

SPECTRUM

Agency Update from the Executive Director

In May, Zelma Henderson, Topeka, passed away and was remembered for her pivotal role as one of the 13 plaintiffs in the landmark *Brown v. Board of Education* case. The U.S. Supreme Court's decision in this case struck down in 1954 the unconstitutional "separate but equal" doctrine in public schools. This precedent-setting decision was handed down just one year after the Kansas Act Against Discrimination was passed, making Kansas the twelfth state to have a law prohibiting discrimination.

Given the passing of landmark civil rights figures, such as Zelma Henderson, along with Rosa Parks and Coretta Scott King in the not too distant past, some would suggest that progression in civil rights is only a memory. Those who make such a suggestion would be wrong because we are today witnesses to historic events.

Senator Barack Obama, the son of a Kansan, became the first African-American to be-

come the presumptive Presidential nominee of a major political party, breaking a barrier 232 years old. His Democratic opponent, Senator Hillary Rodham Clinton, was more successful than any other woman in history in a Presidential race. There are opinions that Senator John McCain, the presumptive Republican Presidential nominee, is breaking down age barriers.

In fact, the pages of this *Spectrum* reflect the ever-changing, living nature of civil rights. Included on page 2 are articles addressing changes at the state and federal levels. Effective July 1st, the Kansas Age Discrimination Employment Act was amended to change the definition of "age" from 18 and older to 40 and older. Also noted on page 2, President Bush signed the Genetic Information Nondiscrimination Act of 2008 into law on May 21, 2008. This act prohibits discrimination on the basis of genetic information in the



William V. Minner
Executive Director

areas of health insurance and employment. There are also summaries of recent U.S. Supreme Court rulings.

As demonstrated in the *Brown* decision, education is one of the reasons the civil rights field is of continuing importance. Former President James Garfield said, "Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained." Appropriately, the remainder of the *Spectrum* is primarily devoted to the KHRC Employment Law Seminar, to be held September 3, 2008 at

the Maner Conference Center, Topeka. This cost-effective seminar covers a wide variety of employment and civil rights issues including: race, national origin, age and religious accommodations. It is an excellent educational opportunity. Additional details are below and on pages 3 and 4.

I surmise that one of the reasons the KHRC motto is "Eternal vigilance is the price of freedom," is because the civil rights field is dynamic. Through May 31, the Commission received 854 complaints of alleged discrimination for 11 months of Fiscal Year 2008. The number of complaints received is a testament to the importance of civil rights. There continue to be civil rights issues with historical roots, but there are also new concerns emerging every day. Some changes are welcome; some are not. In any case, the KHRC is ready to address the issues and concerns, and remains a vital part of the civil rights landscape.

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2008 Law Seminar Registration

The Kansas Human Rights Commission is proud to announce that registration for the 2008 Employment Law Seminar has begun. The seminar will be a one day event on September 3, 2008, that focuses on employment law. There will be eight sessions that will cover such topics as age discrimination, best hiring practices and

wrongful discharge.

Billie Ashton and Alan Rupe will serve as keynote speakers with presentations covering racial and national origin discrimination, and religious accommodations 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 by calling the KHRC at (785) 296-3206.

KHRC Commissioners

Lou Ann Thoms

Chair

Real-Estate, Topeka

Beth Bradrick, Ph.D.

Labor, Pittsburg

David A. Hanson

Legal, Topeka

Clyde Howard

At-Large, Manhattan

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.

Federal Government Passes GINA

Workers across the country are now protected from discrimination based on genetic information with the passage of the Genetic Information Nondiscrimination Act of 2008. The law prohibits discrimination on the basis of genetic information with respect to health insurance and employment. The employment provisions of GINA become effective in November 2009. The provisions pertaining to group health plans

become effective in May 2009. The employment provisions are enforceable through the EEOC.

The Kansas Act Against Discrimination prohibited discrimination on the basis of genetic screening or testing beginning in 1999, which allowed the KHRC to investigate such complaints.

In Fiscal Year 2001, two complaints of genetic testing were filed with the KHRC.

KHRC Legal Update: Age Law Amended

Change in KADEA now defines "Age" as persons 40 years of age or older

Effective July 1, 2008, the Kansas Age Discrimination in Employment Act (KADEA) will be amended to define "age" as persons 40 years of age or older. Previously, the KADEA had potential jurisdiction over age claims made by anyone 18 or older. The amendment to K.S.A. 44-1112(a) renders Kansas law more consistent with the law of surrounding states and the federal Age Discrimination in Employment Act, which generally offer protection against age discrimination to persons 40 years old and older.

The amendment is not expected to significantly impact complaints filed with the KHRC as very few age discrimination complaints have originated from persons younger than 40.

U.S. Supreme Court Rulings

Synopsis of:

Sprint/United Management Co. v. Mendelsohn

Gomez-Perez v. Potter

CBOCS West, Inc. v. Humphries

The U.S. Supreme Court reviewed an age discrimination in employment case arising in Kansas City, Kansas. Sprint/United Management Co. v. Mendelsohn, 2008 WL 495370 (Feb. 26, 2008). The underlying trial court ruling concerned the admissibility of testimony by other former employees of

Sprint with evidence their termination from employment by different supervisors was also the result of discrimination. The trial court excluded the evidence, the Tenth Circuit determined the evidence should have been admitted, and the U.S. Supreme Court agreed to review the case. Rather than reviewing the specific evidentiary issue, the Supreme Court determined a more detailed explanation by the trial court was necessary, indicating only that such evidence is neither clearly admissible nor clearly barred: "The question whether evidence of discrimination by other supervisors is relevant in an individual ADEA case is fact based and depends on many factors, including how closely related the evidence is to the plaintiff's circumstances and theory of the case. Applying Rule 403 to determine if evidence is prejudicial also requires a fact-intensive, context-specific inquiry. [Federal Rules of Evidence] do not make such evidence *per se* admissible or *per se* inadmissible."

Two opinions issued by the U.S. Supreme Court on May 27, 2008, expressly recognized retaliation claims under separate federal laws: (1) In Gomez-Perez v. Potter, the court determined that 29 U.S.C. §633a(a) prohibits retaliation against federal employees who complain of age discrimination; and (2) the CBOCS West, Inc. v. Humphries opinion recognized retaliation claims brought pursuant to 42 U.S.C. §1981.

2008 KHRC Employment Law Seminar

September 3, 2008

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	“Racial & National Origin Discrimination: A Case Update”	Billie Ashton
10:30-11:30 a.m.	Breakout Session	“Protecting Confidential Employment Information”	Carol R. Bonebrake
	Breakout Session	“Best Hiring Practices & Discrimination in Hiring”	Wyatt Wright
11:30 a.m. -12:25 p.m. Lunch			
12:30-1:30 p.m.	Breakout Session	“Wrongful Discharge Claims in an Employment-At-Will State”	Dave Mudrick
	Breakout Session	“Age Discrimination: A Case Update ”	Bert S. Braud
1:45-2:45 p.m.	Breakout Session	“On Leave: Military, FMLA, & Other Leave Requirements”	Shelly Freeman
	Breakout Session	“Sexual Harassment Claims: 10 Years of the <i>Faragher/Ellerth</i> Affirmative Defense”	Rich Olmstead
3:15-4:15 p.m.	Keynote Address	“Religious Accommodation in the Workplace: A Case Update”	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. To register by phone or to ask for special requests, please contact Beth Montgomery at (785) 296-3206 or (888) 793-6874.

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|---|--|
| Method of Payment/Check One | Professional Background/Check One |
| <input type="checkbox"/> Check | <input type="checkbox"/> Attorney |
| <input type="checkbox"/> Money Order | <input type="checkbox"/> Human Resource Professional |
| <input type="checkbox"/> State Inter-Fund Voucher | <input type="checkbox"/> Other _____ |

The deadline for registration is August 20, 2008. 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.

2008 KHRC Employment Law Seminar

September 3, 2008

Capitol Plaza Hotel, Topeka Maner Conference Center

“Race and National Origin Discrimination”

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.

“Best Practices in Hiring & Discrimination in Hiring”

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.

“Age Discrimination: A Case Update”

Bert S. Braud

Mr. Bert S. Braud is a partner at the Popham Law Firm, where he has practiced since graduating from law school in 1984. He is a member of the National Employment Lawyers Association, NELA, and an active member of the NELA Kansas City affiliate, where he currently serves as Secretary.

“Sexual Harassment Claims”

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, and comparable state anti-discrimination statutes.

“Protecting Confidential Employment Information”

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.

“Wrongful Discharge Claims in Employment-At-Will States”

Dave Mudrick

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

“On Leave: Military, FMLA, & Other Leave Requirements”

Shelly Freeman

Shelly L. Freeman is the President of HROI, a wholly-owned subsidiary of the law firm of Lathrop & Gage, L.C. HROI provides HR legal advice, management consulting and training on a full range of HR issues.

“Religious Accommodations”

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, in Wichita.

Lunch Menu

A Buffet Style Lunch

Herb Grilled Chicken
Sliced Pork Loin
Chef's Seasonal Vegetable
Chef's Starch Selection
Mixed Salad, Pasta Salad, Potato Salad
Seasonal Fruit
Rolls & Butter

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.

Agency Briefs

Training Update

During FY 2008, the Kansas Human Rights Commission Public Information Program again increased the total number of hours of training (279) and set a record for the number of participants trained (7,423.) The KHRC conducts training over the topics of sexual harassment, diversity, and the organization of the KHRC. Contact Jeremy Deckard at (785) 296-3206 to schedule free training.

Phone CLE Dates Set

In conjunction with the Kansas Bar Association the Kansas Human Rights Commission will again co-sponsor CLE Phone Seminars in October. The dates of those CLE opportunities are October 7, 14, 21, and 28. The KBA and KHRC will send out information in regards to these classes in the coming months.

Public Servant Rights

In April, Governor Kathleen Sebelius signed a bill that deals with establishing rights for public servants. SB 438 prohibits an employer from terminating any employee because the employee serves as a volunteer firefighter, volunteer certified emergency medical services attendant, volunteer reserve law enforcement officer, or volunteer part-time law enforcement officer.

Pregnancy Discrimination: Topic at KHRC Training

Members of the Kansas Human Rights Commission staff attended internal training on April 29, 2008. The two main topics that were discussed during the training were Hostile Work Environment and Pregnancy Discrimination.

“The reason that Hostile Work Environment and Pregnancy Discrimination were chosen, was that after our previous internal training a survey was taken as to what future topics needed to be covered,” said Ruth Glover, Assistant Director. “The two topics most requested were Hostile Work Environment and Pregnancy Discrimination.”

Employment Consultant John Fultz, retired EEOC Deputy Director, covered the

topic of Hostile Work Environment, while the KHRC supervisors and staff conducted training on Pregnancy Discrimination.

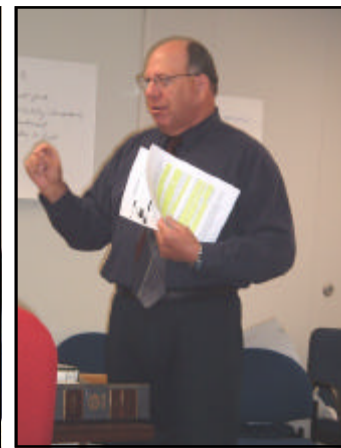
“Our recent training on pregnancy and other discriminatory issues relating to complaints was strong, well-done and the presentations were excellent,” said William V. Minner, Executive Director.

“The training provided good information to assist our intake department in improving how they go about gaining information during the initial contact,” said Robert Easterling, Intake Manager. “Overall the training does provide an additional informational avenue through which we are able to differentiate discrimination claims from non-jurisdictional issues.”

Pregnancy Discrimination was a timely topic and an area of increased discrimination. According to its website, the U.S. Equal Employment Opportunity Commission received 5,587 charges of pregnancy-based discrimination in Fiscal Year 2007, while the KHRC has received 108 maternity leave related complaints since Fiscal Year 2000.

A case study review of Pregnancy Discrimination, Sex Discrimination and Sexual Harassment were also a part of the day’s training.

“The case study segment highlighted investigation principles to the agency participants and introduced new precedent established by the courts,” said Rick Fischli, Investigative Administrator.



INVESTIGATIVE TRAINING:

TOP LEFT: Special Investigators Dan Wentling, Marvin McCurtis, and Paul Forese pay close attention during the training that took place on April 29.

TOP RIGHT: Investigative Administrator Bill Wright covers the topic of Pregnancy Discrimination during the training session on April 29.

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. Copies of the Spectrum can be taken from our web site in PDF format. 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. Visit us on the web at www.khrc.net.

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

**"Great opportunities to
help others seldom come,
but small ones surround us
daily."**

—Sally Koch

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

Public Information Officer's Email Address: Jeremy.deckard@khrc.state.ks.us.

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