

# SPECTRUM

## Agency Update From The Executive Director

I have always been a fan of irony, especially those small everyday quirks of fate that provide a chuckle. Like when you are waiting for the elevator with a friend and as you remark that the elevator is awfully slow, it, almost as if by magic, arrives at that instant.

However, the irony staring at me from my desk was far from laughable, and is still memorable even though it happened some time ago. One memo proclaimed, "Diversity Practices That Work!", whereas the very next memo declared, "New Gallup Poll on Employment Discrimination Shows Progress, Problems". One memo lauded a National Urban League study that determined companies who had diversity practices deemed more effective also boasted a productivity rate that exceeded that of the overall American economy by 18 percent. In contrast, the other memo cited a Gallup poll

where 15 percent of all workers perceived they had been subjected to some sort of discriminatory or unfair treatment.

This type of contrast was also evident in the recent past. In 2005, Rosa Parks, who worked so diligently for civil rights progress throughout her life, achieved another milestone in death by becoming the first woman to lie in state at the nation's capitol. On the other hand, Katrina's disparate impact made it evident there is much progress yet to be made.

Likewise, both the progress Kansas has made and the strides that still need to be made are reflected in this issue of the *Spectrum*.

The Annual Employment Seminar, which has become a growing tradition, received another warm reception in September 2006. As reported below, we are excitedly looking forward to the next edition of this seminar on September 10<sup>th</sup>.



William V. Minner  
Executive Director

victims of domestic violence, sexual assault, stalking and/or human trafficking.

In addition, a U.S. Supreme Court decision further defining retaliation, which may impact Kansas law, is discussed on page 4.

Despite achievements made, Kansas still has strides to make. In fiscal year 2006, the Kansas Human Rights Commission received 1,076 complaints of discrimination in the areas of employment, housing, public accommodation, and racial and other profiling, the highest number since fiscal year 2000.

On January 29<sup>th</sup>, Kansas celebrated its 146<sup>th</sup> birthday. Kansas entered the Union as a free state in 1861, just a few months after the start of the Civil War. With a history emboldened with civil rights achievements, let us not allow the ironies of the past and present to become the ironies of the future.

INSIDE THIS ISSUE:

New Staff Hired	2
High School Training	3
In the Public Eye	3
Safe at Home	3
Legal Update	4
Agency Briefs	5

## Date For Employment Law Seminar Set

Attorneys, human resource professionals, and others should mark their calendars as the Kansas Human Rights Commission (KHRC) has set the date for the 2007 version of the KHRC Employment Law Seminar. The one-day conference will take place on Monday, September 10, 2007, at the Holiday Inn Topeka Holidome.

Last year's conference was attended by more than 120 peo-

ple. This one-day event will utilize expert presenters on a variety of topics that deal with employment law. This conference is usually attended by human resource personnel, attorneys, and others who specialize in employment law. The agency anticipates that CLE, PHR, SPHR, and GPHRA credit will be available for those in attendance.

Topics and speakers for the

seminar will be announced in the Summer 2007 edition of the *Spectrum*, which will also include registration information for the 2007 conference.

The seminar will cover topics that are timely. Topics that have been covered the last two years include intellectual disabilities, age discrimination in employment, hostile work environment and retaliation, as well as case updates on law issues.

## KHRC Commissioners

**Errol V. Williams**

*Chairman*  
Industry, Topeka

**David A. Hanson**

*Vice-Chairman*  
Legal, Topeka

**Beth Bradrick, Ph.D.**

Labor, Pittsburg

**Clyde Howard**

At-Large, Manhattan

**Lou Ann Thoms**

Real Estate, 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.*

## Three New Members Added To The KHRC Staff

### Two Investigators, Topeka Office Manager Hired

The Kansas Human Rights Commission has filled three positions with new hires.

Two of these hires filled the vacancies on the investigative staff, as investigators were hired for two of the satellite offices.

Lin Gillen, Independence, was hired as Special Investigator II in the Independence office. Gillen, was previously employed by Social and Rehabilitative Services as a Human Resource Specialist. She had been employed with SRS since 1982. Gillen has an Associates Degree from Independence Community College. Gillen and her husband, Mark, have four children and 14 grandchildren.

Roma Meraz Valencia, Dodge City, was hired to fill the Special Investigator II position in the Dodge City office. She previously worked as a Case Manager at the Regional Drug & Alcohol Assessment Center. Meraz Valencia has a Bachelor

of Arts degree in Sociology from the University of Kansas, and spent eight years in the Marines as a Medical Corpsman.

The third hire made by the agency filled the position of Office Manager. Beth Montgomery was hired to fill that post. Montgomery, currently resides in Hoyt, with her husband Larry and has spent eight years working for the State of Kansas. She most recently served in the Kansas Department of Health and Environment. Montgomery has four children, two of which currently serve in the U.S. Armed Forces.

“We welcome the new additions to our staff. They are proven individuals in their previous work and have exemplified the dedication and mission that is so important in the work of the Kansas Human Rights Commission,” Executive Director William V. Minner said.



Kansas Human Rights Commission New Hires  
From Left to Right: Lin Gillen, Roma Meraz Valencia, and Beth Montgomery

**“Change alone is eternal,  
perpetual, immortal.”**

**—Arthur Schopenhauer**

## Training For High School Students Continues To Increase

The Kansas Human Rights Commission Public Information Program saw an increase in the number of high schools who participated in the training during the fall of 2006. Beginning in January, 2006, the KHRC began offering training to high school students covering the topics of employee rights, sexual harassment, and diversity.

Fifteen Kansas High Schools participated in such classes and a total of 1,256 stu-

dents were trained during the fall of 2006. These numbers are up from 13 and 1,060, respectively, during the program's spring 2006 training. Training can also be provided to faculty and staff members.

"The program was very beneficial for our students and staff," Jeanie Michaelis, Business Instructor at Hays High School said. "Our staff learned about the rights that we have as employees, and our students

received information that they can take with them to the workplace."

The 15 Kansas high schools that hosted training for students include: Clearwater, Chetopa, Elkhart, Hays, Junction City, Kickapoo Nation, Northeast (Arma), Olathe East, Peabody, Prairie View (LaCygne), Rock Creek, Sacred Heart (Salina), Smith Center, Quinter, and Valley Heights (Blue Rapids).

"Mr. Deckard's training for our students was right on target with their needs. His enthusiasm gets their attention and his knowledge keeps it," Mary Brown, Peabody High School Principal said.

Interested high school teachers, principals, or staff members in need of training may contact Jeremy Deckard by phone at (785) 296-3206 to schedule such sessions.

## In The Public Eye: KHRC Participates In Varied Programs

While working towards the agency's goal of eliminating and preventing unlawful discrimination in the areas of public accommodations, employment, housing, and profiling, members of the Kansas Human Rights Commission staff have participated in many programs, events, and educational opportunities during the first half of FY 2007.

Assistant Director Ruth Glover and Public Information Officer Jeremy Deckard both are active members of the Kan-

sas Human Relations Association, an organization made up of local and state human relations agencies. Glover serves as a legislative liaison to the KHRA and updates its members on current legislative issues that could impact local human relation organizations.

Deckard and Investigative Administrator Bill Wright also are members of the Fair Housing Task Force organized by the Kansas Housing Resource Corporation, and have worked with this group to improve the

accessibility of Fair Housing Information to the public.

Commissioner Clyde Howard and Racial and Other Profiling Administrator Rick Fischli attend the Governor's Racial Profiling Taskforce meetings.

Executive Director William V. Minner and other staff members attended or presented at several public events showing agency support, including the Wichita NAACP Annual Freedom Fund Banquet, the Topeka NAACP Annual Freedom Fund

Banquet, and the dedication of the Brown v BOE Courtroom at the U.S. Postal Office in Topeka.

Staff members also attended or spoke at several workshops including: the Kansas State SHRM Conference, National Association for Civilian Oversight Law Enforcement Conference, the Lawrence Human Relations Department "Equal Opportunity Law Update Seminar" and the Topeka Immigrants Forum.

## 2006 Kansas Law Creates Safe at Home Program

A law passed during the 2006 Kansas Legislative Session created the *Safe at Home* program which is administered by the Kansas Secretary of State Office.

The *Safe at Home* program provides a confidential address program that benefits victims of domestic violence, sexual assault, stalking and/or human trafficking, who have moved to a new location.

The new law enables state and local agencies to respond to requests for public records

without disclosing the location of the victim, provides address confidentiality for victims, and accepts a program participant's use of an address designated by the Secretary of State's office as a substitute mailing address.

"*Safe at Home* allows victims of domestic violence to begin to put their lives back together. They are able to do simple things many of us take for granted, such as obtaining a driver's license or registering to vote, without the fear that their attackers will be able to use

these public records to track them down," said Secretary of State Ron Thornburgh.

The *Safe at Home* program provides a substitute address to be used by participants as their legal address, and a free mail forwarding service for first-class mail.

The *Safe at Home* program confidentially forwards first-class and certified mail to the victim's real address at no cost to the participant.

The new law also prohibits employers from discriminating

or retaliating against victims of domestic violence or sexual assault for taking time off work for certain reasons. While the Kansas Human Rights Commission does not work directly with the *Safe At Home* program, the Commission recognizes the importance of protecting victims through this endeavor

To receive more information about the program, feel free to contact the Safe at Home Coordinator in the Secretary of State's office at (785) 296-3806.

# A KHRC Legal Update.....

## U.S. Supreme Court Addresses Retaliation Claims

The 1961 amendments to the Kansas Act Against Discrimination (KAAD) identified various unlawful employment practices, one of which prohibits retaliation against employees who oppose practices or acts prohibited by the KAAD or who file a discrimination complaint or otherwise assist in KAAD proceedings. (K.S.A. 44-1009(a)(4)). The Kansas Age Discrimination in Employment Act, K.S.A. 44-1113 (a) (5), contains a similar prohibition against retaliation as does Title VII of the Civil Rights Act of 1964, the federal statute prohibiting employment discrimination.

For the past several years, retaliation claims have been included in just over one-fourth of the employment discrimination claims filed with the Kansas Human Rights Commission. While courts have routinely extended protection to employees who are terminated from employment in retaliation for voicing opposition to discrimination, the courts have reached different answers to the questions of (1) whether the adverse action required for a retaliation claim must affect specific "terms and conditions of employment" (such as demotions and terminations) and (2) how harmful must the adverse action

be in order to proceed on a retaliation claim.

The United States Supreme Court attempted to answer those questions in a Title VII decision rendered in June of last year—Burlington Northern & Santa Fe Railway Co. v. White, 126 S.Ct. 2405 (2006). There, the Supreme Court rejected the view that retaliatory conduct is limited to employment-related actions, noting an "employer can effectively retaliate against an employee by taking actions not directly related to employment or by causing [the employee] harm outside the workplace." This approach furthers the purpose of Title VII which cannot be effectively enforced without "employees who are willing to file complaints and act as witnesses." An adverse action will support a retaliation claim if it is "materially adverse," which the court describes as conduct which would "dissuade a reasonable worker from making or supporting a charge of discrimination."

In the Burlington Northern case, a reassignment of duties (from forklift operator to the less prestigious and dirtier track laborer duties), although not accompanied by any reduction in pay, was found to be materially adverse. Similarly, a re-

taliatory suspension for 37 days without pay, even though Burlington rescinded the suspension and paid the back wages following its internal investigation, was also a materially adverse action.

Following Burlington Northern, the threshold requirements for stating a retaliation claim are (1) involvement in a protected activity (e.g., opposition to a discriminatory practice or participation in a discrimination investigation or proceeding); (2) employer action that a reasonable employee would consider materially adverse; and (3) a causal connection between the protected activity and the adverse action.

While the state appellate courts have yet to address application of the Burlington Northern standard to the KAAD, the Tenth Circuit and federal district courts in Kansas have applied the standard in a number of retaliation cases. See Smith v. Century Concrete, Inc., No. 05-2105, 2006 WL 1877013 (D.Kan. 7/6/06)(Assigning plaintiff, whose regular duty was driving a cement truck, to shovel snow on a couple of occasions over a two to three week period was not considered materially adverse so as to support a retaliation claim); Homburg v.

U.P.S., No. 05-2144, 2006WL2251031 (D.Kan. 8/1/06)(summary judgment precluded due to factual issues as to whether "defendant's requirements that plaintiff travel more and work from the office" were materially adverse); Haynes v. Level 3 Communications, LLC, 456 F.3d 1215 (10<sup>th</sup> Cir. 2006)(Burlington Northern decision applied to ADEA and ADA claims); Metzler v. Federal Home Loan Bank of Topeka, No. 04-3412, \_\_\_ F.3d \_\_\_ (10<sup>th</sup> Cir. 9/26/06)(Burlington Northern decision applied to FMLA retaliation claim); Mickelson v. New York Life Ins. Co., 460 F.3d 1304 (10<sup>th</sup> Cir. 2006)("Even if [employer] was under no legal obligation to allow [employee] to work part time or allow her to return to work after her FMLA leave expired, its failure to do so, in light of her request, and in light of the fact that it permitted another [employee] to do so, could be viewed as retaliation" actionable under Title VII irrespective of whether employee raised a separate claim under the FMLA); Argo v. Blue Cross and Blue Shield of Kansas, Inc., 452 F.3d 1193 (10<sup>th</sup> Cir. 2006)(Burlington Northern standards apply equally to employee who opposes reverse discrimination).

**The Spectrum is a publication of the Kansas Human Rights Commission. Free Subscriptions are available. If you would like to be placed on our mailing list, please contact the Topeka office. 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](mailto:jeremy.deckard@khrc.state.ks.us). Copies of the Spectrum are available in PDF Format at our website of [www.khrc.net](http://www.khrc.net). The Spectrum can also be distributed via email in PDF format. If you would like to receive a copy of the Spectrum via e-mail please contact Jeremy Deckard.**

## Agency Briefs

### KHRC Staff Trained

Members of the Kansas Human Rights Commission attended staff development training on October 11, 2006. John Fultz, Employment Consultant, conducted training on disability discrimination, age discrimination, and national origin discrimination. Racial and Other Profiling Supervisor Rick Fischli also conducted an update on racial and other profiling complaints within the agency.

### IAOHRA Conference

In September 2006, members of the Kansas Human Rights Commission attended the 58th Annual International Association of Official Human Rights Agencies Conference in Atlantic City, New Jersey. The theme for this conference was "Building the Boardwalk to Justice." Those commissioners who attended include: Chairman Errol Williams, Commissioner Antonio Villegas, Commissioner Lou Ann Thoms, and Commissioner Jerome Williams.

### Training Update

During the first half of FY 2007, the Kansas Human Rights Commission Public Information Program conducted 94.5 hours of training and trained 2,254 Kansas citizens over the topics of sexual harassment, diversity, and the organization of the KHRC.

# Comparing The Numbers....

## Total Complaints Increase In FY 2006; Recoveries Over \$900,000

The Kansas Human Rights Commission is constantly striving to provide the public with information concerning the agency's progress.

In fiscal year 2006, the total number of complaints filed with the agency increased, while recoveries that were made for complainants

exceeded \$900,000.

Over the last three fiscal years 2,967 total complaints have been filed with the agency, while monetary recoveries have totaled \$3,368,293.

The monetary recoveries total does not include the value of positions or jobs that may have been obtained by

the Commission for complainants, nor does it include other non-monetary remedies.

If an individual feels that they have been discriminated against in the areas of employment, public accommodations, housing, or racial and other profiling, they should contact the KHRC and speak with an intake specialist.

## TOTAL COMPLAINTS FILED FY 2004-FY 2006

FISCAL YEAR	COMPLAINTS
2006	1,076
2005	1,045
2004	855
<b>THREE YEAR TOTAL</b>	<b>2,967</b>

## MONETARY RECOVERIES MADE FY 2004-FY 2006

FISCAL YEAR	RECOVERIES
2006	\$927,285.00
2005	\$1,005,392.00
2004	\$1,435,616.00
<b>THREE YEAR TOTAL</b>	<b>\$3,368,293.00</b>



**LEARNING AND TEACHING:** Racial and Other Profiling Supervisor Rick Fischli (Above Left) listens to a key point made by Employment Consultant John Fultz (Above Right) during staff training that took place on October 11, 2006. Fultz covered the topics of Age, Disability, and National Origin Discrimination.

Kansas Human Rights Commission  
Landon State Office Building  
900 SW Jackson-Suite 568 South  
Topeka, KS 66612-1258

∴ Eternal Vigilance is the  
∴ Price of Freedom

## KANSAS HUMAN RIGHTS COMMISSION AREA OFFICES

### **Main Office, Topeka:**

900 SW Jackson,  
Suite 568-S  
Topeka, KS 66612  
(785) 296-3206  
Fax (785) 296-0589  
TTY (785) 296-0245  
Toll-Free (888) 793-6874

### **Wichita Office:**

130 S Market, Suite 7050  
Wichita, KS 67202  
(316) 337-6270  
Fax (316) 337-7376  
TTY (316) 337-6272

### **Dodge City Office:**

Military Plaza Offices,  
Suite 220  
100 Military Plaza  
Dodge City, KS 67801  
(620) 225-4804  
Fax (620) 225-4986

### **Independence Office:**

200 Arco Place, Suite 311  
Independence, KS 67301  
(620) 331-7083  
Fax (620) 331-7135

**Agency Web Site: [www.khrc.net](http://www.khrc.net)**

**Public Information Officer's Email Address: [Jeremy.deckard@khrc.state.ks.us](mailto:Jeremy.deckard@khrc.state.ks.us).**

# **SPECTRUM**