

ORIGINAL

INDIANA CIVIL RIGHTS COMMISSION MEETING
FOR JULY, 2005

TRANSCRIPT OF PROCEEDINGS

Held at Indiana Government Center South
Conference Room A
402 West Washington Street
Indianapolis, Indiana 46204
Held on July 29, 2005
2:00 p.m.

ACCURATE REPORTING OF INDIANA
12922 Brighton Avenue
Carmel IN 46032
(317) 848-0088

THOSE ATTENDING:

David Carter

John Garcia

Barry Baynard

Chris Gibson

Judge Gregory Scott

Christine Cde Baca

Michael Johnson

Joan Essex

Jackie Cissell

Barbara Dobbins

Robert Lange

1 2:00 p.m.

2 July 29, 2005

3
4 MR. CARTER: The July meeting of the Indiana
5 Civil Rights Commission is in session and are
6 there any agenda requests?

7 JUDGE SCOTT: No, sir, no requests.

8 MR. CARTER: You have before you the Minutes
9 of the June 24th meeting. May I have a motion to
10 accept them, please?

11 MR. GARCIA: I move to accept.

12 MR. CARTER: And a second?

13 MR. BAYNARD: Second.

14 MR. CARTER: All in favor?

15 (Aye.)

16 MR. CARTER: Any opposed?

17 (No Response.)

18 MR. CARTER: Thank you.

19 There is no new business on the agenda, so
20 committee reports.

21 The Director, Judge Scott, please.

22 JUDGE SCOTT: I'm very pleased to report with
23 respect to personnel and, in part, Exhibit A is
24 now currently in the commission room and is
25 offered for evidence, but Michael Johnson has

1 joined the staff, and as we indicated earlier, and
2 I certainly mention to the Commission that we are
3 attempting to fill all the positions before the
4 summer ends, and we are now taking the first step,
5 and Michael will serve as an investigator in the
6 office and will be reporting to Henrietta
7 Poindexter and will be working in the housing
8 area. At this point we're pleased with what he's
9 done, and even though he's only been here a week
10 and a half, we're pleased with his efforts in
11 preparing and speaking with other members of the
12 staff and getting a sense of the work that is
13 required of investigators.

14 And as to the other positions that exist,
15 we are still interviewing individuals to fill
16 those positions, and we have interviews set next
17 week, at least with two other candidates, and
18 one we're very hopeful of. We have a young lady
19 who has applied and who is fluent in Spanish and
20 English and we're hoping that in the
21 interviewing process she will do well because
22 that is an asset that would be important in our
23 office to have that capability with respect to
24 individuals who come into the office or who call
25 in to file complaints. So we're feeling very

1 good about that.

2 And with respect to the Commission itself,
3 the Governor has in his office background
4 information regarding the individual he's going
5 to be considering soon for appointment to the
6 one vacancy on the Commission, and then once
7 that is accomplished -- we hope it will occur
8 before the end of the summer. The Governor is
9 hoping that the Commissioners who currently
10 serve in particular at the moment will be
11 willing to continue to serve until we are able
12 to appoint a successor or either he appoints a
13 commission, and I know that -- I don't know if,
14 Chris, Commissioner Gibson, if you've had an
15 opportunity to speak to the other members
16 regarding the communication that you had from
17 the Governor's office and whether you want to
18 mention that now or not.

19 MR. GIBSON: I have not, and I will just
20 leave it to the Governor's office to speak for
21 themselves on that matter.

22 JUDGE SCOTT: All right. And so in that
23 regard we have been making progress in filling the
24 positions and getting us up to full capacity as to
25 individuals to carry out the work of the

1 Commission.

2 MR. CARTER: Okay. Thank you.

3 You also have before you the Financial
4 Report of June and Ms. Essex is here if you have
5 any questions.

6 MS. ESSEX: I will say one thing, we did
7 finish out the year as planned. We did meet our
8 reversion. We are, have been notified that next
9 year's budget will have a 7 percent reversion
10 target imposed on it, which for our agency equates
11 out to approximately \$165,000. Last year the
12 reversion was 149, so we have to tighten our belts
13 another fifteen or so thousand dollars, but we did
14 get a little bit extra cushion in this next
15 budget, so we'll be able to pretty much be about
16 even from last year to this year, so we look to be
17 in good shape.

18 That's all I have unless anyone has any
19 questions about the end of the fiscal.

20 MR. CARTER: Very well. Thank you,
21 Ms. Essex.

22 There are no Consent Agreements this
23 month.

24 There is one Finding of Fact Conclusions
25 of Law and Order and that's Michael Marquis

1 versus Enterprise. May I have a motion to
2 accept that, please?

3 MR. GIBSON: I move.

4 MR. GARCIA: Second.

5 MR. CARTER: All in favor?

6 (Aye.)

7 MR. CARTER: Any opposed?

8 (No Response.)

9 MR. CARTER: Thank you. No other orders.

10 There are 27 Findings or Order of No
11 Probable Cause.

12 MR. GIBSON: Mr. Chairman, can I ask that we
13 not take Adkins-Libich versus Northern Indiana
14 Public Service Company in mass due to a
15 professional conflict that I have? I'll recuse
16 myself from the NIPSCO case.

17 MR. CARTER: Okay. Well, in the 26, with
18 that exception, may I have a motion to accept
19 those, please?

20 MR. BAYNARD: So moved.

21 MR. GARCIA: Second.

22 MR. CARTER: All in favor?

23 (Aye.)

24 MR. CARTER: Any opposed?

25 (No Response.)

1 MR. CARTER: Okay. I'm not sure what the
2 procedure is if we have a quorum and one person
3 withholds the vote. Does that need to go to the
4 next meeting?

5 JUDGE SCOTT: No, it does not go to the next
6 meeting. It's still a majority.

7 MR. CARTER: Still a majority. Okay.

8 JUDGE SCOTT: So long as there's a quorum
9 even though Commissioner Gibson is not
10 participating.

11 MR. CARTER: May I have a motion to accept
12 Adkins-Libich versus Northern Indiana Public
13 Service with the understanding that Commissioner
14 Gibson will recuse himself? Is there a motion to
15 accept?

16 MR. GARCIA: I will move.

17 MR. CARTER: Any second?

18 MR. BAYNARD: I would second.

19 MR. CARTER: All in favor?

20 (Aye.)

21 MR. CARTER: Any opposed? There's nobody
22 left.

23 (No Response.)

24 MR. CARTER: Okay. There. There was Failure
25 to Locate and/or Failure to Cooperate in four

1 cases. May I have a motion to accept those,
2 please?

3 MR. BAYNARD: So moved.

4 MR. CARTER: And a second?

5 MR. GIBSON: Second.

6 MR. CARTER: All in favor?

7 (Aye.)

8 MR. CARTER: Any opposed?

9 (No Response.)

10 MR. CARTER: Okay. Complaint Withdrawn is
11 three of six cases through mediation. May I have
12 a motion to accept those?

13 MR. GARCIA: Move.

14 MR. GIBSON: Second.

15 MR. CARTER: All in favor? Aye.

16 (Aye.)

17 MR. CARTER: Any opposed?

18 (No Response.)

19 MR. CARTER: And in seven cases we lacked
20 jurisdiction. May I have a motion to accept our
21 lack of jurisdiction in those cases?

22 MR. GARCIA: So moved.

23 MR. BAYNARD: So second.

24 MR. CARTER: All in favor?

25 (Aye.)

1 MR. CARTER: Any opposed?

2 (No Response.)

3 MR. CARTER: Thank you. It's hereby moved
4 that the following cases -- well, there weren't
5 any cases, so I won't go on reading that under
6 probable cause.

7 The reports from Commissioners on
8 Complainants Appeals.

9 Commissioner Baynard, have you any?

10 MR. BAYNARD: Yes, I have two cases. In the
11 case of Lebron versus Wintersong Village of Knox
12 and Wynne versus Metropolitan School District of
13 Lawrence, I recommend to the Commission that we
14 sustain the director's order, no probable cause.

15 MR. CARTER: Okay. Thank you.

16 May I have a motion to accept that
17 recommendation?

18 MR. GIBSON: So moved.

19 MR. CARTER: Okay.

20 MR. GARCIA: Second.

21 MR. CARTER: All in favor?

22 (Aye.)

23 MR. CARTER: Any opposed?

24 (No Response.)

25 MR. CARTER: Do we have news from

1 Commissioner Blackburn?

2 MS. DOBBINS: No. Commissioner Blackburn did
3 not report on her cases.

4 MR. CARTER: Okay. Those three cases,
5 Barber, Slaughter, and Harris will be continued to
6 next month.

7 I had several cases. Harrell versus
8 Clarian Health Partners, Jeffers versus Indiana
9 Department of Corrections, and two cases -- I'm
10 sorry, it was Jeffers versus Indiana Department
11 of Corrections, Diagnosis Reception Center, two
12 cases of that, and Felder versus Indianapolis
13 Power and Light, and in all four of those,
14 three, yeah, four, four of those I recommend
15 that we sustain the director's order of no
16 probable cause finding.

17 May I have a motion to accept that
18 recommendation?

19 MR. GARCIA: So moved.

20 MR. BAYNARD: Second.

21 MR. CARTER: All in favor?

22 (Aye.)

23 MR. CARTER: Any opposed?

24 (No Response.)

25 MR. CARTER: Okay. Commissioner Garcia.

1 MR. GARCIA: In both cases, Payne versus
2 Southern Indiana Treatment Center and Elizabeth
3 Shippen versus James Youngjohn, I recommend that
4 we concur with the Commissioner, Executive
5 Director's finding of no probable cause.

6 MR. CARTER: Okay. May I have a motion to
7 accept that recommendation?

8 MR. GIBSON: So moved.

9 MR. BAYNARD: Second.

10 MR. CARTER: All in favor?

11 (Aye.)

12 MR. CARTER: Any opposed?

13 (No Response.)

14 MR. CARTER: And Commissioner Gibson, you
15 have no cases.

16 MR. GIBSON: I have no cases.

17 MR. CARTER: Okay. Assignment of Appeals to
18 Commissioners.

19 Mr. Baynard, if you would look at Weiler
20 versus S.E. Title, Inc.

21 I will look at Haskins versus Baynes &
22 Shirey, Powell versus Wishard Hospital. I think
23 those are two different cases.

24 Commissioner Garcia, Tyson versus Yorktown
25 Farm Community and Venessa Dolden. I'm sorry,

1 that's Yorktown Farm Community, Venessa Dolden,
2 Manager.

3 And, Commissioner Gibson, if you would
4 look at Waller versus Robert Osmon.

5 And, Commissioner Baynard, would you look
6 at Mrs. Blackburn's, Douglas versus Terre Haute
7 Nursing and Rehab, please?

8 MR. BAYNARD: Yes.

9 MR. CARTER: Thank you. And that brings us
10 to Administrative Update and back to the Director.

11 JUDGE SCOTT: Well, I want to thank the
12 Commission. We had a good meeting a little bit
13 more than a week ago and had the opportunity to
14 benefit from the Commissioners being able to meet
15 and review matters regarding education as well as
16 employment as well as issues regarding the
17 potential legislative agenda, and I thank the
18 Commissioners for their time and effort.

19 At this time I would also like to ask, it
20 seems strange to ask them to stand, but I would
21 ask, I would in particular like to ask Jackie
22 Cissell and Joan Essex, and Barbara Dobbins to
23 please stand, and I'm asking them to stand
24 because I really want to personally acknowledge
25 their efforts in supporting and making it

1 possible for us to have what ended up being a
2 very good meeting, their support in arranging
3 the hospital, the hospital -- glad we didn't
4 need a hospital -- arranging the hotel and the
5 facilities and the wonderful dinner that we had,
6 and the opportunity to enjoy the Walker Theater.
7 And then the following day the business, that
8 didn't lead to any resolutions, there were no
9 matters considered as a business before the
10 Commissioners, but it was an opportunity to hear
11 what we hope was helpful information, and I want
12 to thank them personally as the Director for
13 their work and effort.

14 MR. CARTER: I personally enjoyed the
15 flexible schedule on the second day, and I think
16 the hotel probably did, too.

17 MS. ESSEX: They did send us a thank you note
18 and said that they were very pleased to have us
19 and should we ever want to come back, they would
20 be glad to have us back again.

21 I haven't seen their bill yet though.

22 JUDGE SCOTT: And I will mention that at the
23 end of that meeting you gave some directions to
24 the staff and we are working to prepare matters
25 for presentation for the September meeting, and we

1 are very pleased in really providing the
2 information, and then from there it depends,
3 obviously, on what the Commission wants to do or
4 decides to do, but it will be an opportunity to
5 look at education, which is the one area that you
6 asked us to address first and provide information
7 regarding what kind of inquiry might be conducted
8 that would be full, fair, and inclusive for all
9 those constituencies within the Indiana community,
10 and so we are as a staff working to provide that
11 information to you.

12 MR. CARTER: Okay.

13 JUDGE SCOTT: The second matter is the
14 employment discrimination against disabled
15 persons. As you know, the regulation will sunset
16 under Indiana law unless the Commission takes
17 action to adopt the provisions again, and so we
18 have initiated the process or procedure, which is
19 an abbreviated procedure as opposed to the
20 long-term procedure, which takes much more time,
21 and the announcement has been published and it
22 will provide the opportunity for citizens to raise
23 questions as to any particular portion of the
24 existing regulations or rules, and would also
25 allow for the Commission to have the opportunity

1 to hear from citizens before deciding whether
2 those rules should be readopted, so that is in the
3 process of administratively taking the steps and
4 we have had the announcement made in the Register.

5 MR. CARTER: Is this the legislation that is
6 the equivalent essentially of Title One of the
7 ADA, Hoosiers With Disabilities Act?

8 JUDGE SCOTT: Yes.

9 MR. CARTER: So if it does get sunseted, then
10 we'd be in violation of federal law.

11 JUDGE SCOTT: That is right, but I hate to
12 say that the State has never hesitated to do that,
13 to be in violation of federal law. I shouldn't
14 say that. I was really joking.

15 And are our intention is not to be in
16 violation of federal law, but it is also to meet
17 the requirements of Indiana State Law to allow
18 citizens to have an opportunity to speak and be
19 heard if they have concerns or if they believe
20 the regulations aren't sufficiently responsive
21 to the needs of individuals that the regulations
22 are intended to protect.

23 MR. CARTER: Given that the unemployment rate
24 among people with disabilities is between 25 and
25 70 percent, it should be a matter of concern.

1 JUDGE SCOTT: I assure you that it is.

2 MR. CARTER: And the Deputy Director's
3 report.

4 MS. CDE BACA: You have in front of you the
5 monthly production report for June of 2005. It
6 indicates that currently we have a total 448 cases
7 pending, and it's broken down by different areas
8 as you see across in the first box. Currently or
9 during the month of June we had two probable cause
10 findings. The monthly total intake for the month
11 of June was 38 cases and then total disposition
12 was 66 cases. According to the data base
13 inventory, there are nine adjustments to that,
14 which indicates a total right now of 439 cases.
15 As I indicated earlier, we plan on doing a file
16 inventory, a direct file inventory to find out
17 about the nine adjustments to those cases.

18 With regard to the ADR Unit, you have the
19 sheet in front of you as well, but during the
20 month of June we had three cases that resulted
21 in successful settlements by the ADR Division.

22 Year-to-date, 40 complaints have been
23 settled through mediation, and the total
24 year-to-date momentary benefits to complainants
25 is \$222,574.

1 I also indicated earlier that we will be
2 revising the monthly production reports so that
3 it is a more user friendly report that we could
4 actually access the information much more easily
5 when we view the report during the meetings.

6 MR. CARTER: Okay. Thank you.

7 Any questions?

8 (No Response.)

9 MR. CARTER: Any announcements?

10 (No Response.)

11 MR. CARTER: Is there a motion to adjourn?

12 MR. GARCIA: I move to adjourn.

13 MR. CARTER: I don't think we need a second
14 for that. Thank you.

15
16 (Whereupon, the hearing was concluded at 2:22
17 p.m.)

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1 STATE OF INDIANA)
) SS:
2 COUNTY OF MARION)

3 C E R T I F I C A T E:

4 I, MARSHA A. TRAPHAGAN, the undersigned Court
5 Reporter and Notary Public residing and
6 maintaining offices in the City of Indianapolis,
7 Indiana, do hereby certify:

8 That at the time and place described above in this
9 transcript, I reported to the best of my ability
10 in machine shorthand all of the words spoken by
11 all parties in attendance during the course of
12 the subject proceedings, including objections,
13 if any, made by all counsel present;

14 That I later reduced my shorthand notes into the
15 foregoing typewritten transcript form, which
16 typewritten transcript is a true record of the
17 testimony and/or statements given by those
18 individuals indicated herein;

19 That I am not a relative or employee or attorney or
20 counsel of any of the parties, nor am I a
21 relative or an employee of such attorney or
22 counsel, and that I am not financially
23 interested in this action.

24 IN WITNESS WHEREOF I have affixed my Notarial Seal
25 and subscribed my signature below on this 8th
day of August, 2005.

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Marsha A. Traphagan (SEAL)
Marsha A. Traphagan, Notary Public
County of residence: Marion
My commission expires November 17, 2007