

KANSAS HUMAN RIGHTS COMMISSION

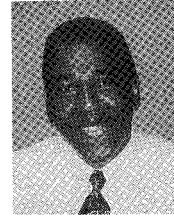
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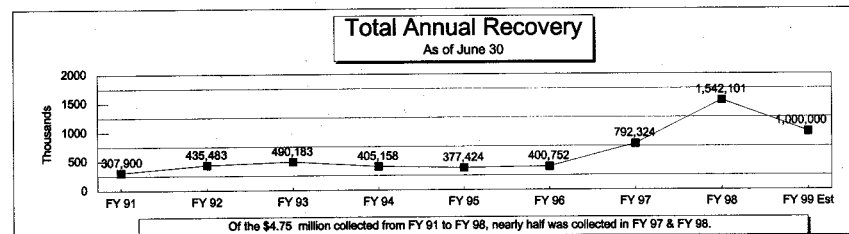
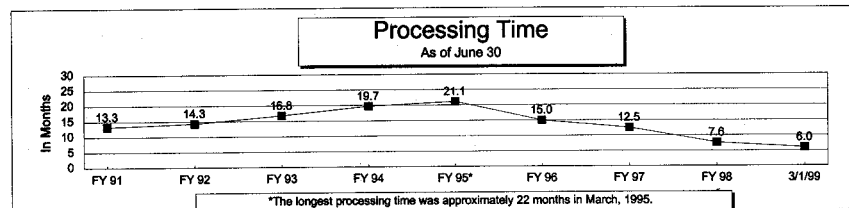
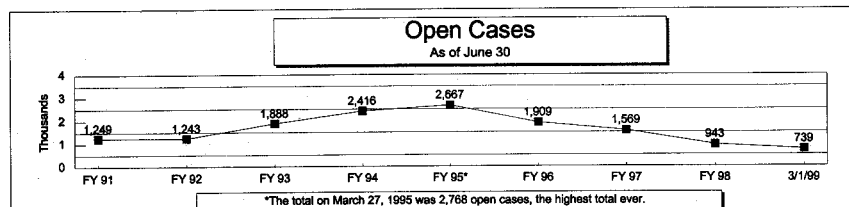
FROM THE EXECUTIVE DIRECTOR'S CHAIR

"We've come too far to turn back now."



William V. Minner, Executive Director

I wanted to share with you where the Commission has been and where it is today. Many people have been responsible for keeping this agency a viable and positive program for all Kansans. Appreciation is due to the Governor and Legislature who gave us a chance, our Commissioners who gave continuous support, and to the employees of this agency who worked hard under changing operational methods. The following charts are a tribute to all of the people mentioned above and many, many more. Thanks to you all.



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COMMISSION MEETING

The Kansas Human Rights Commission meets monthly at various locations throughout the state. Commission meetings are open to the public. Individuals interested in attending may obtain more information by contacting the Commission's main office.



The SPECTRUM is a publication of the Kansas Human Rights Commission. The SPECTRUM was created to inform the public of current civil rights issues and keep interested persons up-to-date on issues pertinent to KHRC. Topics to be addressed in this and future issues of the SPECTRUM include current legal decisions, commentaries, upcoming events of interest, educational updates on issues such as age discrimination, sexual harassment, wage discrimination, and unfair housing practices.

Free subscriptions are available. If you would like to be placed on our mailing list, please contact our main office at the above address. All comments and suggestions are appreciated, and should be addressed to the editor, Mike Hollar, at the main office in Topeka: (785) 296-3206.

COMINGS AND GOINGS AT THE HUMAN RIGHTS COMMISSION

GOINGS

Commissioner Phillip DeLaTorre provided distinguished service with the Commission from December, 1991 to December, 1998. He was the Law Commissioner and we all will miss his contributions.

James Woods retired as the Wichita Office Supervisor on December 31, 1998. He served with the Commission from August, 1976 until his retirement. Jim and his wife have numerous plans to travel and visit relatives. Thanks, Jim, for all you have done for the Commission.

Marvin Stone retired as an Investigator in the Wichita Office on February 28, 1999. He served with the Commission from May, 1982 until his retirement. Marvin's plans are not known at this time but he will continue to be active. Good luck, Marvin.

Linda Auwarter retired on October 26, 1998 as Office Manager. She served with the Commission from September, 1964 until her retirement. Good luck, Linda.

Maureen Carrol, Education/Information Representative II, resigned and is now employed in a position at the University of Kansas.

John Morgan, Wichita Investigator, resigned to accept a position with the Butler County Sheriff's Department.

Patrick Armour, Intake Specialist, resigned to accept a position with the Topeka Capital Journal Internet provider service.

COMINGS

Commissioner Kristin Blomquist was nominated by the Governor and confirmed by the Senate as the Law Commissioner filling the position formerly held by Commissioner DeLaTorre. Commissioner Blomquist is an attorney with Southwestern Bell Telephone Company in Topeka. She will serve a four-year term expiring in 2002. Welcome aboard, Commissioner.

Jane Neave was selected as the Wichita Office Supervisor to fill the position of Jim Woods. Jane was with the Commission as an Investigator before her selection. Congratulations, Jane.

Karen McDaneld was selected as the Office Manager upon the retirement of Linda Auwarter. Karen had served with the Commission as an Office Specialist before being chosen as Office Manager. Congratulations, Karen.

Michelle Smith was chosen to fill Karen's vacated Office Specialist position. Michelle was a Secretary II prior to filling the Office Specialist position.

Linda Wenger was chosen to fill Michelle's former position of Secretary II. Linda's prior position was as a Secretary I with the Commission.

Pamela Santaniello was selected as Patrick Armour's replacement as an Intake Specialist. Pam was the Commission's receptionist before accepting the Intake Specialist position.

Paul Forese was chosen as Pam Santaniello's replacement as the Commission's receptionist. Prior to accepting his current position with the Kansas Human Rights Commission, Paul was enrolled at Kansas State University.

KEEPING CURRENT:

SEXUAL HARASSMENT LAW CHANGES

By Barbara Girard, Staff Attorney

In 1998, the United States Supreme Court (USSC) issued three decisions which will affect how the Kansas Human Rights Commission (KHRC) investigates and analyzes sexual harassment cases filed under the Kansas Act Against Discrimination (KAAD). The USSC analyzes and decides sexual harassment cases under Title VII, the federal law prohibiting sexual harassment, not those cases decided under KAAD. However, KAAD is very similar to Title VII in many important ways, and the Kansas appellate courts have held that cases decided under Title VII are persuasive precedent.

In other words, Title VII sexual harassment cases do not mandate how the Kansas courts decide sexual harassment cases under KAAD, but they do provide direction and legal analysis for KAAD which prohibits sexual harassment under state law. Therefore, the three recently decided USSC sexual harassment cases will affect the interpretation of KAAD by the KHRC. In the process, they will change the way employers and employees handle sexual harassment issues in each Kansas workplace with four or more employees.

Employers should also note that the three important sexual harassment decisions from the USSC involved harassing behavior by supervisors, not just fellow employees. In each case, the employee, who sued for sexual harassment, claimed that he or she had been harassed by supervisors or managers. It was the supervisor/harasser's conduct which could subject the employer to liability. In the 1998 cases, the USSC provided guidelines on when an employer could be held liable in sexual harassment cases if a supervisor was the harasser,

and even if the employer was unaware of the harassment.

Same Sex Sexual Harassment Prohibited

In the first of the three USSC cases, Oncale v. Sundowner Offshore Services, Inc., 118 S.Ct. 998 (1998), the USSC held that same sex sexual harassment is prohibited by Title VII. Same sex harassment cases involve a victim and harasser of the same sex. The sex or gender of the victim is important only because the harasser's actions toward the victim must be because of the victim's sex or gender. In the Oncale case, a male employee, who worked on an oil platform in the Gulf of Mexico as part of an eight man crew, sued his employer. The male employee alleged that he had been sexually harassed by his male supervisors. The evidence showed that the male employee had been physically assaulted and threatened with rape, along with being subjected to other sexually related and humiliating actions and comments. The USSC provided guidance on how an employee could prove that sexually offensive conduct is motivated because of the victim's sex. Actions and comments in the workplace can provide indirect evidence of discrimination and harassment based on the employee's sex. Sexual harassment does not have to be motivated by sexual desire. It can be motivated by animosity towards a particular sex.

In the Oncale case, the USSC stated that sex discrimination is the basis for sexual harassment and may be found even where a female victim is harassed in such a sex-specific way by another woman as to make clear that the harasser is motivated by general hostility toward the presence of women in the workplace. An employee claiming same-sex harassment may show gender-based discrimination by offering direct comparative evidence about the how the alleged harasser treated members of both sexes in a workplace occupied by members of both sexes.

(Continued on page 5)

KEEPING CURRENT:

Continued SEXUAL HARASSMENT LAW CHANGES

(Continued from page 4)

The USSC also made it clear that Title VII forbids only behavior so objectively offensive as to alter the conditions of the victim's employment and that just because words used have a sexual content or connotation, they are not automatically discriminatory or harassing. In other words, the offensive behavior must be judged from the perspective of a reasonable person in the victim's position considering all of the circumstances. The critical issue is whether one sex is exposed to disadvantageous terms or conditions of employment to which the other sex is not. Evidence that the accused harasser treated both male and female employees the same can defeat a claim for sexual harassment.

The Oncale decision does not mean that discrimination on the basis of sexual preference or sexual orientation is covered by Title VII. Neither KAAD nor Title VII protect employees who claim to be harassed because they are homosexual.

Employers May Be Liable for Known and Unknown Sexual Harassment by Supervisors

In the second 1998 USSC sexual harassment case, Ellerth v. Burlington Industries, 118 S.Ct. 2257 (1998), the employee, Kimberly Ellerth, worked as a salesperson for Burlington Industries. She claimed that her immediate supervisor's boss, a mid-level manager, had sexually harassed her by making offensive and inappropriate sexual remarks to her. Ellerth did not tell anyone in authority about the manager's conduct, even though she was aware that Burlington had a policy prohibiting sexual harassment and a complaint procedure for reporting such harassment.

In the third 1998 USSC sexual harassment case, Faragher v. City of Boca Raton, 118 S.Ct. 2275 (1998), Beth Ann Faragher, a lifeguard for the City of Boca Raton, sued her two immediate supervisors and the City for allowing a sexually hostile atmosphere to exist which included uninvited offensive touching and lewd and derogatory comments about women. The city had a sexual harassment policy,

but had not distributed the policy to the lifeguards or supervisors working in the marine safety section of its Parks & Recreation Department where Faragher worked. Faragher, like Ellerth, had not officially reported the harassment of the two supervisors to the city.

In both Ellerth and Faragher cases, the USSC stated that it was not the type of harassment which would determine whether the employer was liable. It was what the employers did both before and after the harassment that made the difference. If a supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or adverse reassignment, the employer has no viable defense, and the employee/victim prevails. However, if there is no tangible employment action, the employer may assert an affirmative defense which has two prongs. First, the employer must prove that it exercised reasonable care to prevent and promptly correct sexually harassing behavior. A well-communicated written sexual harassment policy which includes a complaint procedure would be evidence of such care. The second prong of the employers affirmative defense requires that proof that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer, or to avoid harm otherwise. The employee must show that he/she took advantage of any of the employer's corrective or preventive measures. For example, if the employee failed to use the known complaint procedure, the employer's affirmative defense would protect it.

What Do The USSC Decisions Mean?

The USSC's 1998 decisions do not mean that the employer is absolutely liable for all improper behavior. To be actionable, the harassment must be severe or pervasive. The employer must have a policy and complaint procedure. The employee must use the policy and procedure. The employer must train, supervise and monitor its managers with regard to harassment and discrimination issues.

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Eternal Vigilance is the Price of Freedom!

KANSAS HUMAN RIGHTS COMMISSION EXECUTIVE DIRECTOR WINS NATIONAL AWARD

Executive Director William V. Minner was selected as the National Association of Human Rights Workers (NAHRW) recipient of the Overall Human Rights Award. This prestigious national award is presented annually to the person whose achievements in human, civil and social rights have a national impact. Mr. Minner's other awards include: U.S. Dept. of Justice Community Service Award, The Coordinating Committee of the Black Community Outstanding Public Service Award, and the Martin Luther King, Jr. Governor's Award.



Executive Director William V. Minner accepting the NAHRW Overall Human Rights Award