

# SPECTRUM

## Agency Update From the Executive Director

Have you ever noticed in how many games you have to go “home” in order to win? Baseball is the best example because a runner must cross home plate in order to score. Of course, a homerun is the highlight of any baseball game and a grand slam can have the fans talking for days. Baseball is one of my favorite sports. In sandlots leagues and college baseball, I played the position of catcher.

The Kansas Human Rights Commission’s home, our mission, is to prevent and eliminate discrimination and assure equal opportunities in all employment relations, to eliminate profiling in conjunction with traffic stops, to eliminate and prevent discrimination, segregation or separation, and assure equal opportunities in all places of public accommodations and in housing.

In these days of tough economic times and slumping State revenues, the Kansas Human Rights Commission, like many

State agencies, has been thrown a curveball of increased demand for our services just as budgetary resources have been reduced. In fiscal year 2009, we received 1,070 complaints alleging discrimination in the work place, public accommodations, housing, and profiling in conjunction with traffic stops. Complaints increased by 17 percent from fiscal year 2008 while State General Fund for fiscal year 2010 conversely decreased by 16 percent from fiscal year 2008 expenditures.

So, what’s a ballplayer to do when he’s squeezed from both sides, like in a rundown between third base and home? He keeps his eye on the ball, just as the Kansas Human Rights Commission is always mindful of its mission.

However, budget cuts of this magnitude are unprecedented in our agency’s history and mandate change. Some changes will be obvious to the public, such as distributing electronic copies of the *Spectrum* to save printing and postage costs. Other changes, such as holding open vacant positions, are less visible to the public but very apparent to our staff as they are asked to produce more work with fewer resources. On page two, we recognize the service of six agency employees who celebrated milestone anniversaries with the agency. In addition, Public Information Officer Jeremy Deckard was acknowledged for his training efforts on behalf of the Commission by the Olathe Human Relations Commission, as detailed on page five.



William V. Minner  
Executive Director

One Commission enterprise that remains unchanged is the Employment Law Seminar. As outlined in the following pages, this seminar remains an excellent source for employment and civil rights education. Seminar topics could not be timelier with the Americans with Disabilities Amendments Act effective January 1, 2009, and changes to the Family Medical Leave Act regulations effective January 16, 2009.

In other *Spectrum* news, we welcome new Commissioners Terry Crowder and Jeffrey Lewis on page two and the City of Wichita initiates a significant training project on page five.

Hall of Fame pitcher Satchel Paige said, “Just take the ball and throw it where you want to. Throw strikes. Home plate don’t move.” Despite economic woes, the Commission’s mission has not moved. It remains constant because eternal vigilance is the price of freedom.

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## 2009 Law Seminar Registration

The Kansas Human Rights Commission is proud to announce that registration for the 2009 Employment Law Seminar has begun. The seminar will be a one day event on September 9, 2009, that focuses on employment law. There will be eight sessions that will cover such topics as the ADA Amendments Act, sexual har-

assment, employee handbooks, and background checks.

Billie Ashton and Alan Rupe will serve as keynote speakers with presentations covering the ADA Amendments Act and retaliation in the workplace.

This year’s conference will have six breakout sessions.

These sessions were organized with employment attorneys, human resource professionals, legal assistants, paralegals and others in mind.

Please turn to pages 3 and 4 of this newsletter to find an agenda and registration form for this event. Individuals may also register on-line at [www.khrc.net](http://www.khrc.net)

# KHRC Commissioners

**Lou Ann Thoms**

*Chair*

Real-Estate, Topeka

**Terry Crowder**

Labor, Topeka

**David A. Hanson**

Legal, Topeka

**Clyde Howard**

At-Large, Manhattan

**Jeffrey E. Lewis**

Industry, Topeka

**Anthony Villegas, Sr.**

Labor, Kansas City

**Jerome Williams**

Industry, Wichita

*By law, the Commission must represent particular areas of the workforce and community. In addition, no more than four Commissioners may belong to one particular political party. The Governor of the State of Kansas appoints all seven Commissioners to serve the Kansas Human Rights Commission.*

# Agency Briefs

## Training Update

During FY 2009 the Kansas Human Rights Commission trained a record number of participants. 7,718 participants across the state attended KHRC training. This broke the training record of 7,423 set in FY 2008.

## ADAAA Training

Staff members of the Kansas Human Rights Commission participated in internal training covering the Americans With Disabilities Amendments Act in April and May. The impact of this new law was the focus of the training.

# Two New Members Added To Commission Crowder & Lewis Join KHRC

The Kansas Human Rights Commission has added two new members to the Commission in recent months.

Terry Crowder, Topeka, represents Labor. Crowder has worked at Goodyear Tire and Rubber Company for 40 years. A past sergeant in the United States Marine Corps and a Vietnam Veteran, Crowder continues his public service by volunteering with several local organizations.

Jeffrey E. Lewis, Topeka, represents Industry. Mr. Lewis is a General Attorney and Assistant General Counsel for AT&T, Topeka. Originally from Chicago, Illinois, Lewis has practiced law for 25 years. He has degrees from Southern Illinois, Rutgers, and New York Universities.



Terry Crowder  
Labor, Topeka



Jeffrey E. Lewis  
Industry, Topeka

# Employees' Service Recognized



Service Recognition: A ceremony took place in May recognizing Kansas Human Right Commission employees for their years of service. Employees recognized from left to right: Etta James-20 years, Caryl Hines -20 years, Barbara Girard-10 years, Beth Montgomery-10 years, Linda Wenger-20 years, and Paul Forese-10 years. The KHRC thanks these employees for their service.

# 2009 KHRC Employment Law Seminar

## September 9, 2009

### Capitol Plaza Hotel, Topeka Maner Conference Center

8:00-8:30 a.m.	Registration		
8:30-8:55 a.m.	Welcome	KHRC Assistant Director .....	Ruth Glover
9:00-10:00 a.m.	Keynote Address	“The ADA Amendments Act” .....	Billie Ashton
10:30-11:30 a.m.	Breakout Session	“Employee Handbooks: It All Comes Down To Policies” .....	Carol Ruth Bonebrake
	Breakout Session	“Termination of Employees: It’s Not Over, When That’s Over” .....	Wyatt Wright
11:30 a.m. -12:25 p.m. Lunch			
12:30-1:30 p.m.	Breakout Session	“Background Checks and Other Pre-employment Issues” .....	Stacia Boden
	Breakout Session	“Preserving Electronic Evidence for Employment Claims” .....	Trish Thelen
1:45-2:45 p.m.	Breakout Session	“FMLA Update: What’s New With The FMLA?” .....	Rich Olmstead
	Breakout Session	“Sexual Harassment: A Legal Update” .....	Dave Mudrick
3:15-4:15 p.m.	Keynote Address	“Retaliation In The Workplace: Current Issues” .....	Alan Rupe

## ***KHRC Employment Law Seminar Registration***

NAME: \_\_\_\_\_ EMPLOYER: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ ADDRESS: \_\_\_\_\_  
 CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP CODE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

Please send the registration form and fee of \$70 to the Kansas Human Rights Commission, 900 SW Jackson, 568-South, Topeka KS 66612-1258. Register on-line at [www.khrc.net](http://www.khrc.net). To register by phone or ask for requests, please contact Beth Montgomery at (785) 296-3206 or (888) 793-6874.

- |  |  |
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| Method of Payment/Check One<br><input type="checkbox"/> Check<br><input type="checkbox"/> Money Order<br><input type="checkbox"/> State Inter-Fund Voucher | Professional Background/Check One<br><input type="checkbox"/> Attorney<br><input type="checkbox"/> Human Resource Professional<br><input type="checkbox"/> Other _____ |
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The deadline for registration is August 21, 2009. There will be no “day of” registration. There will be no refunds for those unable to attend. Conference materials will be mailed to paid registrants unable to attend.

# 2009 KHRC Employment Law Seminar

## September 9, 2009

### Capitol Plaza Hotel, Topeka Maner Conference Center

#### “The ADA Amendments Act”

**Billie Ashton**

Ms. Billie Ashton is the Area Director for the Equal Employment Opportunity Commission (EEOC) for the Kansas City Area Office. Prior to becoming a Director, she was a Senior Investigator where she investigated claims of discrimination.

#### “Employee Handbooks: It All Comes Down To Policies”

**Carol R. Bonebrake**

Ms. Carol Ruth Bonebrake established her own law firm, in December 2006, after seven years of private practice. She is a KU School of Law graduate and clerked for Kansas Court of Appeals Judge Gary Rulon.

#### “Termination of Employees”

**Wyatt Wright**

Mr. Wyatt Wright is a partner with Foulston Siefkin LLP, Wichita. Mr. Wright represents employers in a variety of employment law and litigation matters. His practice includes civil rights litigation under various federal, state and local employment related statutes.

#### “Background Checks and Other Pre-Employment Issues”

**Stacia Boden**

Ms. Stacia Boden is an associate with Kutak Rock LLP. She practices in the litigation and labor and employment practice groups in the Wichita, Kansas office. Her practice focuses on the representation of clients in all areas of employment disputes.

#### “Preserving Electronic Evidence for Employment Claims”

**Trisha A. Thelen**

Ms. Thelen’s practice is divided between commercial and employment litigation, as well as counseling employers on how to avoid or resolve disputes with employees. Ms. Thelen has litigated cases in both state and federal courts as well as several AAA arbitrations.

#### “FMLA Update: What’s New With The FMLA”

**Rich Olmstead**

Richard A. Olmstead concentrates his practice in the area of employment and labor law, including the defense of discrimination, sexual harassment and retaliation in violation of Title VII, ADA, ADEA.

#### “Sexual Harassment: A Legal Update”

**Dave Mudrick**

Mr. Dave Mudrick currently serves as a partner with Henson, Hutton, Mudrick & Gragson, L.L.P. His main areas of practice include: labor arbitrations, labor and employment law, discrimination litigation, and employment arbitrations.

#### “Retaliation In The Workplace”

**Alan Rupe**

Alan L. Rupe, a litigation partner, is a trial lawyer certified by the National Board of Trial Advocacy. Recognized for his distinctive courtroom style, skilled advocacy and personal involvement in his clients’ cases. He currently serves as a litigation partner with Kutak Rock LLP., in Wichita.

## Lunch Menu

### A Buffet Style Lunch

**Chicken Cordon Bleu**

**Beef Medallions**

**Chef’s Seasonal Vegetable**

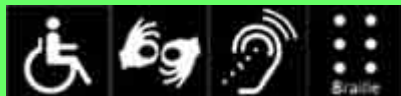
**Chef’s Starch Selection**

**Mixed Salad, Pasta Salad, Potato Salad**

**Rolls & Butter**

**Seasonal Fruit, Dessert Display**

Please contact the Kansas Human Rights Commission at the time of registration for any special or dietary accommodations.



Six hours of CLE credit through the Kansas Continuing Legal Education Commission will also be available to interested conference attendees. Legal Assistants can submit for CLAE credit through NALA.

## Olathe Human Relations Commission Honors KHRC's Deckard

On April 24, 2009, the Olathe Human Relations Commission (OHRC) recognized Jeremy Deckard, Kansas Human Rights Commission Public Information Officer, with the 2009 OHRC Educator Award. Jeremy received the award at the 6th Annual Olathe Human Relations Commission Community Awards Program.

The purpose of the OHRC Annual Community Awards program is to recognize entities and/or individuals in their community who have been actively involved in improving cultural diversity and advocacy of hu-

man relations which benefit the citizens of Olathe.

Deckard was nominated by Jim Terrones, Deputy Director of Programs with the Johnson County Juvenile Detention Center. Deckard has conducted training for juvenile offenders as well as high school students in the Olathe area.

"Jeremy was nominated due to his meritorious service in the pursuit of cultural diversity which benefits all citizens of Olathe," Terrones said. "His outreach presentations significantly impact many, including our at-risk youth."

Since 2006, 163 participants from the juvenile ranks have attended the training at Johnson County JDC. Over 145 high school students have participated in KHRC training at Olathe East High School.

Deckard also was recognized for his training efforts in 2007, at which time he was named the Kansas Human Relations Association member of the year at the 2007 League of Kansas Municipalities Conference.

Six other individuals or businesses were honored at the OHRC awards program.



Jeremy Deckard  
2009 OHRC  
Educator Award Recipient

## City of Wichita Participates In Large-Scale Training

Employees From Five Other Kansas Cities Participate In Training During Last Half Of State FY 2009

City of Wichita employees participated in sexual harassment training provided by the Kansas Human Rights Commission (KHRC) during the months of April and May.

Wichita's police department included the KHRC's sexual harassment class as a part of their professional development program for the year. Approximately 790 police department employees participated in this training conducted by KHRC Public Information Officer Jeremy Deckard.

"Mr. Deckard conducted 11 classes for the Wichita Police Department. The classes were comprised of both our civilian and commissioned personnel," said Lieutenant Jeffrey Weible,

**"Our employees really seemed to embrace the message."  
————Susan Leiker,  
Equal Employment Opportunity Officer  
City of Wichita**

In-Service Training Coordinator. "Mr. Deckard's presentation was informative and presented in a manner that reached each attendee. As one commented, 'Good job with a very difficult and controversial subject.'"

Training was also provided for all supervisors employed by the City of Wichita. Approximately 435 city supervisors

participated in the sexual harassment training.

"Jeremy's presentation was informative and straight to the point. Our employees really seemed to embrace the message. I think it helps hearing from someone else for a change!" said Susan Leiker, Equal Employment Opportunity Officer. "We look forward to inviting Jeremy back to train on other diversity issues."

The cities of Atchison, De Soto, Manhattan, Paola, and Winfield also conducted extensive training across all departments during the last half of state fiscal year 2009.

"The sessions on sexual harassment and diversity were extremely well received. Jeremy made the process easy by working with our logistical issues, such as shift firefighters, and second and third shift plant operators," said Cathy Harnes, City of Manhattan Director of Human Resources. "He did several sessions and then came back at a later date for a mop-up session, making it possible for us to train all but a few of our approximately 330 employees and staff."

**The Spectrum is a publication of the Kansas Human Rights Commission. The Spectrum is distributed via email in PDF format. All comments and suggestions are appreciated, and should be addressed to the editor, Jeremy Deckard: (785) 296-3206 or jeremy.deckard@khrc.state.ks.us. If you would like to receive a copy of the Spectrum via e-mail please contact Jeremy Deckard. Copies of the Spectrum can be taken from our web site in PDF format. Visit us on the web at www.khrc.net.**

# The Supreme Court Decides the New Haven Firefighter Case

By Michael C. Dorf

Excerpted from FindLaw.com

The Supreme Court handed down the most closely-watched case of the current Term: Ricci v. DeStefano. Ricci posed a difficult question of employment discrimination law: When can an employer toss out the results of a promotion test because those results favor white over minority applicants?

The Court ruled 5-4 for the eighteen white (including one Hispanic) firefighter plaintiffs.

Title VII of the 1964 Civil Rights Act offers two main avenues for plaintiffs complaining about discrimination in hiring, promotion, or the conditions of employment. First, a plaintiff who can directly prove that the employer used an impermissible criterion—such as race or sex—in a covered employment decision will bring a "disparate treatment" case. Dis-

parate treatment cases are difficult for plaintiffs to win, because there will rarely be a smoking gun demonstrating intentional discrimination.

Accordingly, plaintiffs often bring the second sort of claim: disparate impact. To oversimplify somewhat, a disparate impact plaintiff must show that the challenged selection mechanism disproportionately underselects members of his or her group. If that showing is made, then the burden shifts to the employer to show that the use of the test or other selection mechanism was justified by the nature of the job or business in question.

In Ricci, however, the two theories of liability were in conflict.

In late 2003, in order to decide who was eligible for promotions to lieutenant and captain, the New Haven fire department administered a writ-

ten multiple-choice test, which accounted for sixty percent of a test-taker's score, and an oral exam, which accounted for the remaining forty percent. Under the city's rules, promotions could only then be given to those who ranked among the top three test-takers. Although six African-Americans earned passing scores on the lieutenant's test, and three passed the captain's test, none of these was among the top scorers eligible for promotion to any of the open slots. After much public discussion, the department therefore decided not to use the test results.

When the white firefighters who would have been eligible for promotions according to the original test results sued, alleging disparate treatment, the department asserted Title VII itself as a defense: The department pointed out that if it had simply used the test results, it

would have been vulnerable to litigation by the African-American firefighters, complaining about disparate impact discrimination; yet, having voided the test results, it had been sued by other firefighters claiming that they had thereby suffered disparate treatment race discrimination. Thus, the department found itself between a rock and a hard place.

The lower courts credited this reasoning, but the Supreme Court did not. An employer does not face a Hobson's choice, Justice Kennedy said for the Court, because the aim of avoiding disparate impact litigation can be a defense to a charge of intentional discrimination. But he added that an employer cannot merely assert a fear of litigation. Instead, for the defense to succeed, there must be a "strong basis in evidence" to fear liability for disparate impact.

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