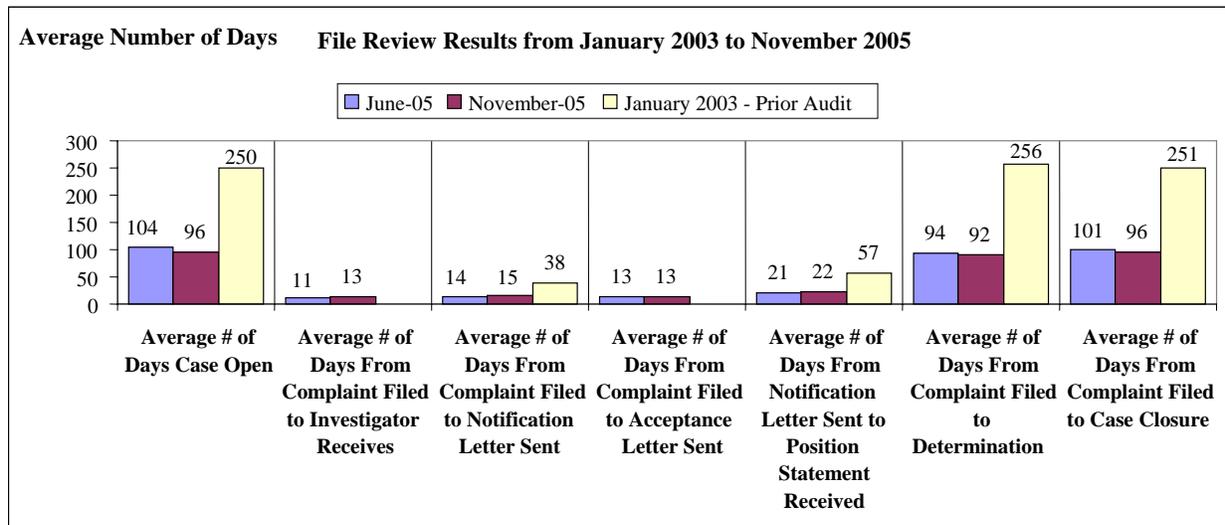
*Tennessee Code Annotated*, Section 4-21-302, requires all complaints to be filed by the aggrieved employee or a member of the commission within 180 days of the discriminatory action, the respondent to be notified within 10 days of the filing of a complaint, and the investigation to commence within 30 days of the complaint's file date. The commission staff, or designee, is required to promptly investigate the matter to determine whether the discriminatory practice exists. It appears as though no changes have been made to *Tennessee Code Annotated* in regard to the auditor's recommendation in the May 2003 audit for time guidelines for closing cases. However, management has placed time guidelines in its procedure manual.

#### Closed Cases

For this audit, we reviewed 72 cases closed by the Department of Housing and Urban Development (HUD), which included 4 cases in November 2005, 37 cases in June 2005, and 31 cases in September 2003. The September 2003 cases were not hard-copy files but printouts from the information system, TEAPOTS (Title Eight Automated Paperless Office Tracking System). These printouts did not contain all the information to track timeliness of the complaint process so they are not included in the closed case analysis. (See finding 1.) The file review revealed that the timeliness in processing complaints has improved since the May 2003 audit. The chart below

illustrates the improvements with timeliness in processing housing complaints for the files reviewed from the previous audit in May 2003 to the current files reviewed in June and November 2005.

### Comparison of File Review from May 2003 Audit to Current Audit



Note: June 2005 averages did not include one case whose total numbers were negative and the six cases that did not contain documentation in the file to determine the average number of days.

### Pending Cases

As of December 2005, there were 50 cases on the pending case list that were open for an average of 108 days, down from an average of 250 days in March 2003. Of those 50 cases, 25 cases were still open and under investigation, 20 cases were caused (discrimination was found), 3 cases were pre-caused (probable finding of discrimination), and 2 cases were closed/caused. Cases that have been caused usually are settled by conciliation agreement, mediation, and/or settlement post-cause. Closed/caused cases mean the investigation has been finished and the case is ready for final legal sufficiency. There were 26 cases open over 100 days and 9 cases open over 200 days. This is down from 32 cases open over 100 days and 19 cases open over 200 days in March 2003.

To ensure that the commission's complaint processing is as efficient as possible, commission management should monitor to ensure that investigators are following established time guidelines for phases of the housing complaint process.

### **HOUSING COMPLAINT CASE-FILE FORMATS AND INCONSISTENCIES**

The *Tennessee Human Rights Commission's Employment and Housing Division's Standard Operating Procedures* state that the commission can receive complaints at any office either in person, by telephone, mail, facsimile, or the Internet. If a complaint is received by mail, the commission must mail the housing discrimination complaint form to the respondent to be

signed and returned within 10 days. All complaints should be date-stamped to acknowledge the date of actual receipt by the commission, and the original documents must be mailed to the Knoxville Regional office within one business day of receipt. According to the manual, once the case has been assigned to an investigator, the investigator must review the file to determine whether it contains a signed complaint form and documents received from the complainant, sufficient information to establish jurisdiction, interviews conducted during the intake process, and notification letters sent to the parties with proof of service. The basic steps of the investigation require documentation of each stage of the investigation on the complaint processing checklist. Once the investigation is complete, the disposition/closure documents will be signed by the commission and sent out to the parties.

The manual also provides that the assembly of the case files should be consistent within each region and should include physically creating the file, placing the case number and name on the file, placing the documents inside the case file under the correct tab, and securing the documents in the case file. The case file should be divided into four sections: disposition/closure documents, evidentiary, deliberation, and conciliation. The disposition/closure documents section must include a signed and dated conciliation agreement, withdrawal, determination, or administrative closure summary; closure letters for each complainant, respondent, and the parties' representatives; and a final investigative report as a quality assurance that confirms that parties have received proper notification. The following documents should be signed, dated, and placed in chronological order under the evidentiary section: housing complaint form, notification letters sent to the complainant and respondent, and any 100-day letters sent.

Although most of the 72 files reviewed from September 2003, June 2005, and November 2005 were in compliance with the case-file format, the majority of the September 2003 printouts showed

- a difference between the date of complaint received on the chronology log and the date printed on the Title Eight Automated Paperless Office Tracking System (TEAPOTS) generated list of cases and
- that the date of determination was not documented in the computer system.

The September 2003 printouts provided by the commission were printout copies of the data in the computer system. The files did not provide enough supporting evidence, such as the original signed and dated documents received and sent by the commission to determine the timeliness of the phases of the complaint handling process.

In June and November 2005,

- 17 files revealed a difference between the date the complaint was received and stamped on the complaint form and the date of complaint received printed on the TEAPOTS-generated list of cases;
- five files contained a determination letter that was not signed;
- three files contained a 90-day complaint processing log that was not completed;

- two files did not contain a complaint processing log at all;
- five files did not contain complaint forms that were signed and dated by the complainant;
- six files did not contain the acceptance letter sent by the commission to the complainant; and
- one file was only a printout of the information in the hard-copy file input into TEAPOTS by the commission.

The housing director should ensure that all of the investigators are consistent in completing the case-file format and processing the complaints as stated in the Employment and Housing Division's Standard Operating Procedures by filling out and completing checklists and logs and ensuring all documents are signed, dated, and securely placed in the file under the correct tab. The housing director should also ensure that all files contain the required documents for the file, such as signed complaint forms.

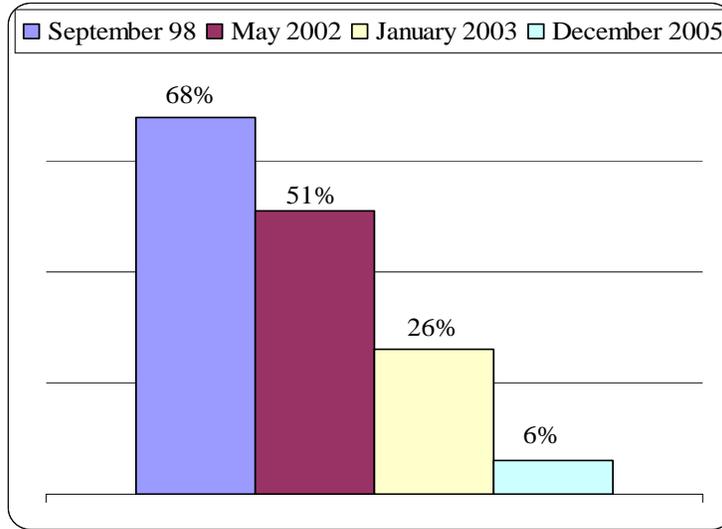
## **IMPROVEMENTS IN TIMELINESS OF EMPLOYMENT COMPLAINT INVESTIGATIONS**

Previous audits in March 2002 and May 2003 found that the commission had problems with pending case inventories and initiating and closing employment complaint investigations in a timely manner. As part of this audit, we reviewed Pending Case reports, Resolution Reports, and closed case files to determine if the commission has improved its timeliness in processing complaints. We compared our results to those of previous performance audits and found continued improvement in many categories.

### Pending Cases

Federal statutes do not specify the number of days in which a case is to be completed; however, the EEOC's Contracting Principles state that a Fair Employment Practice Agency (the commission) should maintain a case inventory of less than nine months, or 270 days. The average case age of the commission's pending cases as of December 2005 was 133 days. The following chart illustrates the improvements that have been made over the past few audits.

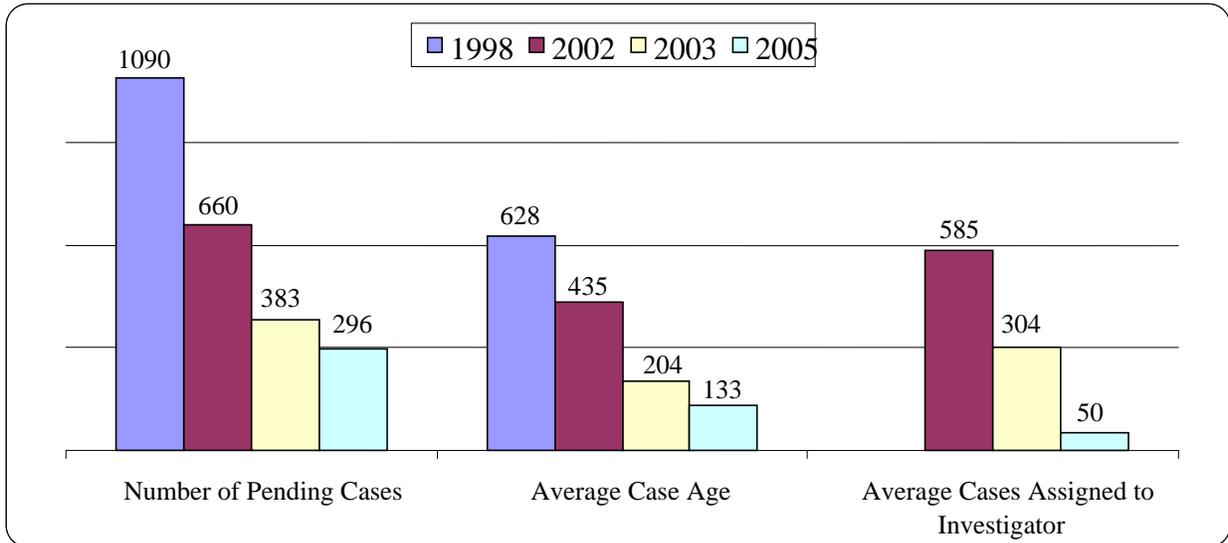
**Percent of Pending EEOC Cases Over 270 Days Old**



As can be seen in the chart above, in September 1998, 68% of pending cases were over 270 days old; in January 2002, 51%; in May 2003, 26%; and in December 2005, only 6% of pending cases were over 270 days old.

In addition, we compared data reported in the 2002 and 2003 performance audits. The chart below shows a steady decrease in the number of pending cases, the average pending case age, and the average number of days for a case to be assigned to an investigator.

**Comparisons of Previous Pending EEOC Case Reports**



Closed Cases

Overall case processing time has improved, based on our review of closed case files. To evaluate the timeliness of processing EEOC cases in accordance with guidelines and regulations, we reviewed 187 EEOC closed case files, 96 in April 2004, and 91 in August 2005. For the

evaluation, we assessed several categories in relation to timeliness. One of the primary categories in the evaluation was processing time, which is a measure calculated by the EEOC Charge Data System (CDS) denoting the difference between the date a complaint was entered into the CDS (office date) and case completion (resolution date). Some of the categories of data provided by the CDS include: date complaint received as recorded in the system (office date), resolution date, and process time.

We collected other categories of data, some of which were not previously measured, from hard copy files and compared this data to the information provided by CDS. The additional categories of data collected consisted of the following:

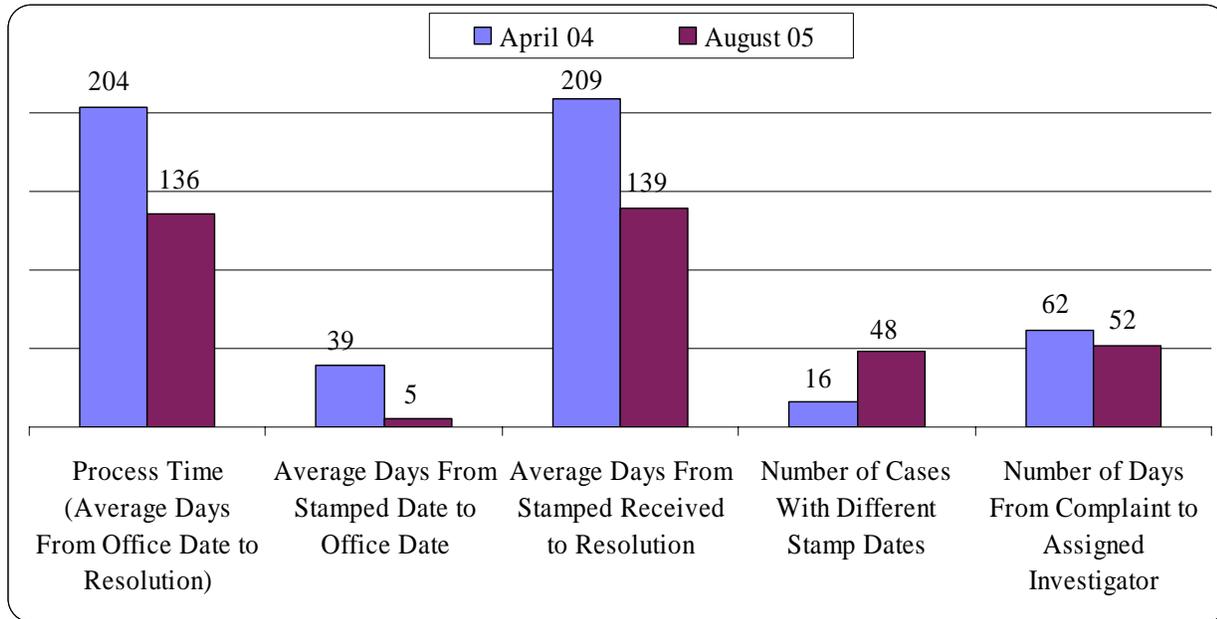
- the stamped date a complaint was received if it was different than the received date reported by the CDS,
- the date the acknowledgement letter was mailed,
- the date the notification letter was mailed,
- the stamped date the position statement was received,
- the date cases were assigned to investigators,
- the date investigators received assigned cases,
- the date of the determination letter, and
- the date the investigator sent the case to the legal department.

Once the information was collected, the following categories were analyzed with regard to timeliness:

- the average process time according to the CDS,
- the average difference between the actual date the complaint was stamped as received by the commission and the CDS office date,
- the average number of days between the actual date the complaint was stamped as received by the commission and the resolution date,
- the number of cases where the date the complaint was stamped as received differed from the CDS office date, and
- the average number of days to assign a case to an investigator after receiving and accepting a complaint (date assigned to investigator minus office date).

The results of these measures are presented in the following chart.

### EEOC Case Review: Timeliness Results



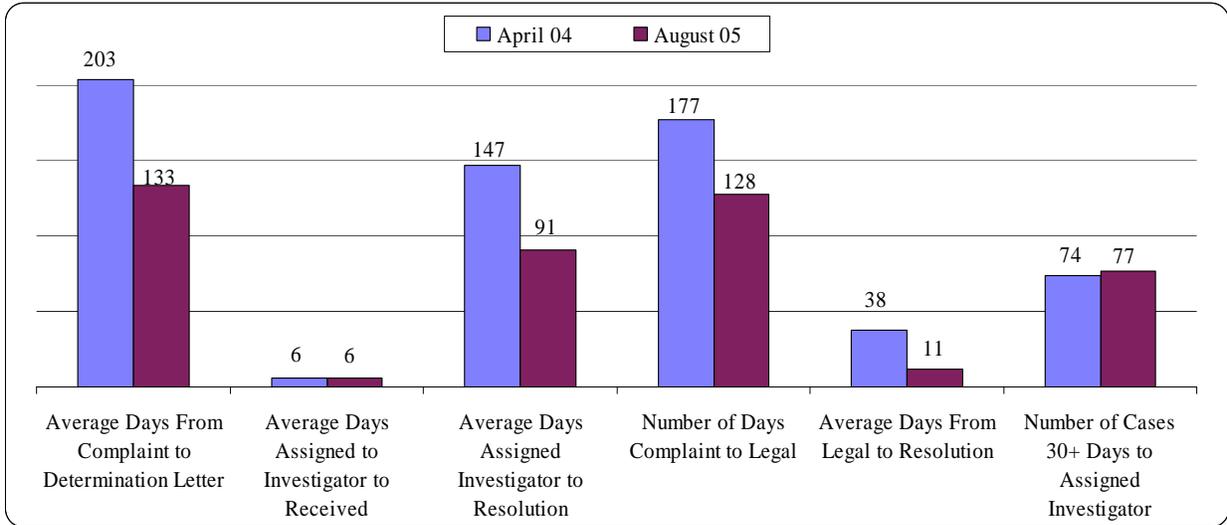
The results of our review indicate that timeliness has improved. Both the CDS process time measure and the stamp to resolution measure show decreases in average number of days. The averages differ because of differences between the dates the complaints were stamped received by the commission and the CDS office date.

Other measures calculated to obtain a more detailed assessment of the complaint process were as follows:

- the average number of days from complaint received to date of determination letter,
- the average number of days between investigator assigned and case received by investigator,
- the average number of days from assignment to investigator to case resolution,
- the average number of days from complaint received to assignment to legal department,
- the average number of days from legal receipt of case to case resolution,
- the number of cases that took more than 30 days to be assigned to an investigator, and
- the number of cases that took more than five days to be entered into CDS.

The following chart illustrates the results of these additional measures.

### EEOC Case Review: Additional Results

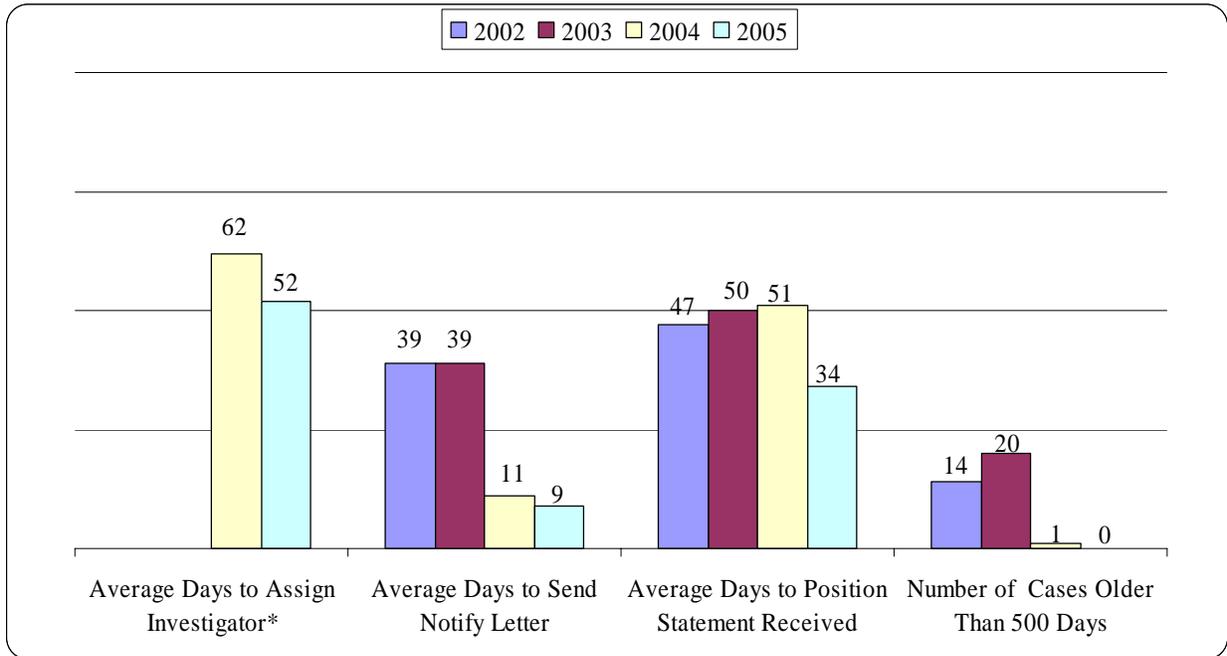


The consistent decrease in averages shows that the commission is improving its timeliness of complaint processing.

To expand our analysis, we made further comparisons and incorporated data from the previous 2002 and 2003 performance audits. Data from our current case review were compared to relative data gathered from past audits. The next chart illustrates the following measures:

- the average number of days from complaint received to investigator assignment,
- the average number of days required to send out notification letters to case respondents,
- the average number of days to receive the respondent position statement, and
- the number of cases over 500 days old.

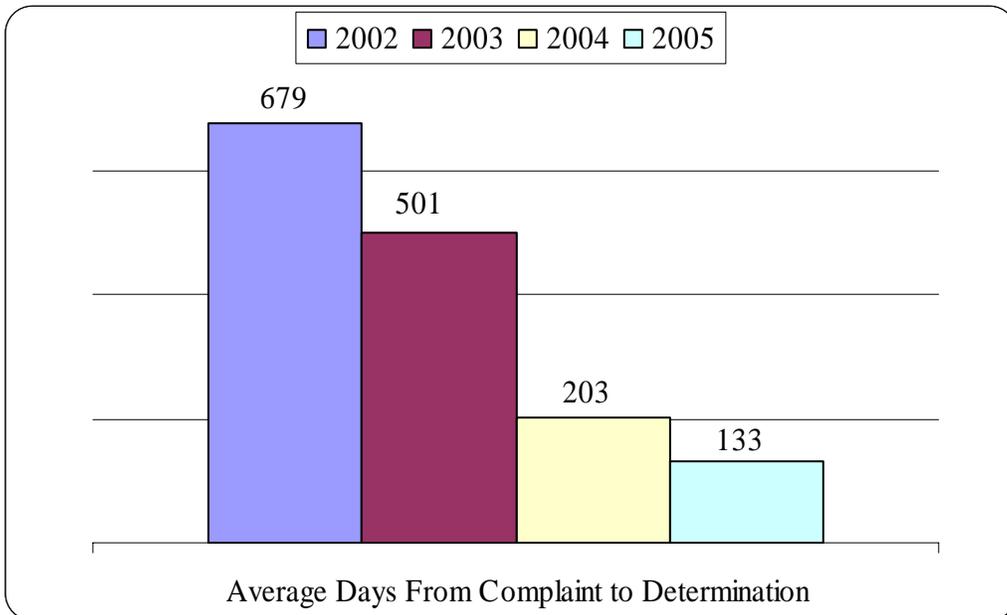
### Comparisons With Previous EEOC Closed Case Report Information



\* Data were not collected for fiscal years 2002 and 2003 for this category.

The final chart shows another comparison of processing time across a number of years. The data were measured from the complaint received date to the date of the determination letter, which is the letter the commission sends out to complainants and respondents indicating that its investigation has concluded. Again, the chart depicts a decrease in average number of days and provides further support for the commission’s improvement in timeliness.

### Yearly Comparison From Complaint to Determination of EEOC Cases



To ensure that the commission's complaint processing is as efficient as possible, commission management should monitor to ensure that investigators are following established time guidelines for phases of the employment complaint process.

## **EMPLOYMENT COMPLAINT CASE-FILE FORMATS AND INCONSISTENCIES**

The May 2003 performance audit of the Human Rights Commission stated that there were three investigation files that the agency could not provide and noted other examples of missing information in files. In November 2004, a commission internal review found disorganized files, a lack of consistency, and a lack of detail. During our current review of Equal Employment Opportunity Commission (EEOC) case files, we discovered problems with file organization, unclear or inaccurate dates, unnecessary or multiple copies of information in files, and missing information.

The EEOC compliance manual for investigative procedures, section 28, provides details for the contents and organization of investigative files. Investigative files must contain:

- EEOC forms related to the case,
- in-house memoranda,
- all evidence submitted by the parties,
- affidavits,
- correspondence,
- investigative notes and analyses, and
- other relevant information.

The compliance manual also requires the materials to be organized in a logical sequence, preferably chronologically, according to the date of receipt or preparation by investigator with the most recent documents on top. The files should be partitioned into several areas, separated by tabs. The case log, which contains the date and nature of all actions and all in-person and telephonic contacts with the parties and witnesses, should be placed on the left side of the file.

We found specific problems with the conciliation (case) logs and determining when certain documents were actually sent or received. Many of the files contain three or more conciliation logs which are used for recording the receipt of relevant investigation information positioned in varying points in the file. Generally conciliation logs were handwritten, and we had to piece together the dates for the entire investigation from multiple logs.

Some examples of other problems we found include the following. In one file, we found a conciliation log stating that a notification letter was sent out on 5/20/05 while a copy of the letter placed in the file was dated 6/10/05. In another file, the complainant questionnaire was stamped with two different received dates and the correct received date could not be determined. Another file contained a position statement from an unrelated case. Other files had position statements not stamped, complainant questionnaires not stamped, and unclear or missing dates

on the conciliation logs. One file showed a case being submitted for final legal review after the date of the determination letter. Many of the files had two or more complete duplicates of information which greatly increased the file size and made it difficult to locate specific information. We noticed that there was improvement between the 2004 and 2005 files we reviewed. The 2005 files were better organized and had fewer inconsistencies.

In an October 2005 assessment of dual-filed cases, the EEOC commented that overall, the commission has improved notably in the work produced by the agency. More specifically, the memo noted improvement in customer service, fewer requests for weight reviews/reconsiderations, and an increase in the number of cause recommendations. The EEOC State and Local Coordinator commented during an interview that, compared to previous years, the agency is doing well due to an improved quality of work.

While the commission has significantly improved the timeliness of complaint investigations, there is still room for improvement in the organization of files. The commission should condense the files to the original documents unless copies are absolutely necessary and should place a log on the left, inside front cover of the main file and require all investigators, intake personnel, and legal review staff to document assignment and receipt dates for each major processing transition point. In addition, the commission should take better care to ensure received documents are date-stamped and that dates entered into the log are accurate and legible. Transition points that could be included in the main log for accurate tracking are as follows:

- the stamped date the agency receives and accepts a complaint,
- the date the notification and acknowledgement letters are mailed,
- the stamped date the respondent's position statement is received,
- the date the case is assigned to the investigator,
- the date the investigator receives the case,
- the date the investigator sends the case to the legal unit,
- the date the legal unit receives the case, and
- the date of resolution/determination.

Additional steps could be added; however, each step of the processes should be clearly documented and easily accessible for review by commission and EEOC staff.

## **NON-JURISDICTIONAL EMPLOYMENT COMPLAINT COMPENSATION**

The Equal Employment Opportunity Commission (EEOC) works with Fair Employment Practice Agencies (FEPAs) such as the Human Rights Commission to receive, process, investigate, and conciliate alleged employment violations. The EEOC has published a document which outlines principles for working with employment agencies, referred to as the "Contracting Principles for State and Local Fair Employment Practices Agencies." Under these principles, a Worksharing Agreement is created between a FEPA and the EEOC. These standardized agreements are used across the country.

The commission's EEOC Worksharing Agreement has always provided funding for investigating and closing jurisdictional complaints; however, in the case of non-jurisdictional complaints, the commission would complete the intake procedures and forward the complaint to the EEOC without receiving compensation for the intake work performed. Commission management learned at an EEOC conference that the commission could receive funding from the EEOC for these non-jurisdictional complaints. Management inquired about the process of obtaining funding and was informed by the EEOC that the commission would need to make a formal request. The commission sent a memo of request to the EEOC in October 2005 and received approval November 1, 2005. The commission now receives \$50 for completing intake procedures for non-jurisdictional cases before transferring the complaint to the EEOC.

The EEOC is responsible, under federal law, for enforcing laws against employment discrimination when the employer has 15 or more employees. Under state statute, an employer must have eight or more employees before charges of discrimination can be made. Any complaint against an employer with between 8 and 15 employees falls under state (and commission) jurisdiction only. Pursuant to a work-sharing agreement renewed annually, employment-related complaints in Tennessee against employers with 15 or more employees are filed with both the commission and the EEOC.

See the chart below for a list of complaints that are non-jurisdictional for THRC.

### Non-Jurisdictional Charges

| Allegations by Complainant                                                                                                                                                                                   | Disposition of Inquiry                                |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| Sexual Orientation                                                                                                                                                                                           | Non-jurisdictional for EEOC and THRC                  |
| Equal Pay Act                                                                                                                                                                                                | Transfer to EEOC                                      |
| Reasonable accommodations relating to a disability                                                                                                                                                           | Transfer to EEOC                                      |
| Disability by Association                                                                                                                                                                                    | Transfer to EEOC                                      |
| Respondent employs fewer than 8 persons in the state of Tennessee; however, respondent has other locations in the US.                                                                                        | Transfer to EEOC                                      |
| Allegations beyond 180 day time frame but within 300 days                                                                                                                                                    | Transfer to EEOC                                      |
| Respondent is a private membership club                                                                                                                                                                      | Jurisdictional for THRC (non-jurisdictional for EEOC) |
| Family and Medical Leave Act                                                                                                                                                                                 | Non-jurisdictional for EEOC and THRC                  |
| Complainant files complaint with EEOC first; complainant files initial complaint with EEOC but files 2 <sup>nd</sup> complaint or a retaliation complaint with THRC; complainant asserts a class allegation. | Transfer to EEOC                                      |

Source: Tennessee Human Rights Commission Standard Operating Procedures.

When the commission's non-jurisdictional cases are transferred to the EEOC, funding for these cases is reduced from \$500 a case for a full investigation to \$50 a case for intake processing. The Deputy Director provided the following numbers of cases that were transferred to EEOC due to a lack of jurisdiction. We calculated the amounts the commission would have received in 2003, 2004, and 2005 had it been aware of the \$50 non-jurisdictional compensation.

### Transferred Cases Comparison

| Jan. 1 Through Dec. 31 | No. of Cases | Non-judicial |
|------------------------|--------------|--------------|
| 2003                   | 9            | \$450        |
| 2004                   | 12           | \$600        |
| 2005                   | 14           | \$700        |

Note: estimate calculated by the audit team.

### COMMISSION MEETING ATTENDANCE

The May 2003 follow-up performance audit included an Observation and Comment regarding commissioners' meeting attendance. The audit reported that 7 of 16 commissioners serving on the board missed at least half of the board meetings they were eligible to attend. At that time, state statute did not provide for removal of a commissioner for any reason; however, the commission's bylaws did permit the chair to request the resignation of any commissioner who missed three consecutive meetings. According to board minutes, no member had been asked to resign. The audit recommended that the General Assembly consider amending *Tennessee Code Annotated* to require the removal of any commission member who regularly fails to attend commission meetings.

In May 2005, the General Assembly amended Section 4-21-201, *Tennessee Code Annotated* to allow the Governor to remove any commissioner who is absent from more than three regularly scheduled meetings in the course of the commission's fiscal year. The amendment went into effect on July 1, 2005.

A review of the board minutes from June 2003 to November 2005 revealed that there have been 24 commissioners to serve on the board. Six of the 15 commissioners currently serving on the board have missed three or more consecutive meetings. Three of those six commissioners have attended less than half of the board meetings they were eligible to attend and have missed three, five, and eight consecutive meetings. The Executive Director indicated that she and the board chair informally agreed to wait one full board year after the Human Rights Commission board attendance bill was passed before taking any action on a commissioner.

For the future, we recommend that the commission follow state law by formally requesting in writing a resignation from any members of the board who have missed three or more consecutive meetings and informing the Governor of that request for resignation. The commission should also ensure compliance with Section 4-21-201, *Tennessee Code Annotated*, by developing procedures for notifying the Governor when a commissioner misses three or more regularly scheduled meetings in one year. To help prevent attendance problems, the chair of the commission should emphasize to new members the importance of their responsibilities.

## CONFLICT-OF-INTEREST STATEMENTS

The May 2003 follow-up performance audit reported that some commissioners and staff were not signing and dating the annual conflict-of-interest statements. We recommended the commission require annual, dated conflict-of-interest statements from both staff and commissioners. Management concurred and stated that in the future both staff and members of the commission would sign annual statements. According to commission management, all parties were made aware that should a conflict arise, management should be notified and the individual should recuse himself or herself.

A review of the conflict-of-interest statements on file for both employees and commissioners of the Human Rights Commission revealed that the conflict-of-interest statements are being signed and dated annually by the commissioners, but staff only sign a statement when they are hired.

### Commissioners

The current conflict-of-interest policy for the commissioners states that the commissioner shall make known to the commission “if any matter before the commission involves a project, transaction, or relationship in which a commissioner, or his or her associated institution or business has a direct or conflicting interest;” and “request to be excused from participating in those matters, which shall be automatically granted.” It further states, “After a commissioner has been excused from participation due to a conflict of interest, he or she shall not participate in the discussion of or vote on the matter for which he or she was excused.” When appointed to the commission, “a commissioner shall disclose in writing his or her affiliations or memberships with organizations that may constitute a potential conflict of interest. This duty to disclose shall be an ongoing one, and shall continue for the duration of a commissioner’s tenure on the commission.”

In 2005, all but two of the commissioners signed and dated the conflict-of-interest statements. One of the two commissioners passed away before the statements were mailed. Management stated that the board did not ask the other commissioner to sign the conflict-of-interest statement because this commissioner informed the board that she would be resigning from her position in February 2005 because of a conflict with her job. However, the commissioner did not resign from the board until October 2005. The commissioner resigned due to job-related restrictions prohibiting employees from sitting on government boards. This commissioner attended three board meetings and voted during one of the three meetings after she announced her resignation. The commissioner did not vote on any matters that were related to the conflict.

## Employees

The conflict-of-interest policy for employees states,

It is the policy of the Tennessee Human Rights Commission, if any employee perceives a conflict of interest as it pertains to any complaint filed which may hinder an objective and unbiased investigation or affect that employee's judgment, that employee must report such conflict to that employee's supervisor immediately. Additionally, an employee must disclose any financial interest of more than \$5,000 . . . that would constitute a conflict, potential conflict, or an apparent conflict of interest by the employee or members of the employee's immediate family.

The majority of the conflict-of-interest forms signed by the employees were dated August 2003, except for the forms of employees who began employment after that date. Commission policy requires employees to sign and date the conflict-of-interest statement at the time of employment with the commission, not annually. Management stated that no annual reminder to update the statements if circumstances have changed is sent to the employees because the commission thinks that it is the employee's responsibility to report any potential or apparent conflicts of interest.

As a best practice, the commission should have all board members and employees complete conflict-of-interest statements annually as a reminder to be aware of actual, potential, and apparent conflicts of interest. The employees and board members should also immediately update the forms when they develop a conflict. The commission should revise the conflict-of-interest policies to require annually signed, written conflict-of-interest statements. Since most of the employees' conflict-of-interest forms are over two years old, management should require employees to update their forms and continue to do so annually. The chair of the commission should ensure that board members submit comprehensive conflict-of-interest statements in a timely manner and that such members recuse themselves as warranted.

## **FINANCE AND ADMINISTRATION SERVICES PROVIDED TO THE COMMISSION**

Until July 2006, the Human Rights Commission paid for and received services from the Department of Finance and Administration (F&A) without any form of a written agreement.

In 2004, when the commission's fiscal officer left, the commission was without a person to complete its financial work and faced some audit issues regarding separation of duties due to the relatively small size of the agency. Instead of hiring a new fiscal officer, the commission elected to work with F&A on budgeting and other financial issues. In fiscal year 2004, as a trial concept, F&A began providing budgeting services to the commission including

- processing invoices,
- preparing checks for deposit,

- preparing the budget,
- attending budget hearings,
- assisting with contracts,
- ordering supplies and equipment, and
- creating labor distribution formulas.

In January 2006, F&A also began handling Human Resources work for the commission. As of July 2006, the commission has a written agreement with F&A. The agreement states that F&A's responsibilities will include both the Fiscal Office and the Personnel Office and will include but are not limited to budget preparation and monitoring, accounts payable, cash management, procurement, payroll and personnel transactions, insurance transactions, and equity management.

## **MEDIATION TRAINING, CASELOADS, AND TIMELINESS**

For the purposes of our audit, we reviewed the employment complaint mediation program including the training the mediators and investigators receive, the mediators' caseloads, and the timeliness of mediations. We found that training for mediators and investigators appears to be adequate and mediators' caseloads are reasonable, but the timeliness of mediations could be improved.

### Mediation Program

The Tennessee Human Rights Commission mediation program started under the administration of the former Executive Director and ended in fall 2004. The commission reinstated the mediation program in June 2005. The first mediations were conducted in July 2005. The commission currently has three mediators; two are located in the Knoxville Office and one in the Memphis Office. In addition to conducting mediations, the employment mediators also investigate housing and/or employment complaints. In order to avoid potential conflicts, the mediator assigned to mediate a case is not the person who originally investigated the related housing or employment complaints.

According to the *Tennessee Human Rights Commission Employment and Housing Standard Operating Procedures*, the mediation process begins with the mediation coordinator inviting the complainant and respondent to participate in mediation. The invitation to mediate is included in the complaint package sent to both the complainant and the respondent. If the parties do not respond or fail to agree to mediate, the offer to mediate is rescinded and the case is sent for full investigation. Once the parties agree to mediation, the file is then processed and assigned to a mediator. The mediator's responsibility is to assist the parties in reaching a settlement in a fair, open, confidential, and honest manner within 30 days from the date the mediator receives the assignment. There will be no settlement unless it is acceptable to all parties involved. If the parties agree on a settlement, the mediator writes it and all parties sign it. After the scheduled

mediation has been held, the mediator advises the Mediation Coordinator if an agreement was reached, not reached (impasse), or if more time is required before a final disposition on the mediation is made. If the parties reach an agreement, the Executive Director reviews the written and signed agreement for acceptance and that will end the case. If the mediation is unsuccessful, a letter will be sent to the respondent requesting the position statement within ten business days, and a complete investigation will be conducted.

### Training

The mediators and investigators are required to receive training to conduct mediations and employment and housing investigations. The mediators receive training from PDRS (Private Dispute Resolution Services) Training Institute and the Supreme Court Rule 31 Certification Commission. The Supreme Court enacted Rule 31 in 1996 to establish court-based alternative dispute resolution on a statewide basis. The PDRS Training Institute is a series of basic and advanced mediation courses and seminars that provide the education necessary to practice quality General Civil and Family mediation and mediation advocacy in Tennessee and other states. Rule 31 Certification requires that the mediators complete 40 hours of training prior to certification. Although mediators receive this training, they do not participate in court-annexed mediation cases because complaints received at the commission originate with a state agency.

The employment investigators receive training from the EEOC (U.S. Equal Employment Opportunity Commission) which is offered on an annual and biannual basis. Investigators are trained on points of the investigative and legal process.

The housing investigators receive training from HUD (U.S. Department of Housing and Urban Development). HUD required annual training is held in Washington, D.C., which includes training on conciliation, mediation, and TEAPOTS (Title Eight Automated Paperless Office Tracking System).

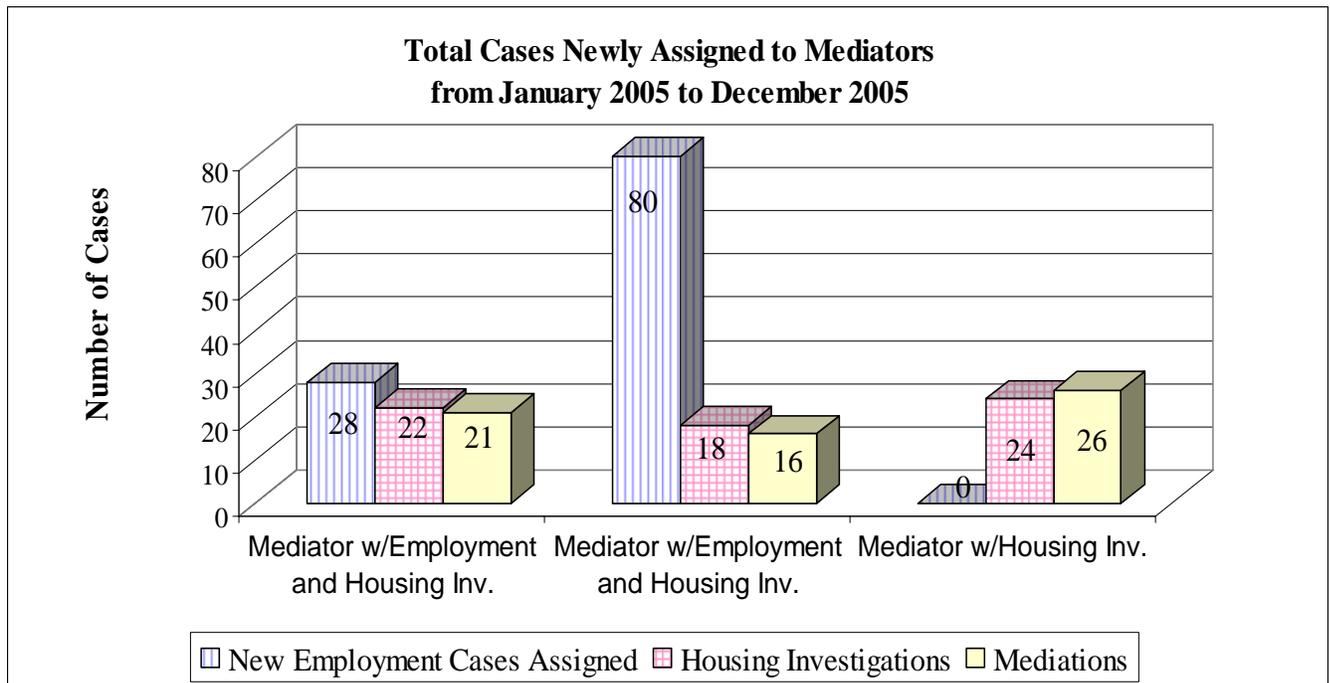
The mediators and investigators appear to have adequate training to handle their assigned caseload in a timely and effective manner.

### Caseloads

According to the housing director, housing investigation and employment mediation cases are assigned to the mediators/investigators based on the physical location of the alleged fair housing violation and/or occurrence, whether or not the same respondent is involved, whether or not the investigator has a conflict with parties to the complaint, the other duties performed by investigators, and the number of cases in the open inventory. The mediators/investigators will not be assigned a case when there is a known or perceived conflict of interest. The mediators/investigators might not be assigned a particular case or cases if they are currently engaged in multiple tasks, such as mediation and/or employment investigation.

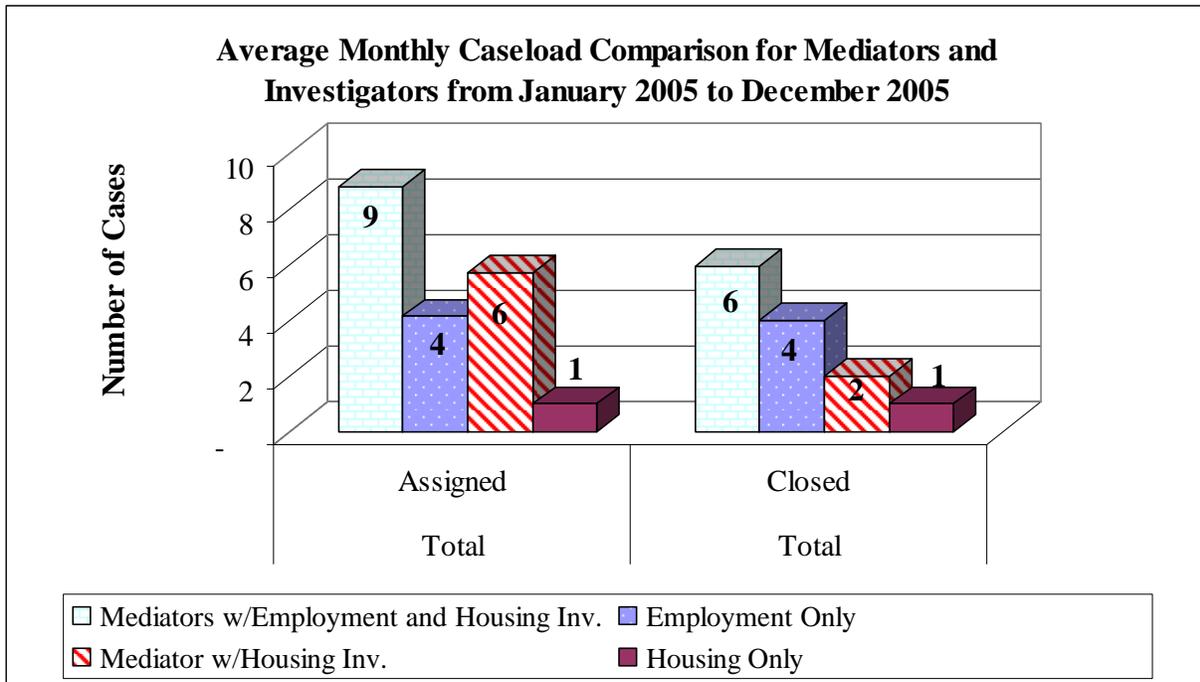
A review of the employment and housing investigation and mediation caseloads revealed that two of the mediators handle both housing and employment investigations as well as

mediation cases while the other mediator only handles housing investigations and mediation cases. The three mediators collectively investigated or mediated a total of 265 cases from January 2005 to December 2005. One mediator was assigned a total of 85 mediation and investigation cases, which included 21 mediations, 22 housing investigations, and 42 total employment investigations (28 newly assigned and 14 carried forward from the previous year). Another mediator was assigned a total of 130 cases for the year, which included 16 mediations, 18 housing investigations, and 96 total employment investigations (80 newly assigned and 16 carried forward from the previous year). The last mediator was assigned a total of 50 cases for the year, which included 26 mediations and 24 housing investigations. The chart below illustrates the total cases assigned to each mediator between January and December 2005. The chart does not include cases carried forward from the previous year.



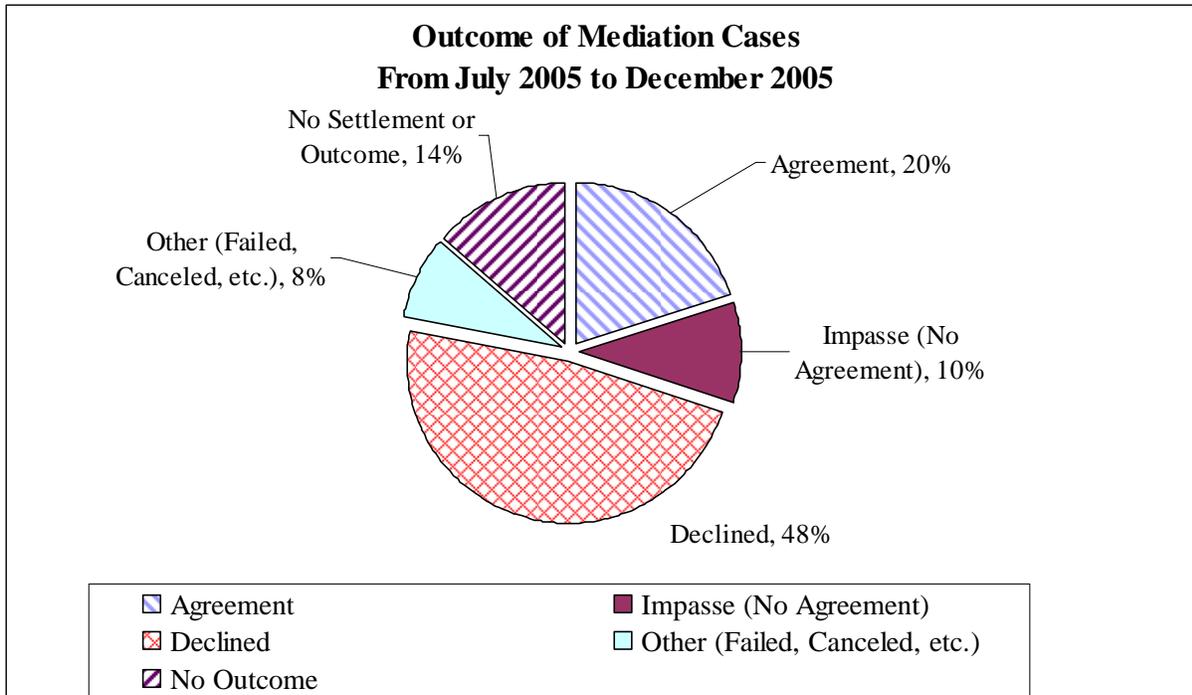
The average caseload assigned to the mediators with housing and employment investigations was 9 cases per month, which included 2 mediations, 2 housing investigations, and 5 employment investigations. Of the mediators that handle the employment investigations, one mediator received an average of two newly assigned cases per month. The other mediator who investigates employment complaints received an average of six newly assigned cases per month. This is in addition to cases that were carried forward from the previous year. The average caseload assigned per month to the employment-only investigators, not including the mediators, was 4 cases. The two mediators with employment and housing investigations closed an average of six cases per month, which included one housing investigation and five employment investigations compared to the employment-only investigators, who closed an average of four cases per month.

The mediator with housing investigations is assigned more housing investigation cases than other housing investigators, is more seasoned than the other two mediators, and therefore is assigned more mediation cases. The mediator with housing investigations was assigned a total of four cases per month, which included two mediation cases and two housing investigations. The housing investigators only were assigned an average of one case per month. The mediator with housing investigations closed an average of two housing investigation cases per month compared to the other housing investigators, who closed an average of one case per month. The graph below illustrates a caseload comparison of the average number of cases assigned and closed by all of the mediators and investigators.



Timeliness

A review of the mediation tracking document provided by the commission revealed that the commission processed a total of 110 mediations from June to December 2005. The chart below illustrates the outcome of the mediation cases.



The review of the mediation tracking document from June to December 2005 also revealed that it took the mediators an average of 45 days to complete the mediation from the date they were assigned the case. The total time it took to mediate the cases exceeded the 30-day mediation date set by the mediation coordinator by 24 days. On average, the number of days between the mediator assignment and the mediation meeting has decreased from 55 days in July 2005 to 32 days in December 2005.

The commission implemented a 30-day period for mediations as a tool to motivate the staff. The commission maintains a spreadsheet with the current progress and results of completed mediations to determine whether mediations are completed within 30 days. The mediation coordinator stated that the mediations are not completed within 30 days due to the following factors:

- the mediator cannot reach parties;
- health reasons of either the Complainant or the Respondent;
- scheduling conflicts, either party or the mediator; and
- parties are negotiating their own settlements but do not let the commission know what they are doing and cancel or reschedule the mediations in order to complete their negotiations.

The mediation coordinator stated that the primary reason for the delay is the constant rescheduling of the dates by the parties.

The mediation coordinator stated that to shorten the length of time for the mediations, the commission has required the mediators to send a bi-weekly update of their scheduled activities and changed the wording in the letter from the mediator to reflect that mediations must be facilitated within 30 days.

The Human Rights Commission should continue working to complete mediation cases within the 30-day period.

## **INTERNAL REVIEWS**

In October 2004, the Human Rights Commission conducted an internal review of its Employment Division. According to the commission, the purpose of the review was to perform a limited review of the division to determine the strengths and weaknesses of the agency's operations. The scope of the internal review was to measure a period of six to nine months. The Deputy Director and the Compliance Officer conducted the audit. Three cases from each investigator were randomly selected and reviewed. Intake and investigative processes were reviewed and compared to a standard based on the agency's guidelines and procedures manual. The results of the review were formatted into findings along with recommendations for improvements. The review was intended to take place at the end of each Equal Employment Opportunity Commission (EEOC) contract year; however, one was not completed this year because the agency did not want to duplicate efforts being completed by the performance audit. At the time of this audit, only one internal review had been performed, dated November 15, 2004. The report indicated findings similar to the problems found in the performance audit. Similarities in the results include:

- disorganized files,
- sloppy handwritten record keeping,
- missing dates,
- unnecessary copies of information, and
- copies in the wrong files.

Recommendations in the internal review identified management initiatives geared toward resolving many of the issues. Examples of these initiatives include that staff should

- note when files are received,
- keep a detailed and accurate log of every action taken in the course of the investigation, and
- avoid handwriting on files to eliminate sloppiness.

The internal review noted improvement in processing times such as intake time and investigative time as did the performance audit.

After reviewing the objective, scope, methodology, and purpose of the internal review, and reviewing the report, we believe the procedures seem capable of producing an objective assessment of the Employment Division's operations and producing enough information to motivate necessary changes. The commission should continue to conduct annual internal reviews of the EEOC investigation process and should consider a similar process for HUD investigations.

## **PART-TIME EMPLOYEE**

According to the May 2003 follow-up performance audit, the commission was not following state policies regarding the employment and workday of part-time and interim employees. The 2003 audit found that interim employees were appointed for more than the allowed one year and a part-time employee was exceeding the annual 1,600 hours permitted by Department of Personnel rules.

Department of Personnel Rule Number 1120-1-.01(61) defines part-time as "a position or an employee budgeted or scheduled to work a part-time schedule as defined by the Commissioner [of the Department of Personnel] and the Commissioner of Finance and Administration, usually less than 1,600 hours per year."

During an interview with the Executive Director and the Deputy Director on December 13, 2005, the Executive Director stated that the commission has had only one part-time employee and she was scheduled to terminate at the end of December. (However, the employee was re-employed by the commission on May 16, 2006, under the same arrangement.) The Executive Director stated that she does not use interim employees.

The part-time employee is an employment investigator. Investigators' duties include gathering and analyzing information necessary to make a determination of cause or no cause, interviewing relevant parties, negotiating settlements, and preparing case file documentation. We reviewed the part-time employee's time sheets and payroll information for the period August 1 to December 31, 2005. The part-time employee worked a total of 942 hours and was paid a total of \$17,483.22 during this time period. The part-time employee averaged 47.1 hours per week or 94.2 hours per two-week pay period. The total hours worked did not exceed the 1,600 hours allowed by the Department of Personnel; however, we noted that in calculating total hours worked, there was no allowance for a lunch hour. The commission stated that this part-time employee was asked to report case status and time worked to the Deputy Director on a weekly basis and was not required to take any particular amount of time for lunch. The commission also provided that the emphasis in the arrangement was to ensure that the appropriate amount of time was spent on investigating and closing employment cases and for that time to be consistent with the amount of time a full-time investigator utilized. Commission management have indicated they are satisfied with the quality of work this part-time employee provides.

On average, this part-time employee worked 47.1 hours each week, which exceeded full-time hours by almost 10 hours each week. According to Section 4-4-105(4), *Tennessee Code Annotated*, and Department of Personnel policies, with few exceptions, each state employee is granted a one-hour unpaid lunch hour. The Personnel Transactions Director at the Department

of Personnel stated that Department of Personnel Policies and Procedures and Rules and Regulations do not specifically address the issue of part-time employees having a lunch hour. The Department of Personnel would expect the person to be scheduled a lunch hour if the person was scheduled to work full-time hours. If the employee was allowed to work through lunch, then he or she should be compensated for that time.

While there is no specific standard regarding a part-time state employee receiving a lunch hour, the hours this employee worked regularly exceeded full-time hours and no lunch break is documented. For example, on August 29 and 30, 2005, the employee's time sheet indicates work hours of 1 p.m. to 1 a.m. (Note: The commission states the employee was permitted to work from home.) The employee was paid for 12 hours of work for these days. The employee's lack of a lunch break or any other type of break during such a long day appears unrealistic, especially when working at home, and calls into question the employee's ability to stay productive for such long periods of time.

The commission should work to ensure the productivity of its part-time employees by implementing a policy for part-time employees regarding the number of hours they can work without a lunch break. The commission should develop a policy for employees who work at home. As part of that policy, the commission may wish to consider requiring a daily time record to document the tasks of employees who work from home and how the employees spend their time.

## **ADDITIONAL AUDIT WORK PERFORMED**

We also performed work in the following areas.

### **Agency Rules**

We reviewed and compared the rules, policies, and procedures of the Human Rights Commission, statutes of the State of Tennessee, regulations of the Equal Employment Opportunity Commission (EEOC), and the Department of Housing and Urban Development (HUD) to determine if any differences were affecting the operation of the commission. During the audit, we determined that the federal government has created standardized policies, procedures, and programs to work with state agencies whether in fair employment or housing cases.

As we discussed statutes, rules, policies, and procedures with commission staff, staff mentioned the following proposed rule changes being considered:

- rules to be amended to incorporate changes in the reasonable cause case process with regard to taking cases to a hearing,
- rules to be amended to include the commission's mediation process,

- rules to be amended to include changes in state law from the 2005 legislative session, and
- bylaws to address the new change in statute regarding commissioner attendance.

The staff would like to propose these changes but is currently in the process of scheduling meetings with the commission's Law and Legislation Committee, which will make a recommendation as to whether or not to proceed.

## **Salary Adjustments**

The May 2003 performance audit found one issue with regard to an interim employee's hourly pay being higher than that of a full-time state employee with the same duties and responsibilities. As part of this audit, we reviewed 16 salary adjustments made since February 2004 totaling a \$68,000 increase to the commission's annual salaries.

We reviewed the 16 salary adjustments to determine if the adjustments were in an appropriate range at the time of the adjustment. These adjustments include salary increases, position creations, and reclassifications. From our review, we determined that only one adjustment was above the maximum range (\$80 above) for the employee class. According to the Department of Personnel, it was aware at the time this was approved that the new salary would be above the maximum for this employee class, but rule 1120-4-.17 allows the Commissioner of Personnel to approve these types of adjustments on a case-by-case basis.

In this audit, with the approved exception mentioned above, we found no instances of salaries exceeding appropriate employee class pay range.

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## FINDINGS AND RECOMMENDATIONS

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### **1. The commission did not comply with its Records Disposition Authorization policy for discarding investigated and closed cases**

#### **Finding**

The destruction of all State of Tennessee government records must be covered by an approved Records Disposition Authorization (RDA) developed by each agency, approved by the Public Records Commission, and filed with the Department of General Services. The RDA for the Tennessee Human Rights Commission, effective April 24, 1998, states that files for investigated and closed cases should be destroyed at the end of the fiscal year, after two years and audit. The commission did not comply with its RDA because it destroyed the files from 2003 before two years from the end of that fiscal year and before the completion of the performance audit. On January 4, 2006, the auditors requested to review the files from September 2003. On January 12, 2006, the auditors requested to review the files from December 2003. According to commission management, both the September and December 2003 files had been destroyed in 2005 (at the end of September and December 2005, respectively). Commission staff gave auditors printouts instead from its case tracking information system, Title Eight Automated Paperless Office Tracking System (TEAPOTS), but the printouts of the files did not provide enough supporting evidence, such as the original signed and dated documents received and sent by the parties involved in the cases and the commission.

The director of the Records Management Division in the Department of General Services interpreted the commission's RDA to mean that the commission must wait until the end of the fiscal year, plus two years, and audit before the files can be destroyed. As an example, the director stated that if an audit takes place within the two years and is complete, then an agency's audit director will give an approval for the files to be destroyed. If an audit is not scheduled during those two years, the files must be maintained until an audit is complete before an agency's audit director can give approval. According to the Records Management Division director, the September and December 2003 files would not be eligible for discard until June 30, 2006, and the completion of the current audit.

The commission's RDA policy does not specify the type of audit that must be performed. The scope of the performance audits include a review of the programmatic issues and investigative files and usually occur every three to four years depending on the termination date given by the General Assembly. The scope of the May 2003 financial audit did not include a review of the investigative files so those files have not been reviewed since the March 2003 performance audit. The Executive Director stated that it never occurred to her to keep the investigative files past the two years indicated in the RDA; thus the files are destroyed on a monthly basis at the end of two years.

## Recommendation

The commission should modify its Records Disposition Authorization (RDA) to include all audits, including performance audits, to ensure that investigated and closed cases are not destroyed before the next performance audit. The commission should consult with the Records Management Division in the Department of General Services when changing the RDA to ensure that destruction requirements are completely clear.

## Management's Comment

We concur. The commission recognizes that its previous understanding of the requirements of its Records Disposition Authorization (RDA) policy was flawed. As such, the commission has taken steps to correct this audit finding by appointing a staff person, with training in records management, to oversee the process for maintenance and destruction of records by the agency. Additionally, the commission is in the process of amending and clarifying its RDA policy, which is expected to be formally revised by December 31, 2006. The new records management officer will develop a written policy that will be included in the commission's Policy and Procedure Manual. The records management officer will also conduct training on the new policy for the entire agency staff.

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## 2. The commission does not provide Title VI training to its employees, as stated in its Title VI plan, or provide information on Title VI to complainants

### Finding

Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. The Human Rights Commission receives federal funding for conducting investigations of discrimination complaints for both the Equal Employment Opportunity Commission and Housing and Urban Development. Since the commission receives federal funding, it would be subject to Title VI. Section 4-21-901, *Tennessee Code Annotated*, requires each state governmental entity subject to Title VI to develop a Title VI implementation plan to be submitted to the Department of Audit by June 30 of each year.

We reviewed the Title VI Plan for the Tennessee Human Rights Commission which was received on July 26, 2005. The plan states that training is provided to employees but does not mention any Title VI information provided to those filing complaints with the commission. We requested any training documents and a history of training provided to commission employees. The Title VI Compliance Officer stated that no documents have been created for Title VI training and no training has been completed in the last three years.

We asked the Title VI Compliance Officer about providing Title VI information to clients, program participants, or complainants. The Title VI Compliance Officer stated that there are no clients or program participants identified within commission activities who must be educated about Title VI requirements. The Title VI Compliance Officer stated that complainants are not clients in the Title VI sense as there are no monetary or tangible services provided to them.

However, according to the Director of the Tennessee Title VI Compliance Commission, Title VI information should be given to beneficiaries (complainants in this case). Employees assisting in complaint investigations need some general knowledge of Title VI requirements.

### **Recommendation**

The Title VI Compliance Officer should ensure that all employees receive regular Title VI training pursuant to the commission's Title VI Plan and all complainants are provided with Title VI information upon filing a complaint with the commission.

### **Management's Comment**

We concur in part. While the commission acknowledges that it did not complete specific training pursuant to its Title VI Implementation Plan, through annual agency trainings, commission employees are aware that discrimination based on race, color or national origin is prohibited. The omission of specific Title VI training to employees was an oversight by the agency in the midst of a tremendous effort to reduce case aging and to expedite case closure rates. Although the commission's most recent Title VI Implementation Plan does not include specific training requirements, the commission has opted to continue its implementation of Title VI by providing guidance and technical assistance to its staff. Specifically, the commission will include Title VI training in any annual, bi-annual or quarterly departmental training of its employees during which the commission's role, obligations, and compliance activities related to enforcement of Title VI will be addressed. Such training has already been scheduled to take place in December 2006. In addition, Title VI information will be placed on the agency's website as well as in general agency information provided to complainants, respondents, and the general public.

### **3. The commission fails to comply with Notice of Vacancy and Appointment requirements**

#### **Finding**

According to Section 10-7-605, *Tennessee Code Annotated*, the chair of an existing agency or appointing authority is required to notify the Secretary of State's office within 15 days of an unscheduled vacancy. The Secretary of State's office is required to publish vacancies until the chair or appointing authority submits notification that the vacancy has been filled. There are currently two unscheduled vacancies on the board that required the commission to notify the Secretary of State's office within 15 days of the vacancies; however, the commission took almost three months to fulfill this obligation.

#### Vacancies

A review of the notices of vacancy revealed that one commissioner passed away and another commissioner resigned. Management indicated that one commissioner passed away on June 8, 2005, and management was notified of the death on June 9, 2005. The notice of vacancy for this position was submitted to the Secretary of State's office on September 27, 2005, over three months later. Another commissioner resigned on October 4, 2005; however, the notice of vacancy for this position was not submitted to the Secretary of State's office until January 5, 2006.

#### Appointments

On February 1, 2005, a commissioner was appointed to replace a previous member. Per Section 10-7-605, *Tennessee Code Annotated*, this notice should have been sent within 15 days of the appointment; however, the commission did not notify the Secretary of State's office until September 27, 2005, almost eight months later.

#### **Recommendation**

The commission should submit the notice of vacancy and notice of appointment to the Secretary of State's office during the time required in Section 10-7-605, *Tennessee Code Annotated*.

#### **Management's Comment**

We concur. Upon review of Section 10-7-605, *Tennessee Code Annotated*, and in consultation with the Open Appointment Office, THRC has gained knowledge of proper procedures and statutory requirements for filing Notice of Vacancies and Appointments. The proper procedures will be outlined and included in the THRC Policy and Procedures Manual by the end of 2006.

**4. The commission does not always meet EEOC Contracting Principles regarding time frames for entering information into the Charge Data System after a complaint is received**

**Finding**

The Equal Employment Opportunity Commission (EEOC) Contracting Principles require basic charge (complaint) data to be entered into the Charge Data System (CDS) within five days of the receipt of a complaint in order for the agency to receive credit. During our file review, we observed some differences between the complaint received dates entered into the computer (CDS office date) and the actual date the case was stamped received (stamped date) at THRC. The data collected showed that the commission was averaging a 39-day difference in April 2004 and a 5-day difference in August 2005. The table below shows how many cases were found with differing received dates and how many of those were beyond an EEOC five-day requirement.

**Differing EEOC Received Date Data**

|             | Total Number of Cases Reviewed | Number of Cases With Different Stamp Dates | Number of Cases With Stamp Dates More Than 5 Days Old | Percentage of Cases With Differing Stamp Dates | Percentage of Cases With Differing Stamp Dates Exceeding EEOC 5 Day Requirement |
|-------------|--------------------------------|--------------------------------------------|-------------------------------------------------------|------------------------------------------------|---------------------------------------------------------------------------------|
| April 2004  | 96                             | 16                                         | 9<br>Range(6-375 days)                                | 17%<br>(16 of 96)                              | 9.4%<br>(9 of 96)                                                               |
| August 2005 | 91                             | 48                                         | 11<br>Range(6-56 days)                                | 53%<br>(48 of 91)                              | 12.1%<br>(11 of 91)                                                             |

The CDS office date is used in the Pending Report and Resolution Report to determine such efficiency measures as Case Age and Processing Time. Our sample revealed that the CDS office date is not always accurate, which can cause timeliness results reviewed by the EEOC and presented in the agency’s annual report to be skewed. We found cases in April 2004 with stamped received dates up to 375 days older than the date recorded in CDS. In August 2005, one case was 56 days older than the date recorded in CDS. The data we obtained do suggest that the agency has made an improvement in this area in the last two years based on the lower percentage of cases older than five days old.

**Recommendation**

The commission should ensure complaints are properly date-stamped when received and promptly entered into the Charge Data System (CDS). Differences between the stamped dates and the CDS Office dates should be monitored so they do not exceed the five days allowed by the Equal Employment Opportunity Commission.

### **Management's Comment**

We concur in part. Although the EEOC Contracting Principles state that charge information must be entered into the data system within five days of receipt, the EEOC district office uses this principle only as a guideline. Additionally, the Tennessee Human Rights Act and the Tennessee Handicap Act do not have a provision requiring the agency to enter charge information into our data system within five days of receipt. Nevertheless, the commission plans to work with EEOC to modify the Contracting Principles to ensure that they more accurately reflect the correct expectations and outcomes of our agency when processing and investigating a charge of discrimination.

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## RECOMMENDATIONS

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### ADMINISTRATIVE

The Human Rights Commission should address the following areas to improve the efficiency and effectiveness of its operations.

1. The commission should modify its Records Disposition Authorization (RDA) to include all audits, including performance audits, to ensure that investigated and closed cases are not destroyed before the next performance audit. The commission should consult with the Records Management Division in the Department of General Services when changing the RDA to ensure that destruction requirements are completely clear.
2. The Title VI Compliance Officer should ensure that all employees receive regular Title VI training pursuant to the commission's Title VI Plan and all complainants are provided with Title VI information upon filing a complaint with the commission.
3. The commission should submit the notice of vacancy and notice of appointment to the Secretary of State's office during the time required in Section 10-7-605, *Tennessee Code Annotated*.
4. The commission should ensure complaints are properly date-stamped when received and promptly entered into the Charge Data System (CDS). Differences between the stamped dates and the CDS Office dates should be monitored so they do not exceed the five days allowed by the Equal Employment Opportunity Commission.
5. To ensure that the commission's complaint processing is as efficient as possible, commission management should monitor to ensure that investigators are following established time guidelines for phases of the employment and housing complaint processes.
6. The housing director should ensure that all of the investigators are consistent in completing the case-file format and processing the complaints as stated in the commission's *Employment and Housing Division's Standard Operating Procedures* by filling out and completing checklists and logs and ensuring all documents are signed, dated, and securely placed in the file under the correct tab. The housing director should also ensure that all files contain the required documents for the file, such as signed complaint forms, etc.
7. The commission should condense the employment files to the original documents unless copies are absolutely necessary and should place a log on the left, inside front

cover of the main file and require all investigators, intake personnel, and legal review staff to document assignment and receipt dates for each major processing transition point. In addition, the commission should take better care to ensure received documents are date-stamped and that dates entered into the log are accurate and legible.

8. For the future, we recommend that the commission follow state law by formally requesting in writing a resignation from any members of the board who have missed three or more consecutive meetings and informing the Governor of that request for resignation. The commission should also ensure compliance with Section 4-21-201, *Tennessee Code Annotated*, by developing procedures for notifying the Governor when a commissioner misses three or more regularly scheduled meetings in one year. To help prevent attendance problems, the chair of the commission should emphasize to new members the importance of their responsibilities.
9. As a best practice, the commission should have all board members and employees complete conflict-of-interest statements annually as a reminder to be aware of actual, potential, and apparent conflicts of interest. The employees and board members should also immediately update the forms when they develop a conflict. The commission should revise the conflict of interest policies to require annually signed, written conflict-of-interest statements. Since most of the employees' conflict-of-interest forms are over two years old, management should require employees to update their forms and continue to do so annually. The chair of the commission should ensure that board members submit comprehensive conflict-of-interest statements in a timely manner and that such members recuse themselves as warranted.
10. The commission should work to ensure the productivity of its part-time employees by implementing a policy for part-time employees regarding the number of hours they can work without a lunch break. The commission should develop a policy for employees who work at home. As part of that policy, the commission may wish to consider requiring a daily time record to document the tasks of employees who work from home and how the employees spend their time.

## **APPENDIX TITLE VI INFORMATION**

All programs or activities receiving federal financial assistance are prohibited by Title VI of the Civil Rights Act of 1964 from discriminating against participants or clients on the basis of race, color, or national origin. In response to a request from members of the Government Operations Committee, we compiled information concerning federal financial assistance received by the Human Rights Commission, and the commission's efforts to comply with Title VI requirements. The results of the information gathered are summarized below.

The Human Rights Commission receives funds from the U.S. Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. The commission is not required to file a Title VI report with any state or federal agencies. The commission is required to file an annual Implementation Plan/Update with the Comptroller of the Treasury each year in June. The fiscal year 2005 plan was received at the end of June 2004; however, the fiscal year 2006 plan was not received until the end of July 2005. The fiscal year 2007 plan was received on June 30, 2006.

Currently, the commission has contracts with the Department of Labor and Workforce Development and Comcast Spotlight Cable Television. The Department of Labor and Workforce Development's \$1,000 contract from April 15, 2005, to June 3, 2006, provides the commission with information on employers who fail to respond to complaints and information regarding the number of employees. Comcast Spotlight Cable Television's \$61,438 contract provides that between February 14, 2005, and February 16, 2006, Comcast will produce and air 30-second public service announcements that are designed to educate the citizens of Tennessee on their rights under the federal Fair Housing Act and raise the awareness of Tennesseans about the commission and its role in eradicating discrimination in the state.

The commission has appointed a Title VI Coordinator, who is located in the Nashville office. The Title VI Coordinator is responsible for monitoring the Title VI plan and disseminating information to all commission employees through their respective supervisors. The Title VI Plan states that the Title VI Coordinator identifies and recommends training or job enrichment activities for employees and responds to career development requests made by individual employees. (See finding 2 regarding Title VI training.) It is also the responsibility of the Title VI Coordinator to investigate alleged violations of Title VI and prepare all required reports including the yearly Title VI plan update.

To ensure it is meeting Title VI requirements and monitoring activities related to Title VI, the commission states that the monitoring of Title VI activities is accomplished once a year when the Title VI Coordinator updates the annual Title VI report.

The commission did not receive any Title VI complaints during the past two years. Should any be received, the commission would investigate them in a fashion similar to an employment or housing complaint.

**Human Rights Commission  
Staff Ethnicity and Gender  
By Job Position  
January 2006**

| <b>Title</b>                            | <b>Gender</b> |               | <b>Ethnicity</b> |              |                 |              |
|-----------------------------------------|---------------|---------------|------------------|--------------|-----------------|--------------|
|                                         | <i>Male</i>   | <i>Female</i> | <i>Asian</i>     | <i>Black</i> | <i>Hispanic</i> | <i>White</i> |
| Executive Director                      |               | 1             |                  | 1            |                 |              |
| Deputy Director                         | 1             |               |                  | 1            |                 |              |
| General Counsel                         |               | 1             | 1                |              |                 |              |
| Communications Officer                  |               | 1             |                  | 1            |                 |              |
| Housing Coordinator                     | 1             |               |                  | 1            |                 |              |
| Secretary                               |               | 2             |                  |              |                 | 2            |
| Administrative Services Assistant       | 2             | 2             |                  | 2            | 1               | 1            |
| Human Rights Representative             | 5             | 7             |                  | 7            | 2               | 3            |
| Information Resource Support Specialist | 1             |               |                  | 1            |                 |              |
| Legal Assistant                         |               | 2             |                  |              |                 | 2            |
| <b>Total</b>                            | <b>10</b>     | <b>16</b>     | <b>1</b>         | <b>14</b>    | <b>3</b>        | <b>8</b>     |

**Human Rights Commission  
Commissioner Ethnicity and Gender  
January 2006**

| <b>Title</b> | <b>Gender</b> |               | <b>Ethnicity</b> |              |                 |              |
|--------------|---------------|---------------|------------------|--------------|-----------------|--------------|
|              | <i>Male</i>   | <i>Female</i> | <i>Asian</i>     | <i>Black</i> | <i>Hispanic</i> | <i>White</i> |
| East         | 2             | 2             |                  | 1            |                 | 3            |
| Middle       | 2             | 2             |                  | 3            |                 | 1            |
| West         | 4             | 1             |                  | 4            |                 | 1            |
| <b>Total</b> | <b>8</b>      | <b>5</b>      |                  | <b>8</b>     |                 | <b>5</b>     |

\*Note: As of January 18, 2006, the commission had two vacancies.