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INDIANA  
CIVIL RIGHTS COMMISSION

CRC 4-24-15

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1                           BEFORE THE STATE OF INDIANA  
2                           CIVIL RIGHTS COMMISSION  
3                           - - -  
4  
5                           PUBLIC MEETING OF APRIL 24, 2015  
6  
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8                           - - -  
9                           PROCEEDINGS  
10       in the above-captioned matter, before the Indiana  
11       Civil Rights Commission, Alpha Blackburn,  
12       Chairperson, taken before me, Lindy L. Meyer,  
13       Jr., a Notary Public in and for the State of  
14       Indiana, County of Shelby, at the Indiana  
15       Government Center South, Conference Center,  
16       Rooms 1 & 2, 402 West Washington Street,  
17       Indianapolis, Indiana, on Friday, April 24, 2015  
18       at 1:04 o'clock p.m.

19                           - - -  
20  
21                           William F. Daniels, RPR/CP CM d/b/a  
22                           ACCURATE REPORTING OF INDIANA  
23                           12922 Brighton Avenue  
                              Carmel, Indiana 46032  
                              (317) 848-0088

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1    APPEARANCES:

2 COMMISSION MEMBERS:

- 3 Alpha Blackburn, Chairperson
- 4 Kent Hull
- 5 Sheryl Edwards
- 6 Steven A. Ramos
- 7 Suzanne Robinson Gaidoo
- 8 Michelle Gough McKeown
- 9 Ahmed Young

10 INDIANA CIVIL RIGHTS COMMISSION  
 11 By Jamal Smith, Director/Secretary  
 12 & Akia Haynes, Deputy Director  
 13 Indiana Government Center North  
 14 100 North Senate Avenue, Room N103  
 15 Indianapolis, Indiana 46204  
 16 On behalf of the Commission.

12 OTHER COMMISSION STAFF PRESENT:

- 13 Noel Allen
- 14 Pamela Cook
- 15 Debbie Rincones-Chavez

16 PRESENT FOR ORAL ARGUMENT:

- 17 Frederick S. Bremer
- 18 Jan Michelsen

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1 1:04 o'clock a.m.  
 2 April 24, 2015

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4 CHAIRPERSON BLACKBURN: Good morning.

5 The Indiana Civil Rights Commission is now in  
 6 public meeting, and with a quick change to the  
 agenda, under E. for Old Business, you have

7 listed Oral Arguments, and we will take that  
8 portion of today's agenda first.

9 So, the case is Denise Lisenbee versus The  
10 Care Group, and I would like for those  
11 participating in this oral argument to please  
12 introduce yourselves.

13 MR. BREMER: My name is Fred Bremer.  
14 I'm a staff attorney with the Civil Rights  
15 Commission. I'll be speaking on behalf of the  
16 Commission.

17 CHAIRPERSON BLACKBURN: On behalf of  
18 whom? I'm sorry; I can't hear you.

19 MR. BREMER: On behalf of the  
20 Commission. The Complainant's name is Denise  
21 Lisenbee.

22 CHAIRPERSON BLACKBURN: Thank you.  
23 And?

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1 MS. MICHELSEN: I'm Jan Michelsen.  
2 I'm an attorney at Ogletree Deakins, and I  
3 represent what was The Care Group. The Care  
4 Group doesn't exist anymore, but it is now part  
5 of St. Vincent Medical Group.

6 CHAIRPERSON BLACKBURN: All right.  
7 Thank you very much.

8 I want to establish between you an  
9 agreement that each side would have 15 minutes to  
10 present your argument, and 10 minutes for  
11 rebuttal. Should you not use all of that time,

12 that's fine. We like to allow at the end enough  
13 time for Commissioners to direct questions to  
14 you, if there are still any questions in the  
15 minds of the Commissioners. So, if that is  
16 agreeable, in that this case was brought by the  
17 Commission for oral argument, let us hear first  
18 from counsel for Lisenbee.

19 MR. BREMER: Thank you, Madam  
20 Chairman.

21 This case comes to you in a curious  
22 status, because there has been a ruling on a  
23 motion for summary judgment instead of a ruling

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1 after a hearing on the full merits of the claim,  
2 Denise Lisenbee, that she was denied an  
3 employment opportunity a couple of times, one --  
4 the second time because she applied for a job  
5 with the Respondent and was not hired.

6 The summary judgment, as it stands, as the  
7 Judge has recommended to the Commission, is a --  
8 in a posture of basically cutting us off at the  
9 kneecaps. We're talking about here a very early  
10 stage of proving the discrimination case in terms  
11 of whether the individual who filed the case,  
12 Denise Lisenbee, under the evidence, qualifies  
13 for protection from the standpoint of the  
14 disability aspect.

15 In this case, the objections come down to  
16 a simple position, because we're only dealing

17 with what the Judge did in saying that she did  
18 not have status, that there was not a genuine  
19 issue of material fact on that point. The Judge  
20 did not give to the merits of the motion for  
21 summary judgment, the full motion for summary  
22 judgment filed by the Respondent.

23 On all of the issues in the case, the

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1 pretext issues, everything, the -- and the  
2 decision, the recommended decision, of the  
3 Administrative Law Judge is very clear on that,  
4 that she did not go there. We are really only  
5 talking about objections to the finding,  
6 recommendation to this Commission that Denise  
7 Lisenbee did not have the status to begin with,  
8 to even be protected from discrimination.

9 The -- it's the position of the  
10 Complainant that the -- what the Administrative  
11 Law Judge has recommended as far as how you get  
12 to this point of determining that the Complainant  
13 had lacked the status is that the Judge relied  
14 upon statutory standards from a statute that has  
15 specific standards about what it takes to become  
16 a protected person by -- in that, I mean that the  
17 individual must show that she has a substantial  
18 disability that substantially -- well,  
19 substantially interferes or keeps her from  
20 engaging in a major life activity, at least one  
21 major life activity.

22 That's a standard that's specifically  
23 stated in what I would call Chapter 5 of

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1 Article 9 of the Indiana Civil Rights Laws.  
2 We're talking here about Indiana Code 22-9-5.  
3 That's Chapter 5. That is the state's employment  
4 discrimination against the disabled provisions  
5 that resemble similar law under the ADA. So,  
6 that's where the standard comes from that was  
7 used by the Administrative Law Judge.

8 There -- the case was determined under  
9 both that and another chapter, Chapter 1 of the  
10 same Article 9, which is the Indiana Civil Rights  
11 Law. That particular statute says that the  
12 protected status depends upon the person being  
13 substantially disabled, a substantial disability.  
14 There is no mention of having to show that --  
15 exclusively, that there has to be a substantial  
16 disabling effect on an identified major life  
17 activity.

18 It's clear from paragraph 6 and 9 of the  
19 conclusions of law in the Judge's proposed  
20 decision that the Judge was borrowing from  
21 Chapter 5, bringing that over into Chapter 1, and  
22 saying that that standard was the exclusive  
23 standard under Chapter 1.

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1           It's the position of the Complainant that  
2 that was legally not defensible; that the larger  
3 standard that's available under the older  
4 statute, which is -- really is Chapter 1, goes  
5 back a long time before Chapter 5 entered into  
6 the law. That particular one is to be broadly  
7 construed, according to the Indiana Civil Rights  
8 Law, and is entitled -- the Complainant is  
9 entitled to be judged according to that standard.

10           And what's happened here is that basically  
11 there is a borrowing of a standard from another  
12 statute, which not only is borrowed, but the  
13 Judge is saying this is what you use exclusively,  
14 you have to use this, and that is what we are  
15 objecting to.

16           When this case is hopefully referred back  
17 to the Administrative Law Judge by the  
18 Commission, that it's the hope of the  
19 Complainant, certainly, that the Commission will  
20 make it clear that it's a given that the  
21 Complainant qualifies under the evidence, the  
22 designated evidence, as a person that's entitled  
23 to protection.

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1           Now, there are other issues to be  
2 determined. Was there discrimination against  
3 this person? Was -- you know, what was the  
4 result of all of that? Was there pretext, and so  
5 forth? Of all of those issues are yet to be

6 determined on the basic claims on the merits by  
7 the Complainant.

8           So, we're saying that this case should go  
9 back to the Administrative Law Judge, say, assume  
10 that, you know, "You're to write another proposal  
11 assuming that this individual does qualify for  
12 protection under the Indiana Civil Rights Law  
13 because she was substantially disabled," and then  
14 leave it to the Judge to, you know, address other  
15 issues as would be necessary.

16           In terms of what Ms. Lisenbee is  
17 actually -- what her actual story is, is this:  
18 She had diverticulitis. This resulted in a  
19 lengthy hospitalization of a month. She used up  
20 all 12 weeks of her Family Medical Leave Act  
21 because of it. She came back into -- finally  
22 qualified to come back to the workplace, and  
23 at -- and by that time, she was carrying over her

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1 the risk of having to have further surgery.

2           So, she had certainly a substantial  
3 disability to talk about. When we look at her  
4 situation, when you're talking about being that  
5 confined to your home and to a hospital for that  
6 length of time before you get the go-ahead to  
7 return to work, that's a substantial disability,  
8 and we're saying that that's what qualifies, in  
9 part, under the Indiana Civil Rights Law, to give  
10 you the right to complain about being

11 discriminated against.

12 Thank you.

13 CHAIRPERSON BLACKBURN: Thank you,

14 Mr. Bremer.

15 Counsel for The Care Group.

16 MS. MICHELSEN: Yes. Thank you.

17 I'm glad that Mr. Bremer clarified that  
18 the only objections that were made to the ALJ's  
19 decision were on the finding on disability.  
20 Obviously to survive summary judgment, a  
21 plaintiff has to, on all of the elements, show  
22 that there is a -- you know, they have a disputed  
23 issue of fact.

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1 As evidenced in the very extensive  
2 briefing in this matter, and in the ALJ's  
3 proposed findings of fact and conclusions of law,  
4 this really is a relatively simple case, at least  
5 compared to some other employment actions. The  
6 material facts are undisputed, and the law is  
7 settled.

8 Now, Mr. Bremer suggested that the ALJ  
9 only apply one of the standards, and it was the  
10 incorrect standard. I think it's clear from her  
11 conclusions of law and her findings of fact, none  
12 of which Ms. Lisenbee objected to -- none of the  
13 findings of fact were objected to; only a few of  
14 the conclusions of law, but the ALJ clearly said  
15 that "I need to look at this under both portions

16 of that statute."

17           And those are slightly different. One of  
18 them, the one that we -- we have also analyzed  
19 under both portions of the statute. One is the  
20 employment discrimination against disabled  
21 persons, and that's exactly what we're talking  
22 about here, which follows the pre-2008 ADA  
23 standard for someone who is either disabled or

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1 regarded as disabled.

2           Chapter 1, which Mr. Bremer referred to,  
3 which is the older portion of the Indiana Civil  
4 Rights Law, I think significantly in this case  
5 has no provision for "regarded as," only actual  
6 disability. So, any of the early -- the --  
7 Ms. Lisenbee, early on in her original complaint,  
8 only had a "regarded as" charge. So, with that  
9 complaint, she could only have brought it under  
10 section 5, and that was what her charge was. She  
11 also had an accom -- failure to accommodate  
12 charge, which she has abandoned during the  
13 process from her initial charge.

14           So, the legal standards that the ALJ  
15 applied were two. The -- you know, that a  
16 physical or mental impairment substantially  
17 limits a major life activity, or being regarded  
18 as having an impairment. And being regarded as  
19 having an impairment doesn't apply to temporary  
20 impairment, so nothing under six months.

21 Ms. Lisenbee was basically out for about  
22 three months, and her doctor and her said she is  
23 fully cured, so when she came back, it was the

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1 end of any impairment. It no longer existed.  
2 so, she had a transitory impairment, and  
3 therefore, didn't even qualify under the  
4 "regarded as." And under a "regarded as" claim,  
5 there's no right to accommodation.

6 The other section which Mr. Bremer  
7 referred to is a substantial disability, but  
8 actually there's more language to that, and that  
9 is: "A substantial disability unrelated to the  
10 ability to engage in a particular occupation."  
11 There's no "regarded as" provision, and we look  
12 at that in terms of the plain language.

13 And what Ms. Lisenbee had is  
14 diverticulitis, but there -- what the ALJ found  
15 is that there was just no evidence of why that  
16 was a disability. Obviously there has to be some  
17 evidence; otherwise, any person, whether they  
18 even had an impairment, could come and say, "I am  
19 disabled under the law."

20 So, under the rules of statutory  
21 interpretation, specific terms override the  
22 general terms, and we have some specific terms in  
23 the other section of that statute. So, Lisenbee

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1 was not disabled under any part of the Indiana  
2 Civil Rights Law, under Section 1 or Section 5,  
3 and the ALJ made both of those analyses.

4           The other thing that I think is very  
5 significant is that Ms. Lisenbee herself, in the  
6 ICRC intake questionnaire, which she, you know,  
7 provided and signed as true and accurate, said  
8 she had no impairment, she had no limitation  
9 associated with an impairment, she had no  
10 limitation on major life activity, she had no  
11 impairment that The Care Group was aware of, and  
12 she was not disabled. In her writing it, says  
13 not disabled.

14           So, even she did not think she had a  
15 substantial disability under either of those  
16 provisions. And, of course, when she came back,  
17 she was completely cured. She wasn't regarded as  
18 disabled, there was no evidence of that, and that  
19 was actually the only claim in her original ICRC  
20 complaint. She wasn't denied reasonable  
21 accommodation, she wasn't treated less favorably.

22           But as Mr. Bremer said, the -- those  
23 things -- which we would say there's no question

1 of fact about any of those things. So, the ALJ  
2 properly applied both of those statutory sections  
3 and found on the record of facts, which were not

4 objected to, that Ms. Lisenbee lacked sufficient  
5 evidence of substantiality, and that was both --  
6 there was no substantial limitation on any major  
7 life activity, and she did not have a substantial  
8 disability unrelated to the ability to engage in  
9 a particular occupation.

10 So, she only objected to the conclusion  
11 that she was not disabled, and that doesn't carry  
12 the day on summary judgment, so the objection  
13 should be overruled. She had insufficient  
14 evidence that she was disabled or regarded under  
15 any definition.

16 She had insufficient evidence that any  
17 adverse employment action was because of a  
18 disability. She had any -- she had insufficient  
19 evidence that she was denied a reasonable  
20 accommodation, and the ALJ did exactly what she  
21 was obligated to do, to consider all of the  
22 admissible evidence.

23 Now, Ms. Lisenbee did make some statements

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1 which would not be admissible evidence. She in  
2 fact said, "well, I just kind of put it together  
3 as an assumption," and she said that the person  
4 looked at her in a discriminatory way. That is  
5 not evidence. That obviously was her perception  
6 and her opinion about what was happening.

7 So, when the ALJ did what she was supposed  
8 to do, she found that there were no genuine

9 issues of fact about whether the person,  
10 Ms. Lisenbee, was disabled. She did have  
11 diverticulitis, and she testified that she had  
12 only, in two years, two flare-ups, each lasting  
13 12 to 24 hours. So, in two years, she had a  
14 maximum of four days of this impairment from the  
15 diverticulitis, and those were seven months  
16 apart.

17 She was fully healed by August 31. No  
18 impact, let alone a substantial impact, on any  
19 major life activity. She testified that she  
20 could care for herself, she could interact with  
21 others, she could do all of these things, all of  
22 which would belie a disability under either  
23 definition in the statutes. And she never

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1 provided any evidence that she had a substantial  
2 disability unrelated to her ability to engage in  
3 a particular occupation.

4 So, the other important thing is that  
5 Ms. Lisenbee in fact was -- her position was  
6 eliminated while she was out on leave, but it was  
7 a decision that was being made to reduce head  
8 count long before that for budgetary reasons, so  
9 had she never gone out on leave, she wouldn't  
10 have had a job anyway.

11 And she was encouraged when she finally  
12 came back, after promising to come back about  
13 four different times, you know, after being given

14 actually more than the 12 weeks of FMLA leave.  
15 She got 15 weeks of leave, and then was warned  
16 that "Your leave is up. You either have to come  
17 back or you will be terminated, but you can apply  
18 for other jobs."

19 She applied for only one job, even though  
20 she testified that there were several jobs that  
21 she was qualified for. But she didn't want  
22 those; she only wanted to apply for the one job,  
23 and unfortunately for her, someone else was

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1 deemed to be the better person for that. So,  
2 there was no job for her to return to, and she  
3 could not -- she was not able to get the job that  
4 she did want to get.

5 So, I agree with Mr. Bremer that only --  
6 the only thing that was argued was an erroneous  
7 standard of proof as to what qualifies for  
8 protected status, but would, you know, point out  
9 to the Commission that a careful reading of the  
10 ALJ's decision shows that she in fact did look at  
11 both of those standards and found that there was  
12 insufficient evidence that there was a  
13 substantial disability unrelated to the ability  
14 to perform a particular occupation, and there was  
15 not a substantial limitation on a major life  
16 activity.

17 So, given that under both of those  
18 standards there was no question of fact as to

19 whether Ms. Lisenbee was disabled -- in fact she  
20 was not, based on the evidence -- there was --  
21 the finding of summary judgment was appropriate.  
22 Accordingly, the Commission should adopt the  
23 findings of fact and conclusions of law, and

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1 dismiss Ms. Lisenbee's claims.

2 Thank you.

3 CHAIRPERSON BLACKBURN: Yes,  
4 Mr. Bremer, you have surrebuttal.

5 MR. BREMER: In definition -- in  
6 defining a disability as to the -- Chapter 1 of  
7 the Indiana Civil Rights Law, at Indiana  
8 Code 22-9-1-3, subpart (r), it allows for really  
9 a larger and a more confined definition that  
10 deals with employment only, but the larger  
11 definition is, that applies to all types of  
12 discrimination, it says, "...disability' means  
13 the physical or mental condition of a person that  
14 constitutes a substantial disability."

15 Then it says, "In reference to  
16 employment," it doesn't say this is the only  
17 standard for employment, it says in addition to,  
18 in the case of employment, it "also means the  
19 physical or mental condition of a person that  
20 constitutes a substantial disability unrelated to  
21 the person's ability to engage in a particular  
22 occupation."

23 So, the larger issue of whether the person

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1 has a substantial disability to get into that  
2 category of being protected is available to the  
3 Complainant, and in this case, the Complainant,  
4 as has been pointed out, is not currently  
5 suffering from a dis -- a disabling condition  
6 that's putting her on her back.

7 She had a substantial disability, and a  
8 very serious incident, and the Civil Rights Law,  
9 in the view of the Complainant, allows for  
10 protection for her if she had this type of a  
11 history. She came in and, you know, that's --  
12 only just gets her in the door. If she was -- if  
13 it was known by the decision makers in both of  
14 these incidents of this history, then, you know,  
15 it would be possible to establish whether or not  
16 she was discriminated against on the claims that  
17 she has made.

18 She comes in as a person that, in the  
19 broadest construction possible, which is allowed,  
20 and in fact mandated by the Indiana Civil Rights  
21 Law, to protection. It's very easy to say,  
22 "well, that was history," but if somebody had a  
23 history of a disability, could that not be the

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1 basis for discrimination as well as whether or  
2 not they're disabled right now, when the event is

3 going on?

4 I think the answer to that question is  
5 obvious. The broadest construction of the  
6 Indiana Civil Rights Law allows for protection.  
7 In that incident that was historical, not that  
8 historical, as in the time these things happened,  
9 years ago, when she was denied employment.

10 As to the -- the specific terms in the  
11 Chapter 5, which the Respondent's counsel  
12 referred to as they're more specific and  
13 therefore they would control what it takes to be  
14 protected under Chapter 1 of the Indiana Civil  
15 Rights Law, I would like to point out that the  
16 Indiana Civil Rights Law itself, Chapter 1,  
17 specifically says -- identifies itself as the  
18 Indiana Civil Rights Law.

19 It -- and when this other chapter was  
20 adopted in 1992, which were ADA-type  
21 requirements, there was certainly an opportunity  
22 for the legislature to clear things up, and we're  
23 looking at a statute that says what it takes to

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1 have protection under the Indiana Civil Rights  
2 Law. Chapter 1 is different than what we're  
3 going to say under Chapter 5. You have to show  
4 under Chapter 5 that there would be a substantial  
5 disabling affect on a major life activity. It  
6 doesn't say that in the Indiana Civil Rights Law,  
7 a law of long standing.



13 comments. I would disagree with Mr. Bremer's  
14 assessment that the Chapter 1 allows for a record  
15 of impairment or a record of disability.

16 Chapter 5, the employment --

17 CHAIRPERSON BLACKBURN: Excuse me;  
18 would you repeat that?

19 MS. MICHELSEN: Oh. I said I would  
20 disagree with Mr. Bremer's analysis that the  
21 Indiana Civil Rights Law, Chapter 1, allows for a  
22 person to bring a claim not based on an actual  
23 disability, but on a record of disability or a

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1 history of disability. The Chapter 5, which is  
2 the employment discrimination, follows the ADA,  
3 the Federal Americans with Disabilities Act,  
4 although before the amendments.

5 That statute, the ADA and then the  
6 Chapter 5 that follows it, has a provision for  
7 someone being disabled, regarded as disabled, or  
8 with a record of disability. Chapter 1 that  
9 Mr. Bremer, unless he's invoking both of those  
10 chapters, and maybe he is, has no provision, and  
11 I believe that we've cited case law in some of  
12 our briefing that suggests that only an actual  
13 disability is actionable under Chapter 1.

14 And that's -- the other thing about the  
15 language of the Chapter --

16 CHAIRPERSON BLACKBURN: Could I --  
17 could I --

18 MS. MICHELSEN: Sure.

19 CHAIRPERSON BLACKBURN: -- interrupt  
20 just for --

21 MS. MICHELSEN: Sure.

22 CHAIRPERSON BLACKBURN: -- a moment?  
23 Do I understand you to say that a temporary

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1 impairment would not constitute a disability?

2 MS. MICHELSEN: That -- no, a  
3 temporary impairment can constitute a disability  
4 during the period of time that the impairment  
5 exists.

6 CHAIRPERSON BLACKBURN: Okay.

7 MS. MICHELSEN: It only cannot be  
8 used to say, "regarded as disabled." However,  
9 when the decisions that Ms. Lisenbee complains  
10 about; i.e., not getting her old job back because  
11 it had a been eliminated and not getting the new  
12 job that she had applied for, those decisions  
13 only took place after she was -- by her doctor,  
14 she was good as new. So, she certainly did  
15 not -- she does not even say she had an  
16 impairment at that time.

17 The other thing about the language of the  
18 statute is I think it is important that there is  
19 this -- Chapter 1 may be broad, but it is not  
20 unlimited, and it does say substantial  
21 disability. If in fact the legislature wanted it  
22 to be broad and include anyone that had an

♀ 23 impairment, then perhaps that statute would just

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1 say, "anyone with a disability." They wouldn't  
2 have the disclaimer about unrelated to a  
3 particular occupation, and they wouldn't use the  
4 term "substantial."

5 So, I think the term "substantial" means  
6 something. It means you have to have more than  
7 an impairment or you have to have more than a  
8 disability. And when we asked Ms. Lisenbee in  
9 her deposition, to try to find out why she  
10 thought she had a substantial disability, the  
11 reasoning was somewhat circular, and that was,  
12 "I'm disabled because I have a disability," and  
13 that -- you know, that is just simply not enough  
14 evidence to be able to --

15 COMM. HULL: Ms. Michelsen, I've got  
16 some questions. Can I ask them now?

17 MS. MICHELSEN: Sure.

18 CHAIRPERSON BLACKBURN: Yes, you may.

19 COMM. HULL: First of all, in fact,  
20 the Civil Rights Statute is a remedial statute,  
21 is it not? And we have a fair amount of case  
22 law, both at the federal and state level, which  
23 says that remedial statutes, and Civil Rights

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1 statutes as remedial statutes, should be  
2 interpreted broadly.

3 We also have a history with statutes like  
4 the ADA where employers have defended these cases  
5 by attempting to knock the cases out, as  
6 Mr. Bremer said at the beginning, cut it off at  
7 the knees under the definition, and then we have  
8 the 2008 amendments, where Congress listed  
9 examples from the U.S. Supreme Court where they  
10 did exactly that, and they amended the ADA and  
11 overturned those cases.

12 We also had 98 United States Senators  
13 vote. Every Republican, every Democrat, voted  
14 for those 2008 amendments. That's the first  
15 question, I -- the first point that I have that I  
16 don't think you're recognizing.

17 But I'm wondering here that this case is  
18 decided on summary judgment. Now, my  
19 understanding as a lawyer is that summary  
20 judgment is appropriate when there's no dispute  
21 of material fact. The Administrative Law Judge  
22 issued a summary judgment. From just listening  
23 to the two of you and what you're saying about

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1 what's in the record, there's enormous dispute of  
2 material fact here.

3 If the Administrative Law Judge had issued  
4 a finding that said this woman is not disabled or  
5 does not come within the coverage, it would seem

6 to me that that's one thing. But summary  
7 judgment, to me, is entirely inappropriate here  
8 as a procedural mechanism.

9 I'm also concerned about this view of  
10 diverticulitis, that -- I don't -- I mean if  
11 there's case law which says that diverticulitis,  
12 for example, is not covered under the ADA, I'd be  
13 interested in knowing that, because I think it is  
14 covered under the ADA. But diverticulitis, by  
15 its very nature, is something which -- excuse the  
16 pun, but comes and goes. It can be very  
17 debilitating to people.

18 So, those parts, and -- I'll stop talking.  
19 I'll just let you respond to that, if you want  
20 to, and then I have some other questions for you.

21 MS. MICHELSEN: Okay. Yes, the ADA  
22 was amended to, we would say, lessen the burden  
23 to show disability. I think we would all agree

♀

29

1 with that. The Indiana statute actually -- even  
2 the employment discrimination statute was not  
3 changed to meet -- it actually follows the  
4 pre-2008 ADA standards. But I guess I'm not as  
5 concerned about it, because obviously Mr. Bremer  
6 has focused on Chapter 1, and our position is  
7 that under Chapter 1, she is not disabled.

8 And to your question that -- there are in  
9 fact many cases, and they're actually -- I don't  
10 know which brief this is -- on page 8 of the

11 brief, where situations very much like hers under  
12 state -- other states and under federal statutes,  
13 an employee with diverticulitis which caused a  
14 fistula, which I believe Ms. Lisenbee had, and  
15 who underwent two surgeries, had no lasting  
16 physical impairments and none of his life  
17 functions were in any way impaired, and he was  
18 not handicapped --

19           COMM. HULL: Well, wait a minute. Is  
20 that case pre-'08?

21           MS. MICHELSEN: That is pre-'0 --  
22 well, this is under state law.

23           COMM. HULL: What state?

♀

30

1

2           MS. MICHELSEN: Missouri.

3           COMM. HULL: Well, we don't even know  
4 what the Missouri --

5           MS. MICHELSEN: Right.

6           COMM. HULL: -- statute says.

7           MS. MICHELSEN: Right.

8           COMM. HULL: Can you cite a federal  
9 post-'08 opinion that says diverticulitis is not  
10 a disability under the law?

11           MS. MICHELSEN: I don't have one in  
12 this particular page.

13           COMM. HULL: Okay.

14           MS. MICHELSEN: Those two -- well,  
15 post-2008 decisions have really kind of just been

16 making their way --

17 COMM. HULL: well, it's been seven  
18 years --

19 MS. MICHELSEN: Yeah.

20 COMM. HULL: -- okay? And the other  
21 question, I would say -- or the other issue that  
22 I'm concerned about here is: At one point, you  
23 said, "well, the only thing the Complainant said

‡

31

1 was, 'They kind of treated me like I was  
2 disabled.'" I can tell you that's what people  
3 with disabilities experience. Somebody didn't  
4 walk up and say, "we're going to discriminate  
5 against you because you're disabled," any more  
6 than women face discrimination in that way. It  
7 happens because of the way they're treated.

8 MS. MICHELSEN: Right.

9 COMM. HULL: So, I think that is  
10 admissible evidence.

11 MS. MICHELSEN: Right.

12 COMM. HULL: And the final thing I  
13 would say is that what I would be concerned --  
14 actually, I'll direct this to Mr. Bremer.

15 Is there any concern in this case that her  
16 job was eliminated because she had this earlier  
17 problem with the diverticulitis?

18 MR. BREMER: well, that's certainly  
19 the belief of the Complainant, that it was  
20 manipulated.

21 MS. MICHELSEN: Although I would say  
22 that the findings that the ALJ made were very  
23 specific, said that it was done for budgetary

♀

32

1 reasons well before she went out on leave, other  
2 positions were eliminated as well as hers, and  
3 there were five positions actually in that  
4 department that that was done.

5 And just to correct, and I may have  
6 misspoken when I said earlier, her statement  
7 wasn't -- in the deposition -- wasn't that she  
8 was treated discriminatorily. She just said that  
9 her evidence of discrimination was that the  
10 person had a discriminatory look in her eyes when  
11 she looked at her. I don't --

12 COMM. HULL: Well --

13 MS. MICHELSEN: -- know what exactly  
14 that is.

15 COMM. HULL: Yeah. Well, I think --  
16 I think I know what she's trying to say, but I  
17 will add just one other point. You criticized  
18 her because of what she said when she made the  
19 initial application with the ICRC. At that  
20 point, people, especially lay people, are trying  
21 to describe a situation. Maybe they don't use  
22 the magic word.

23 I mean you've got an investigator or an

♀

1 intake person who is simply trying to get the  
2 facts, but I don't think, you know, what somebody  
3 says on the initial application is nearly as  
4 important as what is later developed in -- in the  
5 discovery or in the hearing. So, I kind of think  
6 that's a stretch from the employer's standpoint.

7 MS. MICHELSEN: Thank you.

8 CHAIRPERSON BLACKBURN: Thank you,  
9 Comm. Hull. We do have another question or two.

10 COMM. MCKEOWN: I just have a quick  
11 question. Is there any -- and this might have  
12 been addressed and I was taking notes, I might  
13 have missed it, but is there case law that holds  
14 that the Indiana Act is not to be interpreted to  
15 encompass the 2008 changes?

16 MS. MICHELSEN: Well, it would --  
17 there was nothing that says that it would, and it  
18 has not been changed or there's nothing to  
19 reflect that it would be, and that's very common  
20 in state law sort of statutes, where they don't  
21 necessarily catch up. They often are very  
22 different than that. So, there's -- you know, it  
23 still reads exactly the same as -- as the ADA did

♀

34

1 pre-2008.

2 COMM. MCKEOWN: Okay. So, it is  
3 just --

4 MS. MICHELSEN: And I'm --  
Page 28

5                   COMM. MCKEOWN:  -- the same --  
6                   MS. MICHELSEN:  And I will admit I --  
7                   COMM. MCKEOWN:  -- or similar to  
8 other remedial state statutes, or is there case  
9 law that says that they are not to be read to  
10 reflect changes to the acts that they are  
11 patterned after?  
12                   MS. MICHELSEN:  Standing here today,  
13 I apologize that I can't --  
14                   COMM. MCKEOWN:  Okay.  
15                   MS. MICHELSEN:  -- can't answer that.  
16 There may or may not be.  
17                   COMM. MCKEOWN:  Okay.  
18                   CHAIRPERSON BLACKBURN:  Okay.  I  
19 would entertain any other questions before there  
20 is an exchange and brief discussion of the issues  
21 before you today.  Any other question?  
22                   (No response.)  
23                   CHAIRPERSON BLACKBURN:  Then any

‡

1    comments that you would have with regards to  
2    whether or not you think --  
3                   Thank you very much, counsel.  Thank you  
4    both for your presentations.  
5                   But you have to consider from your  
6    judgment if the objections by the complainant  
7    should be overruled.  You need to decide, of  
8    course, whether or not to adopt the  
9    conclusions -- the findings of fact and

10 conclusions of law submitting by the ALJ. And  
11 so, if you want to discuss that briefly before I  
12 entertain a motion.

13                   COMM. HULL: Well, I guess my  
14 thinking is that I'm still bothered by it, but --  
15 maybe this is just too legalistic, but I have a  
16 very distinct idea of summary judgment. This is  
17 not Federal Court. In Federal Court employers  
18 are using and misusing summary judgments to knock  
19 these cases out.

20                   In state courts in Indiana, it is far more  
21 difficult for a party to get a summary judgment.  
22 The Indiana Supreme Court, within the last year,  
23 has said that summary judgment is to be an

♀

36

1 exception. People should be able to go forward  
2 and have a hearing on the merits. And again,  
3 maybe the term -- maybe I'm just stumped on this  
4 term of "summary judgment," but to me, summary  
5 judgment says there's no dispute.

6                   I think there is a dispute here of fact  
7 about the nature of this Complainant's  
8 disability. I'd even like to see some medical  
9 evidence. I'm very skeptical of a view which  
10 puts down diverticulitis, because this is always  
11 the position which employers say, which is that  
12 people are pretending to be disabled or they're  
13 claiming to be disabled. We've heard this for  
14 years and years and years.

15           The Supreme Court, in three very  
16           unfortunate decisions, bought into this, and  
17           Congress, in 2008, said to the Supreme Court,  
18           "You're wrong, you're wrong, you're wrong." So,  
19           my view, is that the Complainant's position as  
20           advanced by Mr. Bremer should be upheld.

21           CHAIRPERSON BLACKBURN: Is that a  
22           motion?

23           COMM. HULL: It is.

37

1           CHAIRPERSON BLACKBURN: I would  
2           entertain questions before a second. Any  
3           questions?

4           COMM. YOUNG: Mr. Hull, so your  
5           assertion is that there are issues of material  
6           fact that need to be --

7           COMM. HULL: Yes, sir --

8           COMM. YOUNG: -- discussed?

9           COMM. HULL: -- it is.

10          COMM. YOUNG: My interpretation is  
11          slightly different. I think there are legal  
12          conclusions that need to be reached, and these  
13          aren't questions of fact, but questions of law,  
14          which are appropriate for summary judgment.  
15          That's my view, so I couldn't second that motion.

16          CHAIRPERSON BLACKBURN: Other  
17          comments?

18          COMM. HULL: well, whether you call  
19          it questions of fact or questions of law, I guess

20 what I'm trying to say is I think the suggestion  
21 that, as a matter of law, the Complainant is not  
22 covered by the Indiana law, at this stage, is  
23 wrong. I think we need more factual development

♀

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1 in the record, and we don't have it.

2 CHAIRPERSON BLACKBURN: May I hear  
3 either another question, if you still have  
4 questions, or I would entertain a second to the  
5 motion that we uphold the Complainant's  
6 objection.

7 (No response.)

8 CHAIRPERSON BLACKBURN: Do I hear a  
9 second?

10 (No response.)

11 CHAIRPERSON BLACKBURN: Hearing none,  
12 I will entertain a motion to the contrary.

13 COMM. YOUNG: So moved.

14 CHAIRPERSON BLACKBURN: Do you want  
15 to state it?

16 COMM. YOUNG: That we uphold the --  
17 that we uphold and adopt the findings and  
18 conclusions by the ALJ.

19 CHAIRPERSON BLACKBURN: Any questions  
20 before I hear a second?

21 (No response.)

22 CHAIRPERSON BLACKBURN: Hearing none,  
23 may I hear a second?

♀

1                   COMM. GAIDOO: Second.

2                   CHAIRPERSON BLACKBURN: All those in  
3 favor, aye, please.

4                   COMM. GAIDOO: Aye.

5                   COMM. YOUNG: Aye.

6                   COMM. RAMOS: Aye.

7                   COMM. EDWARDS: Aye.

8                   CHAIRPERSON BLACKBURN: Aye.

9                   Anyone opposed?

10                  COMM. MCKEOWN: Nay.

11                  COMM. HULL: No.

12                  CHAIRPERSON BLACKBURN: Let the  
13 record show there are two nays, and the vote  
14 carries. Thank you very much.

15                  Thank you for participating in the oral  
16 argument.

17                  And the remainder of us will continue with  
18 the agenda, with B. on your agenda, which calls  
19 for an Election of Chair and Vice-Chair. I would  
20 entertain a motion for Chair -- or a nomination  
21 for Chair.

22                  COMM. RAMOS: Madam Chair, I make a  
23 motion that we approve the current Chair, Alpha

♀

1 Blackburn, as our Chairperson for the Commission.

2                   CHAIRPERSON BLACKBURN: Thank you

3 very much. I didn't have to ask for a second.  
4 That's fine.

5 Are there any objections?

6 COMM. HULL: I'll second that.

7 CHAIRPERSON BLACKBURN: I'm sorry?

8 COMM. HULL: I will second that.

9 CHAIRPERSON BLACKBURN: Oh, thank  
10 you.

11 In that case, all in favor?

12 COMM. HULL: Aye.

13 COMM. YOUNG: Aye.

14 COMM. EDWARDS: Aye.

15 COMM. GAIDOO: Aye.

16 COMM. RAMOS: Aye.

17 COMM. MCKEOWN: Aye.

18 CHAIRPERSON BLACKBURN: Aye.

19 Anyone opposed?

20 (No response.)

21 CHAIRPERSON BLACKBURN: Thank you.

22 May I have a motion now -- or a  
23 nomination, please, for Vice-Chair?

♀

41

1 COMM. YOUNG: I move to nominate  
2 Comm. Ramos.

3 COMM. GAIDOO: Second.

4 CHAIRPERSON BLACKBURN: Excellent. I  
5 have a motion for a nomination and a second. All  
6 in favor, please?

7 COMM. YOUNG: Aye.

CRC 4-24-15

8 COMM. MCKEOWN: Aye.  
9 COMM. EDWARDS: Aye.  
10 COMM. HULL: Aye.  
11 COMM. RAMOS: Aye.  
12 COMM. GAIDOO: Aye.  
13 CHAIRPERSON BLACKBURN: Aye.

14 Anyone opposed?

15 (No response.)

16 CHAIRPERSON BLACKBURN: Thank you,  
17 and congratulations.

18 COMM. RAMOS: Thank you.

19 CHAIRPERSON BLACKBURN: I want now,  
20 before we go further with the agenda, to make a  
21 formal welcome to our new Commissioners. Susan  
22 Robinson Gaidoo.

23 COMM. GAIDOO: Perfect.

♀

42

1 CHAIRPERSON BLACKBURN: All right.

2 And Sheryl Edwards. Welcome.

3 COMM. EDWARDS: Thank you.

4 CHAIRPERSON BLACKBURN: We have  
5 already in a previous session welcomed Ahmed  
6 Young, but again, welcome.

7 COMM. YOUNG: Thank you much.

8 CHAIRPERSON BLACKBURN: Thank you.  
9 Steve Ramos, we're going to talk in a second, and  
10 Michelle, we want to again welcome you --

11 COMM. MCKEOWN: Thank you.

12 CHAIRPERSON BLACKBURN: -- as a

13 relatively new Commissioner.

14 And Comm. Kent Hull, our hearty welcome.

15 COMM. HULL: Thank you.

16 CHAIRPERSON BLACKBURN: I think for  
17 an oral argument, we've never had such a lively  
18 discussion, and I appreciate your contribution to  
19 that discussion.

20 COMM. HULL: Well, you know, let me  
21 ask a question. As somebody who is very new,  
22 apparently briefs had been filed. They referred  
23 to that someplace? Did we ever --

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1 MS. HAYNES: Could you repeat that?

2 I'm sorry.

3 COMM. HULL: Well, where I got --  
4 unless I have misplaced something, which has  
5 certainly happened before, we got the order  
6 scheduling the hearing, we got the proposed  
7 findings and the notice of oral argument, but I  
8 mean when she -- I guess what I'm wondering is:  
9 Ordinarily, before what just happened, do we get  
10 the briefs?

11 MS. HAYNES: Typically you will  
12 have -- well, it actually would depend, so --

13 COMM. HULL: I'm sorry?

14 MS. HAYNES: It would depend, so in  
15 this case, I am under the impression that briefs  
16 were requested, so they were provided. But  
17 because this case is so old and so thick -- the

18 case file is probably about a foot thick --  
19 certain items were provided, and I believe the  
20 final briefs perhaps were provided, but --

21 COMM. HULL: Yeah. I guess -- I mean  
22 if you're listening to an oral argument and  
23 somebody says, you know, "we're looking at the

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1 language of the statute," or "we've got cases,"  
2 or "we don't have cases," I mean unless I've got  
3 a computer up here with me, it's kind of hard to  
4 figure out. So, I guess what I'm wondering about  
5 is: As a general practice, when we schedule what  
6 we just had, an oral argument, can we  
7 automatically have the briefs submitted to all  
8 Commissioners ahead of time?

9 MS. HAYNES: We can work on that. I  
10 think there would be a way that we could provide  
11 those briefs before -- they wouldn't necessarily  
12 be served upon you, they'd be served to the  
13 Administrative Law Judge, but in that type of  
14 situation, yes, we could make sure that you would  
15 have copies of those.

16 COMM. HULL: Because otherwise we're  
17 kind of guessing.

18 MS. HAYNES: Yes.

19 CHAIRPERSON BLACKBURN: I think  
20 that -- I don't want to substitute my words for  
21 your own, but I think Comm. Hull means if there  
22 is to be an oral argument --

1 CHAIRPERSON BLACKBURN: -- on the  
2 case, then it is appropriate that we have a  
3 little bit more information than just who the  
4 participants are in the discussion.

5 MS. HAYNES: Correct. Okay.

6 CHAIRPERSON BLACKBURN: Thank you.

7 MS. HAYNES: Thank you, Chair.

8 CHAIRPERSON BLACKBURN: I want to  
9 comment, too, that in reading over the report  
10 that transpired at the last meeting, I wasn't  
11 here, and I feel terrible not to have been here  
12 when Commissioners of such long standing were  
13 attending their last meeting, and I was moved by  
14 the comments by Comm. Garcia, and certainly  
15 amused by the wonderful humor that is so  
16 consistent with Comm. Carter.

17 And I want to say in their absence how  
18 proud I am to have served with them for so many  
19 years and seeing their absolute dedication to the  
20 work of the Commission. And I think in the 24  
21 years that Comm. Carter served, he may have  
22 missed one, maybe two Commission meetings, which  
23 is quite a remarkable record, and if you have an

1 opportunity to drop a note to Comm. Carter or to  
Page 38

2 Comm. Garcia, I think it would be appropriate, on  
3 a personal level, to let them know how proud you  
4 are of the record that they had while serving  
5 here.

6 So, with that said, let's move on to the  
7 approval and adoption of the meeting minutes,  
8 which should have been included in the materials  
9 you received. May I have a motion to approve?

10 COMM. RAMOS: So moved.

11 COMM. MCKEOWN: Second.

12 CHAIRPERSON BLACKBURN: All in favor?

13 COMM. YOUNG: Aye.

14 COMM. MCKEOWN: Aye.

15 COMM. EDWARDS: Aye.

16 COMM. HULL: Aye.

17 COMM. RAMOS: Aye.

18 COMM. GAIDOO: Aye.

19 CHAIRPERSON BLACKBURN: Aye.

20 Anyone opposed?

21 (No response.)

22 CHAIRPERSON BLACKBURN: Thank you.

23 And now, the Executive Director's Report.

♀

47

1 MR. SMITH: Good afternoon, everyone.

2 (Pause in proceedings.)

3 MR. SMITH: Okay. Well, good  
4 afternoon again.

5 COMM. RAMOS: Good afternoon.

6 CHAIRPERSON BLACKBURN: Good

7 afternoon.

8 MR. SMITH: In your packets, you  
9 should have received the Financial Report as well  
10 as the External Affairs and Outreach Report. You  
11 should also have an Agency Report which documents  
12 caseload and so forth, in addition to the ALJ's  
13 Summary Report, so I just want to make sure that  
14 you have all of those. Obviously we won't go  
15 line by line through all of those reports. Some  
16 of them, and arguably the most important we'll  
17 start with is the Financial Report, and assuming  
18 that everyone has received that, I will entertain  
19 any questions about the agency's finances at this  
20 point.

21 (No response.)

22 MR. SMITH: Any thoughts, questions,  
23 feedback?

♀

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1 CHAIRPERSON BLACKBURN: May I have a  
2 motion to adopt the Financial Report?

3 COMM. YOUNG: So moved.

4 CHAIRPERSON BLACKBURN: Second?

5 COMM. RAMOS: Second.

6 CHAIRPERSON BLACKBURN: All in favor?

7 COMM. YOUNG: Aye.

8 COMM. MCKEOWN: Aye.

9 COMM. EDWARDS: Aye.

10 COMM. HULL: Aye.

11 COMM. RAMOS: Aye.

12

COMM. GAIDOO: Aye.

13

CHAIRPERSON BLACKBURN: Aye.

14

Anyone opposed?

15

(No response.)

16

CHAIRPERSON BLACKBURN: Thank you.

17

MR. SMITH: Also, moving on to

18

External Outreach, a couple of things to note.

19

We just -- or we are in the process of wrapping

20

up Fair Housing Month, obviously in April, which

21

is a big deal for the agency.

22

This year, we did a few things that were

23

relatively unprecedented, one of which was

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49

1

hosting two Fair Housing Conferences. We did one

2

here in Indianapolis, which went off really well,

3

if I might say. We had a little over 220 people

4

register and attend the Conference, which was a

5

well-attended event.

6

The second one was held down in French

7

Lick, Indiana as per kind of a request from our

8

partners down in the southern part of the state.

9

In the midst of everything being here in

10

Indianapolis, obviously you get some contention

11

from folks up north as well as down south, and

12

they agreed to help partner with us in large

13

regard, which is why we were able to go down to

14

French Lick and host the second conference down

15

there.

16

That went off well as well, and we were



22 40-plus barbershops, where were the highest  
23 concentrations? Here in Marion County? Lake?

♀

51

1 others?

2 MR. SMITH: Marion County, which is  
3 pretty typical for most events, obviously,  
4 because it's the most concentrated of cities, but  
5 Lake County, and then the northeast part of the  
6 state --

7 COMM. YOUNG: St. Joseph?

8 MR. SMITH: -- South Bend, St. Joe's  
9 County, was pretty active as well. Evansville  
10 and Vanderburgh County -- when we say Vanderburgh  
11 in this type of an issue, it was pretty much  
12 Evansville -- they were pretty active as well.  
13 Of course, the biggest piece of that initiative  
14 is the follow-up. The incentive is to get black  
15 males to come into the barbershop, do some health  
16 screens, and that is all for naught unless, you  
17 know, follow-up is taken into account. So, we're  
18 excited about that.

19 A good point to transition over to what  
20 Comm. Ramos mentioned at the last meeting, to  
21 make sure we looked into the Latino Expo, which  
22 we did, and I stand corrected in that the agency  
23 is involved. And we work through ICHLA,

♀

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1 obviously, to get a lot of that done, and  
2 Danielle is -- and she corrected me when I went  
3 back and was making my push for her to be  
4 involved, and she let me know that we were  
5 already involved and working to partner with the  
6 Expo to do some things.

7           So, we'll have a more clear picture of  
8 what we'll be doing in June as part of that. And  
9 our hopes, as we push through with that  
10 partnership, is to make sure that we do more than  
11 just the Expo, and we're trying to pull them on  
12 board to do some things and kind of retrofit the  
13 partnership so that they partner with us in some  
14 of our activities throughout the year as well.

15           COMM. RAMOS: Thank you.

16           MR. SMITH: So, one of the ways we're  
17 doing so, we call it cross-collaboration. We  
18 have a similar partner in La Voz, and we're  
19 trying to pull them in to help us achieve some of  
20 those objectives, so we're excited about that.

21           COMM. RAMOS: Yeah, they're going do  
22 it at the end of May.

23           MR. SMITH: Uh-huh, they're sure

‡

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1 doing that, so we'll make sure they're part of  
2 that conversation.

3           COMM. RAMOS: That's great.

4           MR. SMITH: Any other questions or

5 comments about the activities related to the  
6 agency?

7 CHAIRPERSON BLACKBURN: I'm curious  
8 how many people showed up in French Lick and --

9 MR. SMITH: We had around 80 people  
10 show up in French Lick --

11 CHAIRPERSON BLACKBURN: Excellent.  
12 Wow.

13 MR. SMITH: -- which was very  
14 encouraging to have those people show up down in  
15 French Lick, which was good, to come from the  
16 housing providers. The next step for that -- and  
17 we had -- of course, one of our main partners  
18 when we're doing Fair Housing Month is HUD, and  
19 we're working with them to do an event hopefully  
20 a lot larger next year here in Indianapolis,  
21 whereby we'll be able to pull in the whole  
22 region, and we'll be kind of a poster child, if  
23 you will, for that activity involving HUD.

♀

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1 They'll be mandating many of those partners to be  
2 here in attendance, so we're excited about that  
3 as a possibility.

4 The other thing unprecedented was our  
5 Statewide Fair Housing Testing Program. A long  
6 phrase, I know. The goal in the beginning, as I  
7 mentioned when we unveiled the program, was to  
8 make sure we had a really good finger on the  
9 pulse of what was going on with fair housing

10 across the state.

11 A lot of the research that we had done,  
12 not just here in Indiana, but things that we  
13 read, research done across the country at the  
14 time, we take that less than five percent of  
15 housing discrimination was ever reported. The  
16 latest number's somewhere in the neighborhood of  
17 less than ten percent, one out of every ten  
18 persons who are facing -- or who is facing  
19 housing discrimination ever makes it to a  
20 reporting forum.

21 And so, we wanted to make sure that we  
22 were covering a lot of the outreach and activity  
23 that we intended, in addition to a lot of the

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1 investigation, with some testing. Testing is  
2 done in pockets. We have some small agencies  
3 that do it in cities and ZIP Codes, but nowhere  
4 in the country had it been done statewide. So,  
5 it's been about an 18-month process to get the  
6 program up and running, but last year we finished  
7 it, and we unveiled the results at this year's  
8 Fair Housing Conference.

9 And not only did it go over well, it looks  
10 like we've set a precedent for states across the  
11 country, so we're extremely excited about that.  
12 So, kudos to you guys as a representative of the  
13 Commission, as well as the staff, for putting  
14 forth that effort to make sure that we pulled

15 that off. So, we were extremely excited. A lot  
16 of pats on the back from HUD and a lot of our  
17 partners across the state.

18 CHAIRPERSON BLACKBURN: I have a  
19 suggestion.

20 MR. SMITH: Yes.

21 CHAIRPERSON BLACKBURN: I know you've  
22 got a lot on your plate, but we represent all  
23 parts of the state.

♀

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1 MR. SMITH: Yes.

2 CHAIRPERSON BLACKBURN: I think  
3 there's benefit in having the Commissioners  
4 recognized in their communities --

5 MR. SMITH: Yes.

6 CHAIRPERSON BLACKBURN: -- for being  
7 associated with the Commission in ways that you  
8 might be able to involve any or all of us: In  
9 radio announcements, in appearances, in the  
10 meetings, in any way that the Commission is  
11 publicized --

12 MR. SMITH: Right.

13 CHAIRPERSON BLACKBURN: -- I would  
14 suggest that you partner with or provide those  
15 opportunities to the Commissioners themselves, so  
16 that the public knows who they are and the  
17 capacity in which they're serving.

18 MR. SMITH: Great suggestion, and so  
19 that's actually part of my notes here. So,

20 moving forward, as you guys see the list of  
21 activities that we have going on -- and it's a  
22 very diverse amount of activities and things that  
23 we are engaged in -- one, take notice, and even

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1 if it's -- because some of things in it, the  
2 agency isn't necessarily doing anything, just  
3 present, which is always a good thing. And in  
4 those instances, if you have the opportunity and  
5 we're in your neighborhood or in your back yards,  
6 we certainly want to have you guys involved in  
7 those types of activities.

8 But moving forward, Madam Chair -- and I  
9 think that's a fabulous suggestion -- as we build  
10 our programming of things that the agency is  
11 actually initiating in and of itself, we would  
12 love to have you guys as Commissioners engaged in  
13 that activity, whether it's sitting on a panel or  
14 MC'ing one of the programs or just being there  
15 physically and being acknowledged, I think that's  
16 a fabulous idea, and we'll make sure that the  
17 outreach staff touches base with you guys as  
18 Commissioners on a consistent basis.

19 CHAIRPERSON BLACKBURN: I think you  
20 could start with our media persons placing  
21 notification of --

22 MR. SMITH: Thank you.

23 CHAIRPERSON BLACKBURN: -- any

1 employments and like in the IBJ --

2 MR. SMITH: Uh-huh.

3 CHAIRPERSON BLACKBURN: -- and Nuvo  
4 and wherever else you can find an opportunity to  
5 announce.

6 MR. SMITH: Great point. So, press  
7 releases are being written as we speak. They  
8 should be done, I approved those today, and we'll  
9 be going out and making mention of new  
10 appointments. We wanted to -- I know there was  
11 some behind-the-scenes chaos with the  
12 appointments, so we wanted to make sure we got  
13 two in for this Commission meeting and everything  
14 was solid.

15 So, we will be sending out press releases  
16 that will discuss the new appointments, as well  
17 as some of the other things that will be -- that  
18 the agency has going on. That was the other part  
19 of making sure that we have photos of all of you  
20 guys as Commissioners, so that that, too, could  
21 be included as we send those press releases out.  
22 A very good suggestion, Madam Chair.

23 COMM. MCKEOWN: And perhaps this

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1 isn't an appropriate time, but I will say that  
2 the Commission did invite me to speak at a CLE  
3 next Friday on Civil Rights in Education, and I  
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4 will be joining some of the folks in private  
5 practice next Friday in Terre Haute. I'm really  
6 looking forward to that, and I thank you all for  
7 the opportunity.

8 MR. SMITH: Yes.

9 CHAIRPERSON BLACKBURN: Great.

10 MR. SMITH: And I guess that's a  
11 really good segue and an opportunity just to say  
12 thank you to those Commissioners who have been  
13 engaged and involved and give your additional  
14 time to some of the activities that the agency  
15 has going on, so --

16 COMM. RAMOS: Question.

17 CHAIRPERSON BLACKBURN: Yes.

18 COMM. RAMOS: I know that from a  
19 previous meeting with Judge Allen, she kind of  
20 listed that all of the other Commissions, the  
21 Native Americans --

22 MR. SMITH: Yes.

23 COMM. RAMOS: -- the Hispanic have

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1 all now been filled, from what I understand.

2 MR. SMITH: You mean sat as in terms  
3 of being active, or --

4 COMM. RAMOS: No, as far as having an  
5 appointed --

6 MR. SMITH: Director?

7 COMM. RAMOS: -- Executive Director.

8 MR. SMITH: Yes. So, they all are --

9 I call that -- so when you are able to speak, in  
10 saying that's filled, which means that they are  
11 now active. The last remaining one was the  
12 Native American Commission, and so the Director,  
13 Kerry Steiner, has been placed, if you will, and  
14 hired, and so that Commission is now active, and  
15 they will be engaged. And she's got a really  
16 aggressive agenda, if you will, in terms of  
17 things that they'll have going on, so we're  
18 excited to see that Commission move forward as  
19 well.

20 COMM. RAMOS: Is it -- I mean  
21 different Commissioners have a different  
22 perspective, and that's fine, but it would be  
23 great if it's within our purview --

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1 MR. SMITH: Uh-huh.

2 COMM. RAMOS: -- to get an update on  
3 the good, the bad and the indifferent, if you  
4 will, on each of their Commissions, because we  
5 have -- it's been a while.

6 MR. SMITH: Yeah.

7 COMM. RAMOS: And I know Danny did  
8 that from the Latino perspective --

9 MR. SMITH: Uh-huh.

10 COMM. RAMOS: -- and it might be good  
11 just to get an update on each of these, because I  
12 know my colleagues here have not had that  
13 opportunity. It is interesting to hear about

14 that side of it.

15 MR. SMITH: So, another thing that  
16 you have in your packets, obviously -- and as you  
17 look at the list of events, the list of events  
18 includes all of the Commission's activities, and  
19 so, you'll see a lot of that there.

20 Just a quick synopsis, to go down all of  
21 the Commissions, the good, bad and ugly. There  
22 hasn't been any ugly, praise God; right? So, all  
23 of the Commissions are moving forward actively,

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1 if you will. I think obviously a lot of the  
2 hoopla over the past month or so with the RFRA  
3 deal, I think, has indirectly impacted not just  
4 ICRC, but everyone, if nothing else, having to  
5 explain each of our Commissions' involvement, or  
6 lack thereof, in that process.

7 And so, of course, we've had some  
8 consistent conversation with the Directors of  
9 each of the Commissions to make sure that they  
10 were aware of what was going on, and then the  
11 jurisdictional limitations that existed there,  
12 and so -- you know, but I wouldn't consider that  
13 bad or ugly, just a matter of fact, right, in  
14 making sure that we as an agency, and all of our  
15 subsidiaries being the Cultural Commissions, are  
16 prepared to have those conversations, so that was  
17 good.

18 The other good has been that, I think, all  
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19 of the Commissioners, again, have been extremely  
20 active in touching base with their respective  
21 communities. We talked about the Black  
22 Barbershop Initiative. One thing I failed to  
23 mention, though, was, for example, the Womens

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1 Commission had a series of documentaries, if you  
2 will, or "Her Stories," as Kristen, who is the  
3 Director, called them, and so, throughout the  
4 month of March, she wrote "The Woman from  
5 Indiana" and her impact on the state of women  
6 history. So, that went over well. All of that  
7 is posted on the Womens Commission's Web site,  
8 and I encourage all of you to take advantage and  
9 go to that as well.

10 ICHLA is extremely active preparing for  
11 the Latino Expo as well as some of the  
12 collaborations we have with folks. If you look  
13 through there, we have, since February, been  
14 dealing with especially a lot of media things,  
15 but with the Latino -- up north, too, we have Que  
16 Viva, who is another partner that we work  
17 through, and they do and provide some vignettes,  
18 if you will, PSA's, for the Hispanic community up  
19 north, specifically in the Lake County corridor  
20 of the state, and Que Viva has been a consistent  
21 partner. . These past 60 days have been extremely  
22 active in that part of the state.

23 And then the Native American Commission,  
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1 like I said, has been just kind of gearing up and  
2 setting the agenda, preparing their particular  
3 plan, and Kerry has a very aggressive outreach  
4 and education agenda. So, there are contentious  
5 moments for them. Obviously, by statute, they  
6 cannot discuss gaming, you know, but she can't  
7 avoid the conversation coming up, and so, you  
8 know, of course, as the Director, she has to  
9 prepare, like all of us, to answer those types of  
10 questions, so that's one of those preparation  
11 types of deals.

12 The other we call a Cultural Commission,  
13 it doesn't necessarily have a Director, but the  
14 MLK Commission, which is responsible not only for  
15 the MLK celebration that we have at the turn of  
16 the year, but responsible for the Holocaust,  
17 which I mentioned before, and they handle that  
18 very, very well.

19 And of course, one of the ultimate  
20 objectives for both the MLK event as well as the  
21 Holocaust are the young people, and so we're  
22 excited to say that I think if you combine both,  
23 we had a little over 500 kinds visiting the State

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1 Capitol Building to take part in both of those

2 programs, so we are extremely excited about that  
3 as an opportunity as well.

4 Another good that I would highlight is it  
5 has been the opportunity for all of the Cultural  
6 Commissions to collaborate; right? Although some  
7 of the respective objectives are specific to the  
8 culture, there are some things that overlap. For  
9 example, available education is a common place  
10 for everyone; health care is a common concern for  
11 all. So, we've been able to collaborate on a lot  
12 of those issues that cross over, which has been  
13 good for budgets as well as resources, so we're  
14 excited about that. I would check that off in  
15 the good category.

16 And that's the nutshell. And so, we're  
17 excited by activity of all of the Commissions as  
18 far as the agencies that are embedded within the  
19 ICRC, and we're moving along fairly well.

20 COMM. RAMOS: Thank you.

21 MR. SMITH: Yes, sir.

22 CHAIRPERSON BLACKBURN: Excellent.

23 MR. SMITH: Any other thoughts or

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1 questions or feedback?

2 (No response.)

3 MR. SMITH: Hearing none --

4 CHAIRPERSON BLACKBURN: Exciting  
5 work. Thank you very much.

6 MR. SMITH: Yes, ma'am. Thank you

7 guys.

8 CHAIRPERSON BLACKBURN: We will move  
9 now to E.2. on your agenda, Report by  
10 Commissioners on the Complaint Appeals.

11 Comm. Young?

12 COMM. YOUNG: Thank you, Madam Chair.  
13 In the matter of Randy Dice versus OrscheIn, I  
14 recommend --

15 MS. HAYNES: Hold it. One moment,  
16 since I normally do my summation at this point.  
17 So, I will start with that, and I'm actually -- I  
18 recognize that the retaliation claim is listed  
19 before the disability claim, but I'm going to  
20 discuss the disability claim first, because it  
21 ties into that retaliation claim.

22 So, in the matter of Randy Dice versus  
23 OrscheIn, that is a case alleging discrimination

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1 on the basis of disability in violation of the  
2 Indiana Civil Rights Law in Title I of the  
3 Americans with Disability Act, and the issue  
4 presented before the Commission is whether the  
5 Complainant was subject to different terms or  
6 conditions of employment because of a perceived  
7 disability.

8 In this case, the Complainant must show  
9 that he had or was regarded as having an  
10 impairment that could be perceived as limiting a  
11 major life activity; he was subject to an adverse

12 employment action; he was meeting Respondent's  
13 legitimate business expectations; and similarly  
14 situated employees were treated more favorably  
15 under similar circumstances.

16 Simply stated, there is insufficient  
17 evidence to show that Complainant was perceived  
18 to have a disability as defined under the law.  
19 However, even assuming arguendo that Complainant  
20 did have such or was perceived to have such an  
21 impairment, no evidence has been presented or  
22 uncovered to show that the Complainant was  
23 subjected to an adverse employment action at this

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1 time.

2 So, in this case, Respondent offered  
3 Complainant a conditional offer of employment  
4 subject to a post-offer medical examination.  
5 Evidence showed that during the evaluation,  
6 Complainant disclosed that he had back surgery  
7 but was released to work without restrictions,  
8 and while Respondent asked for documentation  
9 substantiating that the Complainant was indeed  
10 released to work, the Complainant was unable to  
11 actually provide any such documentation.  
12 Nonetheless, the Respondent permitted Complainant  
13 to work without an issue.

14 while Complainant alleges that a member of  
15 Respondent's HR department threatened his  
16 employment, Respondent contests this rendition of

17 events. Moreover, the evidence shows that the  
18 complainant was indeed permitted to work without  
19 issue. As such, the finding was no probable  
20 cause to believe that the law was violated as  
21 alleged.

22 Commissioner?

23 COMM. YOUNG: Thank you.

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1 In the matter of Randy Dice versus  
2 Orscheln, I recommend we uphold the findings of  
3 no probable cause as it relates to the cause  
4 ending in 376.

5 CHAIRPERSON BLACKBURN: May I have a  
6 motion to accept the recommendation?

7 COMM. MCKEOWN: So moved.

8 CHAIRPERSON BLACKBURN: All in favor?

9 COMM. YOUNG: Aye.

10 COMM. MCKEOWN: Aye.

11 COMM. EDWARDS: Aye.

12 COMM. HULL: Aye.

13 COMM. RAMOS: Aye.

14 COMM. GAIDOO: Aye.

15 CHAIRPERSON BLACKBURN: Aye.

16 Anyone opposed?

17 (No response.)

18 CHAIRPERSON BLACKBURN: Thank you.

19 Comm. Ramos?

20 MS. HAYNES: Madam Chair, I

21 apologize. May I interject and discuss the

22 second OrscheIn case?

23 CHAIRPERSON BLACKBURN: Do we need --

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1 do you need to hear the case presented?

2 COMM. MCKEOWN: I don't.

3 CHAIRPERSON BLACKBURN: Then thank  
4 you very much.

5 Comm. Ramos?

6 COMM. MCKEOWN: But we do have to  
7 still have a motion on the matter, though; right?

8 CHAIRPERSON BLACKBURN: Right.

9 COMM. MCKEOWN: Oh, okay.

10 CHAIRPERSON BLACKBURN: I blew past  
11 it.

12 COMM. MCKEOWN: I thought he had a  
13 question.

14 CHAIRPERSON BLACKBURN: No.

15 COMM. YOUNG: Okay. I also recommend  
16 upholding the no probable cause for the case  
17 ending in 596.

18 COMM. RAMOS: I'll second that.

19 CHAIRPERSON BLACKBURN: Tell me which  
20 case it is.

21 COMM. YOUNG: It's the second matter  
22 for Randy Dice versus OrscheIn --

23 CHAIRPERSON BLACKBURN: Oh, okay.

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1                   COMM. YOUNG: -- ending in 596.  
2                   CHAIRPERSON BLACKBURN: Thank you.  
3                   All right. All -- may I have a motion to  
4 accept that recommendation? Okay.  
5                   COMM. MCKEOWN: So moved.  
6                   CHAIRPERSON BLACKBURN: And a second?  
7                   COMM. RAMOS: Second.  
8                   CHAIRPERSON BLACKBURN: And all in  
9 favor?  
10                  COMM. YOUNG: Aye.  
11                  COMM. MCKEOWN: Aye.  
12                  COMM. EDWARDS: Aye.  
13                  COMM. HULL: Aye.  
14                  COMM. RAMOS: Aye.  
15                  COMM. GAIDOO: Aye.  
16                  CHAIRPERSON BLACKBURN: Aye.  
17                  Anyone opposed?  
18                                (No response.)  
19                  CHAIRPERSON BLACKBURN: Thank you.  
20                  Now, Comm. Ramos.  
21                  COMM. RAMOS: Okay. Do you want to  
22 do a review of my case? I can certainly provide  
23 it, but --

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1                   MS. HAYNES: Yes, Commissioner.  
2                   So, in this matter, the Complainants  
3 allege discrimination on the basis of disability  
4 in violation of the Indiana Fair Housing Act, the  
5 Indiana Civil Rights Law, and Title VIII of the  
                                  Page 60

6 Civil Rights Act.

7           There are two issues pending before the  
8 Commission. The first is whether the Complainant  
9 was evicted because of her son's disability, and  
10 in order to prevail, the Complainant must show  
11 that she was a member of a protected class, she  
12 was willing and able to continue her tenancy with  
13 the Respondent in accordance with his reasonable  
14 terms and conditions; she was indeed evicted; and  
15 the Respondent treated similarly situated tenants  
16 without disabled children more favorably under  
17 similar circumstances.

18           While it is evident that the Complainant  
19 was a member of a protected class by virtue of  
20 her association with her disabled child, evidence  
21 shows that she was unwilling to continue her  
22 tenancy in a manner consistent with Respondent's  
23 reasonable terms and conditions. Moreover, no

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1 evidence has been provided or submitted to show  
2 that similarly situated tenants without disabled  
3 children were treated more favorably under  
4 similar circumstances.

5           In this case, Respondent evicted  
6 Complainant after she was delinquent on several  
7 months of rent, paid partial rent, accrued late  
8 fees, and wrote checks that were insufficient,  
9 owing in an amount of \$2,000. For that purpose,  
10 Respondent then evicted the Complainant, and on

11 that issue, no reasonable cause was found to  
12 determine that a discriminatory practice occurred  
13 as alleged.

14 With respect to the second issue before  
15 the Commission, that issue is whether the  
16 Complainant was denied a reasonable  
17 accommodation. Here, Complainant must show that  
18 she has a child who is a member of a protected  
19 class; the Respondent was aware that  
20 Complainant's son had a disability and expressed  
21 a need for a reasonable accommodation; that she  
22 indeed requested reasonable accommodation; and  
23 that Respondent unreasonably denied Complainant's

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1 request for a reasonable accommodation.

2 Now, at all times pertinent to the  
3 complaint, the parties resided in a town that  
4 banned chickens, and the Complainant admits that  
5 her friend provided her child with a chicken that  
6 was previously used in 4H competitions; however,  
7 later, that animal was shown to provide companion  
8 [sic] to the disabled child, so it has now been  
9 converted into a companion animal.

10 Now, although the ordinance provides that  
11 a variance can be obtained to maintain the  
12 chicken and Respondent provided the Complainant  
13 with the documentation of how to complete this  
14 request for a variance, Complainant failed to  
15 take the steps necessary to make the request.

16 And it's important to remember that the  
17 Complainant was not evicted for the request for  
18 reasonable accommodation, but rather for  
19 nonpayment of rent.

20 Now, here, no evidence has been provided  
21 or uncovered to show that the Respondent  
22 prevented the Complainant from providing the  
23 paperwork or that Respondent would not have faced

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1 substantial financial hardship based on  
2 Complainant's failure to complete the  
3 aforementioned paperwork, because a fine was  
4 assessed to having the banned chickens. For that  
5 reason, no reasonable cause was found to believe  
6 that a discriminatory practice occurred as  
7 alleged.

8 CHAIRPERSON BLACKBURN: Comm. Ramos.

9 COMM. RAMOS: Madam Chair, in the  
10 case of Sherri Frushon versus Todd Salle,  
11 Landlord, I recommend that we uphold the Deputy  
12 Director's finding of no reasonable cause.

13 CHAIRPERSON BLACKBURN: May I have a  
14 motion to accept that recommendation?

15 COMM. EDWARDS: So moved.

16 CHAIRPERSON BLACKBURN: Thank you.

17 And a second, please?

18 COMM. YOUNG: Second.

19 CHAIRPERSON BLACKBURN: All in favor?

20 COMM. YOUNG: Aye.

21                   COMM. MCKEOWN: Aye.  
22                   COMM. EDWARDS: Aye.  
23                   COMM. HULL: Aye.

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1                   COMM. RAMOS: Aye.  
2                   COMM. GAIDOO: Aye.  
3                   CHAIRPERSON BLACKBURN: Aye.  
4                   Anyone opposed?  
5                                 (No response.)  
6                   CHAIRPERSON BLACKBURN: Thank you.

7                   The case which I reviewed is Tamika  
8 Mitchell versus Butler Toyota, and I assume that  
9 Ms. Haynes is going to provide a review of the  
10 complaint.

11                   MS. HAYNES: Yes, Madam Chair.

12                   In this matter, the Complainant filed a  
13 complaint of discrimination on the basis of race  
14 and sex in violation of the Indiana Civil Rights  
15 Law and Title VII of the Civil Rights Act.

16                   In this matter, the issue pending is  
17 whether the Respondent terminated Complainant's  
18 employment because of her race and/or gender. In  
19 order to prevail, the Complainant must show that  
20 she a member of a protected class; she suffered  
21 an adverse employment action; she was meeting  
22 Respondent's legitimate performance expectations;  
23 and similarly situated male employees or

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1 employees of another race were treated more  
2 favorably under similar circumstances.

3           In this instance, Respondent hired  
4 Complainant as a saleswoman, and at all times  
5 relevant, Respondent maintained an employee  
6 handbook which prohibited salespersons from  
7 engaging in price negotiations with customers  
8 until the customer has taken a test drive and the  
9 salesperson has discussed features of the  
10 vehicle.

11           The Respondent also discussed in this  
12 handbook that it preferred salespeople to  
13 accompany the customers on test drives and to  
14 otherwise generally comply with Respondent's  
15 policies and procedures. Complainant was aware  
16 of these requirements as evidenced by her  
17 signature on acknowledgement of such.

18           During Complainant's tenure with  
19 Respondent, Respondent received several  
20 complaints about her performance. Specifically  
21 on several occasions, Respondent observed  
22 Complainant failing to offer customers a chance  
23 to test drive the vehicle without discussing the

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1 pertinent areas.

2           In fact, this individual simply began  
3 discussing pricing without informing the customer

4 of the vehicles features. The Respondent also  
5 observed Complainant requesting monthly payment  
6 information and other information that would be  
7 deemed inappropriate at the time it was being  
8 requested.

9           While Respondent actually performed  
10 coaching with the Complainant, Respondent then  
11 observed the Complainant violating other rules,  
12 policies and procedures associated with its  
13 practice. As a result, Respondent terminated  
14 Complainant's employment, and for these reasons,  
15 there was no probable cause to believe that a  
16 discriminatory practice occurred as alleged.

17           CHAIRPERSON BLACKBURN: Thank you.

18           Are there any questions about this  
19 before --

20           COMM. HULL: Well, I'm wondering  
21 about when the Complainant learned of the  
22 response from the Respondent, from the employer,  
23 that the Complainant's employment was deficient,

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1 did the Complainant rebut that or attempt to  
2 rebut that? Did she dispute it?

3           MS. HAYNES: Based on my  
4 recollection, no.

5           COMM. HULL: Based on --

6           MS. HAYNES: I don't recall.

7           COMM. HULL: I guess what I'm  
8 wondering about is this: And with this -- I've

9 only been here twice now, but if, in the course  
10 of developing a case, and as you developed this  
11 and developed the presentation, and you  
12 identify -- or I should say the staff, the  
13 investigators or whoever, identifies that there  
14 was just a conflict, you know, one witness says  
15 one thing, another witness -- he-says-she-says,  
16 or a group of people say, at that point, does the  
17 Commission just say there's no probable cause  
18 because there's a dispute of fact, or does the  
19 staff attempt to clarify who is or is not telling  
20 the truth?

21 MS. HAYNES: Right. In this matter,  
22 I do recall that there are -- there are interview  
23 statements between the parties, so essentially an

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1 interview was conducted with --

2 COMM. HULL: I'm sorry; I didn't  
3 quite get that.

4 MS. HAYNES: Yes, there are  
5 interviews with the parties.

6 COMM. HULL: Okay.

7 MS. HAYNES: So, both parties were  
8 interviewed and asked what occurred, and so,  
9 Respondent's rendition is, "These are the things  
10 that occurred," Complainant's rendition is,  
11 "These are the things that occurred."

12 In most cases, though I can't speak  
13 specifically to this one because I would have to

14 review the case file, typically there will be  
15 documents showing "This person has been written  
16 up for this reason, coaching has been performed  
17 on this date." I can't speak to whether that  
18 documentation is included in this matter because,  
19 again, I'd need to see the case file, but  
20 typically that is the practice of what would  
21 occur.

22           And legally, if both would meet the same  
23 standard, let's say Respondent is saying, "Yes, I

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1 believe a discriminatory practice occurred --"  
2 well, if the Respondent is saying, "Yes, this  
3 person is not meeting expectations for the  
4 following reasons," Complainant is saying, "Yes,  
5 I am meeting expectation," at that point, they --  
6 there is not sufficient evidence to show that a  
7 discriminatory practice occurred because there  
8 would be that question as to whether the  
9 individual was indeed meeting the legitimate  
10 business expectations. There would not be enough  
11 evidence to show that they were meeting it,  
12 because there would be substantial evidence  
13 showing that they would not.

14           COMM. HULL: So, could,  
15 theoretically -- I'm not saying is happened here,  
16 but could, theoretically, a Respondent defeat the  
17 charge, defeat a complaint, by simply, quote,  
18 creating, unquote, evidence to negate what the

19 Complainant is saying?

20 MS. HAYNES: Of course, but every bit  
21 of evidence that is submitted is vetted, so you  
22 can typically tell if evidence is being created.  
23 For instance, it would have the dates on it, it

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1 wouldn't follow the typical protocol of  
2 everything else that they had provided, or in a  
3 witness interview, you would be able to tell that  
4 the person has no idea what's going on.

5 So, during the investigation, every piece  
6 of information from each side is vetted for its  
7 accuracy and for credibility purposes, and if you  
8 had a Respondent who just never said anything at  
9 all, that would not be a case that would go no  
10 probable cause, because at that point, the only  
11 evidence you would be relying upon is the  
12 evidence by the Complainant, which would meet all  
13 of the elements.

14 COMM. HULL: Okay.

15 CHAIRPERSON BLACKBURN: Are there any  
16 other questions?

17 (No response.)

18 CHAIRPERSON BLACKBURN: Hearing none,  
19 I wish to recommend in the case of Tamika  
20 Mitchell versus Butler Toyota that we uphold the  
21 Deputy Director's finding of no cause. I ask for  
22 a motion to accept the recommendation.

23 COMM. GAIDOO: So moved.

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1 CHAIRPERSON BLACKBURN: And a second?

2 COMM. HULL: Second.

3 CHAIRPERSON BLACKBURN: All in favor?

4 COMM. YOUNG: Aye.

5 COMM. MCKEOWN: Aye.

6 COMM. EDWARDS: Aye.

7 COMM. HULL: Aye.

8 COMM. RAMOS: Aye.

9 COMM. GAIDOO: Aye.

10 CHAIRPERSON BLACKBURN: Aye.

11 Anyone opposed?

12 (No response.)

13 CHAIRPERSON BLACKBURN: And finally,

14 Comm. McKeown.

15 COMM. MCKEOWN: Sure. So, in the  
16 matter of Fan versus Summerlakes, I recommend --  
17 there was a second to the motion from last time,  
18 so thank you for that. I recommend that we --  
19 that the Commission look at the new evidence that  
20 has been presented, as well as consider whether  
21 additional investigation is necessary to apply a  
22 legal standard, which should include whether the  
23 rules are being applied in a consistent, neutral,

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1 nonselective manner, and if the answer to that is  
2 no, whether the distinctive discrepancies are a

3 foray for a permissible basis.

4 MS. HAYNES: Thank you,

5 Comm. McKeown.

6 CHAIRPERSON BLACKBURN: That was a  
7 recommendation to remand?

8 COMM. MCKEOWN: Yes, thank you.

9 Sorry.

10 CHAIRPERSON BLACKBURN: May I have a  
11 second?

12 COMM. HULL: I do. I will second it.

13 CHAIRPERSON BLACKBURN: All in favor?

14 COMM. YOUNG: Aye.

15 COMM. MCKEOWN: Aye.

16 COMM. EDWARDS: Aye.

17 COMM. HULL: Aye.

18 COMM. RAMOS: Aye.

19 COMM. GAIDOO: Aye.

20 CHAIRPERSON BLACKBURN: Aye.

21 Anyone opposed?

22 (No response.)

23 CHAIRPERSON BLACKBURN: Thank you.

‡

1 There are no Appeals this month at all.

2 COMM. RAMOS: That's a first.

3 CHAIRPERSON BLACKBURN: That's got to  
4 be a first.

5 JUDGE ALLEN: Correct.

6 CHAIRPERSON BLACKBURN: And no  
7 Motions before the Commission. So, I assume

8 that -- now Ms. Haynes, who will brief us on the  
9 findings of fact.

10 JUDGE ALLEN: Well, good afternoon,  
11 everyone.

12 CHAIRPERSON BLACKBURN: Good  
13 afternoon.

14 COMM. RAMOS: Good afternoon.

15 COMM. HULL: Good afternoon.

16 JUDGE ALLEN: And as the  
17 Administrative Law Judge who has proposed orders  
18 before you, I will make this very brief.

19 In the matter of Lisa M. Vernon versus  
20 Sugar Creek Group, LLC doing business as Sugar  
21 Creek Nursing and Rehabilitation, this was an  
22 employment case on the basis of race. The  
23 parties have settled, and it is my recommendation

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1 that we dismiss this matter, as the parties have  
2 decided their own fate.

3 COMM. EDWARDS: I move to accept.

4 COMM. MCKEOWN: Second.

5 CHAIRPERSON BLACKBURN: All in favor?

6 COMM. YOUNG: Aye.

7 COMM. MCKEOWN: Aye.

8 COMM. EDWARDS: Aye.

9 COMM. HULL: Aye.

10 COMM. RAMOS: Aye.

11 COMM. GAIDOO: Aye.

12 CHAIRPERSON BLACKBURN: Aye. No one

13 opposes.

14 Thank you.

15 JUDGE ALLEN: In the matter of Merlin  
16 Inman versus Fifth Third Bank, this was a public  
17 accommodations case, discrimination on the basis  
18 of race. The same situation, the parties have  
19 settled after a very long time. You notice this  
20 was a 2011 case. But in any event, it is my  
21 recommendation that we dismiss it, as the parties  
22 have settled.

23 CHAIRPERSON BLACKBURN: May I have a

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1 motion to accept the dismissal?

2 COMM. EDWARDS: So moved.

3 COMM. MCKEOWN: Second.

4 CHAIRPERSON BLACKBURN: All in favor?

5 COMM. YOUNG: Aye.

6 COMM. MCKEOWN: Aye.

7 COMM. EDWARDS: Aye.

8 COMM. HULL: Aye.

9 COMM. RAMOS: Aye.

10 COMM. GAIDOO: Aye.

11 CHAIRPERSON BLACKBURN: Aye.

12 Thank you very much.

13 JUDGE ALLEN: Thank you all.

14 CHAIRPERSON BLACKBURN: There being  
15 no Consent Agreements, is there any Public  
16 Comment?

17 (No response.)  
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18 CHAIRPERSON BLACKBURN: Hearing none,  
19 are there any Announcements?

20 (No response.)

21 CHAIRPERSON BLACKBURN: I wish to  
22 announce that I want you to put a date on your  
23 calendar of June 20th for a scholarship event

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1 which I am now hosting for the 11th year, and  
2 hoping I can talk to you off-line or send you  
3 each an invitation, but in case you get an  
4 opportunity, I wanted you to have the date on  
5 your calendars. It's June 20th.

6 COMM. RAMOS: If I could --

7 CHAIRPERSON BLACKBURN: You have --

8 COMM. RAMOS: If I could piggy-back  
9 on that.

10 CHAIRPERSON BLACKBURN: Yes.

11 COMM. RAMOS: Make a day of it. The  
12 day is the Latino Expo, and we can combine that  
13 with your scholarship.

14 CHAIRPERSON BLACKBURN: Excellent. I  
15 think that would be a great plan.

16 You have on your agendas the meeting dates  
17 and place.

18 Other announcements?

19 JUDGE ALLEN: Yes. Thank you.

20 I would also like to announce, as the  
21 President of the Inter-Alumni Council for the  
22 United Negro College Fund, we are hosting and

23 having a fund-raiser on Thursday, July 23rd.

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1 It's our third annual golf classic, and if you  
2 are a golfer, we would love to have you golf. It  
3 will be at the Golf Club of Indiana, located in  
4 Lebanon, Indiana. And if you're interested, I  
5 will give you information on how you can become a  
6 sponsor and/or part of a foursome.

7 Thank you.

8 CHAIRPERSON BLACKBURN: This meeting  
9 is adjourned.

10 - - -  
11 Thereupon, the proceedings of  
12 April 24, 2015 were concluded  
13 at 2:33 o'clock p.m.  
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I, Lindy L. Meyer, Jr., the undersigned  
Court Reporter and Notary Public residing in the  
City of Shelbyville, Shelby County, Indiana, do  
hereby certify that the foregoing is a true and  
correct transcript of the proceedings taken by me  
on Friday, April 24, 2015 in this matter and  
transcribed by me.

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Lindy L. Meyer, Jr.,  
Notary Public in and  
for the State of Indiana.

My Commission expires October 27, 2016.