



THE ARKANSAS FAIR HOUSING COMMISSION
CAROL JOHNSON, DIRECTOR

**2009 ANNUAL REPORT
TO THE ARKANSAS LEGISLATURE
ACT 1785 OF 2001**

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MISSION STATEMENT

The mission of the Arkansas Fair Housing Commission is to receive, investigate, conciliate and/or resolve complaints alleging violations of the Arkansas Fair Housing Act which prohibits discrimination on the basis of race, color, national origin, religion, sex, familial status (including children under the age of 18 living with parents or legal custodians, pregnant women and people securing custody of children under the age of 18) and handicap (disability); to cooperate with and provide technical and other assistance to federal, state, local and other public or private entities that are formulating or operating programs to prevent or eliminate discriminatory housing practices; and to establish an education and outreach program to prevent discriminatory housing practices.

THE ARKANSAS FAIR HOUSING ACT

Act 1785 of 2001, codified at Ark. Code Ann. §16-123-201 et seq., is the enabling legislation creating the Arkansas Fair Housing Act and the Arkansas Fair Housing Commission.

This legislation allowed Arkansas to become one of 38 states to enact fair housing laws substantially equivalent to the federal Fair Housing Act.

With this legislation, the Arkansas General Assembly declared that, “[t]he opportunity to obtain housing and other real estate without discrimination because of religion, race, color, national origin, sex, disability, or familial status...is recognized and declared to be a civil right.” Ark. Code Ann. § 16-123-203.

In seeking to protect the public’s access to fair housing, the Arkansas General Assembly further recognized that “the right to seek housing underlies the general public’s ability to secure health, safety, and welfare.” Ark. Code Ann. § 16-123-301.

The legislature provided that the Arkansas Fair Housing Act “shall become effective after the statutes and regulations required by this subchapter are adopted as substantially equivalent to federal fair housing laws, as recognized by the appropriate federal agency designated to enforce the provisions of federal fair housing laws.” Ark. Code Ann. § 16-123-203.

In July of 2003, Arkansas passed a fair housing law which the U.S. Department of Housing and Urban Development (HUD) recognized as being substantially equivalent to the federal Fair Housing Act (also known as Title VIII) and Act 1785 of 2001 became effective in Arkansas.

THE HISTORY OF THE COMMISSION

In January of 2001, Arkansas began to amend its existing fair housing law for the purpose of obtaining substantial equivalency. Over the following two years, the U.S. Department of Housing and Urban Development (HUD) provided technical assistance and legal analysis to assist Arkansas in developing its fair housing law. During this time, Arkansas created the Arkansas Fair Housing Commission – appointing 13 commissioners and hiring an Executive Director and other staff to investigate complaints filed under its new fair housing law. In July of 2003, Arkansas enacted an amended fair housing law that is substantially equivalent to the federal Fair Housing Act.

With the passage of Act 1785 of 2001, HUD recognized the Arkansas Fair Housing Act as being “substantially equivalent” to the federal Fair Housing Act and allowed Arkansas to join other States already participating in HUD’s Fair Housing Assistance Program (FHAP).^a

In a ceremony held on August 20, 2003, HUD Assistant Secretary Carolyn Peoples joined Arkansas Governor Mike Huckabee and HUD FHEO Regional Director Garry Sweeney in celebrating the addition of the State of Arkansas to the Fair Housing Assistance Program.

^a FHAP is a HUD-funded program that provides reimbursement funds to states or localities that investigate fair housing complaints under state or local laws which provide rights and remedies substantially equivalent to those provided under the federal Fair Housing Act. In order to participate in FHAP, a state or locality must enact a law that provides rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act.

Approximately 50 people attended the ceremony held at the State Capitol in Little Rock, Arkansas, including Little Rock Mayor Jim Dailey, members of the Arkansas Fair Housing Commission, representatives from the Arkansas Realtors Association, the Little Rock Racial and Cultural Diversity Commission, the National Association for the Advancement of Colored People and the HUD Little Rock field office.

The Arkansas Fair Housing Commission held its first formal meeting at the State Capitol on September 16, 2003, and opened its first permanent office on June 1, 2003, at 101 E. Capitol Avenue, Suite 114, Little Rock, Arkansas. The Commission meets quarterly on the third Thursday of the month at 1:30 p.m. in Conference Room C of the Main Street Mall, located at Capitol & Main Streets, Little Rock, Arkansas.

**THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE
FAIR HOUSING ASSISTANCE PROGRAM (FHAP)**

The right to equal opportunity in housing is ensured not only by the federal Fair Housing Act, but also by state and local laws. The U.S. Department of Housing and Urban Development provides Fair Housing Assistance Program grants annually on a noncompetitive basis to substantially equivalent state and local governmental fair housing enforcement agencies. At the beginning of an agency's participation in FHAP, HUD provides a flat amount of funds for capacity building. Following the period of capacity building, HUD will provide the agency with contributions funds for complaint processing, administrative costs, special enforcement efforts, training and other projects designed to enhance the agency's administration and enforcement of its fair housing law. FHAP currently provides funds to 98 state and local governments to help administer laws that are substantially equivalent to the federal Fair Housing Act.

The Arkansas Fair Housing Act was certified by HUD as substantially equivalent to the federal Fair Housing Act and enabled Arkansas to become a FHAP agency in 2003.

SUBSTANTIAL EQUIVALENCY

Substantial equivalency certification occurs when a state or local governmental agency applies for certification and the U.S. Department of Housing and Urban Development determines that the agency enforces a law that

provides substantive rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act.

HUD has developed a two-phase procedure for the determination of substantial equivalency certification. In the first phase, the HUD Assistant Secretary for Fair Housing and Equal Opportunity determines whether, "on its face," the state or local law provides rights, procedures, remedies and judicial review provisions that are substantially equivalent to the federal Fair Housing Act. An affirmative conclusion that the state or local law is substantially equivalent on its face will result in HUD offering the agency interim certification for a term of three years. An agency must obtain interim certification prior to obtaining certification.

In the second phase, HUD's Assistant Secretary for Fair Housing and Equal Opportunity determines whether, "in operation," the state or local law provides rights, procedures, remedies and the availability of judicial review that are substantially equivalent to the federal Fair Housing Act.

An affirmative conclusion that the state or local law is substantially equivalent both on its face and in operation will result in HUD offering the agency certification for a term of five years.

During the five years of certification, HUD will assess the agency's ability to maintain certification and will renew certification for an additional five years if

it determines that the agency enforces a fair housing law that is facially and operationally substantially equivalent to the federal Fair Housing Act.

BENEFITS OF SUBSTANTIAL EQUIVALENCY CERTIFICATION

Substantial equivalency certification presents numerous advantages to State and local governments, parties to housing discrimination complaints and the general public. Such advantages include funding availability, local complaint processing under a substantially equivalent law and opportunities for partnerships that affirmatively further fair housing as addressed below:

FUNDING AVAILABILITY

Substantially equivalent agencies are eligible to participate in the Fair Housing Assistance Program. FHAP permits HUD to use the services of substantially equivalent state and local governmental agencies in the enforcement of fair housing laws and to reimburse these agencies for services that assist HUD in carrying out the spirit and letter of the federal Fair Housing Act. A variety of FHAP funds are available to agencies with substantial equivalency interim certification and certification.

COMPLAINT PROCESSING UNDER A SUBSTANTIALLY EQUIVALENT LAW

Substantial equivalency certification results in housing discrimination cases having the benefit of state or local complaint processing. At the same time, the process assures that the substantive and procedural strength of the federal Fair Housing Act will not be compromised.

Generally, when HUD receives a complaint and the complaint alleges violations of a state or local fair housing law administered by an interim certified or certified agency, HUD will refer the complaint to the agency for investigation, conciliation and enforcement activities. Fair housing professionals being based in the locality (or the same state, district, possession or territory) where the alleged discrimination occurred benefits all parties to a housing discrimination complaint. These individuals often have a greater familiarity with local housing stock and trends. In addition, the fair housing professional's closer proximity to the site of the alleged discrimination may lead to greater efficiency in case processing.

While certification results in a shift in fair housing enforcement power from the federal government to the state or locality, the substantive and procedural strength of the federal Fair Housing Act is not compromised. Prior to certification, an agency must demonstrate to HUD that it enforces a law that is substantially equivalent to the federal Fair Housing Act.

PARTNERSHIPS THAT AFFIRMATIVELY FURTHER FAIR HOUSING

Certified agencies are eligible for funding that can be used to partner with private fair housing organizations. By drawing on the strengths of private and public fair housing organizations, such partnerships can result in effective efforts to combat housing discrimination.

ORGANIZATIONAL STRUCTURE

The Arkansas Fair Housing Commission consists of thirteen (13) Commissioners – seven (7) of which are appointed by the Governor; three (3) by the Speaker of the House of Representatives; and three (3) by the Senate Pro Tempore. Six (6) of the appointees are industry representatives and seven (7) are consumer representatives.

Commissioners serve four-year terms, except that the initial appointees shall serve staggered terms with six (6) serving a two-year term and seven (7) serving a four-year term. No Commissioner may serve more than two (2) four-year terms; however, Commissioners serve until they are reappointed. Each congressional district must be represented by a Commissioner.

THE COMMISSIONERS

Commissioner Expiration Terms	Appointing Official	City/County/ Congressional District
Annie M. Abrams (2002 – 2006)	Senate Pro Tempore	Little Rock/ Pulaski County/ District 2
Shauna Allen (2008 – 2012)	Governor	Hot Springs/ Garland County/ District 4
Walter Fenton (2008 – 2012) Second term	Governor	Rogers/ Benton County/ District 3
Rebecca Finney (2007 – 2011)	Governor	Little Rock/Pulaski/ District 2
Gerald Gaither (2008 – 2012)	Senate Pro Tempore	Batesville/ Independence County/ District 1
Burt Henderson (2008 – 2012)	Governor	Morillton/ Conway County/

		District 2
Betty A. McGee (2008 – 2012) Second term	Governor	El Dorado/ Union County/ District 4
Gary McHenry (2002 – 2006)	Speaker of the House	Fayetteville/ Washington County/ District 3
Vacant	Senate Pro Tempore	-----
Wilmar B. Moss (2002 – 2004)	Speaker of the House	Magnolia/ Columbia County/ District 4
Milton B. Smith (2006 – 2010) second term	Governor	Walnut Ridge/ Lawrence County/ District 1
Todd Wilcox (2008 – 2012)	Governor	Jonesboro/ Craighead County/ District 1
Paul E. Wilson (2006 – 2010) second term	Speaker of the House	Clarksville/ Johnson County/ District 4

The Commission consists of four committees: education, personnel, finance and legislative. Charges are detailed below:

Education Committee Charge

- The Education Committee is responsible for assisting the Director in providing fair housing education and outreach to Arkansans regarding the Arkansas Fair Housing Act.

Personnel Committee Charge

- The Personnel Committee is responsible for providing personnel policy recommendations to the Commission.

Finance Committee Charge

- The Finance Committee meets quarterly to review monthly finance reports presented by the Director and to offer input to the Director as necessary to work toward the budget for each legislative session.

Legislative Committee Charge

- The Legislative Committee's goal is to work with the Director and the legislature to facilitate the progression of the Arkansas Fair Housing Commission.

The Staff

The Commission currently is budgeted with ten personnel members: Director (1), Program Coordinator (1), Chief Investigator (1), Investigator (5), Grants Analyst (1), and an Administrative Assistant (1). Additionally, the Commission is assigned a representative from the Attorney General's Office to provide technical and legal assistance.

DIRECTOR – CAROL JOHNSON

Carol Johnson began as Director of the Arkansas Fair Housing Commission on October 10, 2005. Ms. Johnson holds a Bachelor of Science degree in Broadcast Journalism from Texas Christian University in Fort Worth, Texas, a Master of Arts degree in Journalism from the University of Arkansas at Little Rock, Arkansas, and a Juris Doctor from the William H. Bowen School of Law at the University of Arkansas at Little Rock, Arkansas.

Johnson has previously worked in civil rights law, particularly in the area of fair housing, and is a graduate of the 2000 HUD National Fair

Housing/Assistance/Initiatives Programs Policy Conference sponsored in part by the John Marshall Law School Fair Housing Legal Support Center.

Johnson additionally has worked in various areas of administrative, civil and criminal law, in such agencies as the Arkansas Attorney General's Office, the Arkansas Workers' Compensation Commission and the Arkansas Department of Health and Human Services. Johnson is a former Deputy Prosecuting Attorney for Garland County.

ASSIGNED ASSISTANT ATTORNEY GENERAL – CHRIS HART

Though not a staff member, Chris Hart, Assistant Attorney General, has been assigned to assist and provide legal counsel to the Arkansas Fair Housing Commission.

ENFORCEMENT ACTION

The Arkansas Fair Housing Commission investigates fair housing complaints via a cooperative agreement with HUD. This agreement recognizes that the Commission is a “substantially equivalent” agency, now certified, and grants funds to the Commission annually to accomplish its mission of enforcing the state’s fair housing law. As per the cooperative agreement between the Commission and HUD, HUD refers to the Commission all complaints which fall under the jurisdiction of the State of Arkansas.

The Commission “graduated” from the interim certification stage in 2008 and currently is investigating all allegations of Title VIII fair housing complaints occurring within the State of Arkansas.

Since the inception of the Commission, Title VIII fair housing complaints have been constant and rising. Cases that once were only prosecuted at the federal administrative and judicial levels, now are being processed and adjudicated at the state level.

The Arkansas Fair Housing Commission’s investigation report for 2009 is charted below:

2009 INVESTIGATION ACTIVITY REPORT

Activity	Calendar Year
Inquiries made to AFHC	208
Cases Assigned to AFHC	127
Total closed cases by type	128*
*****	****
Cases w/drawn w/ Resolution	37
Cases – No Cause Found	38
Cases – Cause Found	02
Cases – Conciliated	41
Cases – Administrative Closures	10

Note: *Closures are represented by calendar year and includes one proposed Cause case and one case conciliated after Cause was found. Closures for FY2009 will be greater.

In 2009, Commission case processing of fair housing complaints within the State has remained constant and consistent. Increases in Title VIII case processing largely is due to HUD's decreased case processing capacity and an overall influx of fair housing related complaints. As the housing market continues to experience problems, fair housing complaints are expected to increase to record numbers across the state and the nation. Conditions such as these clearly indicate a strong need for fair housing education and enforcement throughout the State's 75 counties. The Commission is working diligently to accomplish this mission.

COMPLAINT PROCESSING

Inquiries involving a possible fair housing violation may be made to the Commission or to HUD. As per the Cooperative Agreement between HUD and

the Commission, HUD refers most inquiries and/or complaints based in Arkansas and made initially to HUD to the Director of the Commission for processing. An *inquiry* is contact whereby the public seeks information regarding the Commission or its activities. Inquiries regarding conduct falling outside the Commission's jurisdiction are referred to the appropriate agency.

Once made, an inquiry may become a *claim* - an inquiry that involves allegations which, if true, would constitute a violation of fair housing laws. Intake is conducted to determine jurisdiction and timely filing (within one year of the date of the last alleged discriminatory act). In some instances, cases are referred to HUD subsequent to intake – such as those involving housing providers that receive federal funding. Additionally, some extreme cases may be referred to other governmental agencies. In one instance, an Arkansas case was referred to the U.S. Department of Justice after investigation revealed allegations of violence against a family with an interracial child.

When a claim is determined to have sufficient grounds to proceed, an investigation is conducted and an appropriate resolution is pursued. The Director of the Commission may attempt *conciliation* between the parties at any time during this process. A *conciliation agreement* is an enforceable agreement between the parties and is approved by the Director of the Commission as satisfying the public interest.

If the parties reach a mutually agreeable solution, a complaint may be *withdrawn with resolution* and the case is closed to further investigation. Conversely, a case may also be *withdrawn without resolution*. Prior to a case being *withdrawn without resolution*, all parties will have an opportunity to present any documents, statements, witnesses and other relevant evidence during the investigative process. Cases *withdrawn without resolution* may proceed to an administrative or judicial adjudication by election of the involved parties.

A Final Investigative Report is prepared after a full and complete investigation of complaints alleging fair housing violations. The Director of the Commission is charged with reviewing the report to determine any appropriate further course of action. The Director of the Commission will then issue a decision of either: (1) *No Cause*, indicating a conclusion that no reasonable cause exists to believe that a fair housing violation has occurred; or (2) *Cause Found*, indicating a conclusion that reasonable cause exists to believe that a fair housing violation has occurred. The Director of the Commission will issue a *Charge* once a decision of *Cause Found* is made. A *Charge* allows a complaint to be adjudicated by the Full Commission.

The Director of the Commission will notify all parties that a *Charge* has been issued and the parties may elect to have the case heard before the Full Commission or be transferred to a court of competent jurisdiction.

EDUCATION AND OUTREACH

The Commission has been active during 2008 providing educational and outreach assistance to Arkansans and state housing providers. The Commission has worked assiduously to efficiently use agency resources and has participated in several educational, outreach and training activities over the past year, such as:

JANUARY 2009

- Prepared and submitted the Arkansas Fair Housing Commission Annual Report to the Arkansas Legislature.
- Submitted the agency's IT Plan to the State Technology Council.
- Staff training.

FEBRUARY 2009

- Provided a fair housing presentation at the Arkansas Realtors Equal Opportunity Commission Meeting.
- Receive state technology training at annual meeting.

MARCH 2009

- Participated in a conference – Study on Racial Attitudes in Pulaski County.
- Provided six-hour course on fair housing sensitivity and management training.

APRIL 2009

- Participated in the Little Rock Housing Authority Fair Housing Program kick-off at Bowen Law School.

- Participated in the U.S. Department of Justice Arkansas Civil Rights Working Group at the U.S. Attorney's Office for the Eastern District of Arkansas.
- Participated in "Table Talk" at Bowen Law School.
- Attended the Consolidated Plan Public Advisory Committee meeting hosted by the Arkansas Development Finance Authority, the Arkansas Economic Development and the Arkansas Department of Health and Human Services.
- Provided a fair housing presentation for the Pine Bluff Housing Authority.
- Hosted the Commission's Annual Fair Housing Summit in Little Rock, AR.

MAY 2009

- Provided six-hour course on fair housing sensitivity and management training.
- Attended state-sponsored HR training.
- Attended Arkansas Legislative Council Meeting to present Annual Legislative Report.
- Attended a housing trust fund meeting.
- Participated in the Central Arkansas Bank Fair.

JUNE 2009

- Participated in the Fair Housing Assistance Program conference call with the U.S. Department of Housing and Urban Development.
- Participated in the Argenta Community Development Corporation's "Repair Affair".
- Provided fair housing workshop at the Affordable Housing Association of Arkansas in Springdale, AR.

- Staff attended the National Fair Housing Training Academy.
- Staff attended In-Take training from HUD Regional Office Staff, Fort Worth, Texas.

JULY 2009

- Participated in the U.S. Department of Justice Arkansas Civil Rights Working Group at the U.S. Attorney's Office for the Eastern District of Arkansas.
- Provided fair housing training for the Forrest City Board of Realtors.
- Provided fair housing training for United Property Management.

AUGUST 2009

- Participated in the annual HUD monitor review.
- Attended the National Fair Housing Training Academy Lending Discrimination training in Fort Worth, Texas.

SEPTEMBER 2009

- Staff attended state-sponsored fiscal management training.
- Received the "Spirit of 110 Council" award for service to the community at the Governor's Mansion.

OCTOBER 2009

- Attended state-sponsored annual benefits fair.
- Presented fair housing workshop at the local chapter of the National Association for Residential Property Management meeting in Maumelle.
- Presented fair housing information at the South End Civil Rights Summit.

NOVEMBER 2009

- Attended state-sponsored risk assessment training.

- Attended the Promise of Justice Conference in Little Rock, AR.
- Participated in the HUD Strategic Planning Session in Fort Worth, Texas.

DECEMBER 2009

- State attended the National Fair Housing Training Academy in Washington, D.C.

POLICY AND PROGRAM RECOMMENDATIONS

The Arkansas Fair Housing Commission was established to support the legislative dictate to enforce fair housing laws within the State. The passage of the Arkansas Fair Housing Act gained the State of Arkansas federal recognition as being a “substantially equivalent” agency, meaning that the state law provides substantially the same protections as the federal law. Accordingly, Arkansas became certified in 2008 to enforce fair housing laws within its borders with minimal federal intervention. As a result of legislative foresight, Arkansas is now processing fair housing complaints and prosecuting violations for the State’s 75 counties.

As part of the “substantially equivalent” process, the Commission was required to complete a three-year “capacity-building” phase during which time it partnered with HUD via a cooperative agreement to receive, investigate and conciliate fair housing complaints within Arkansas. During this mandatory three-year “capacity-building” period, the Commission investigated a portion of the State’s fair housing complaint caseload with HUD investigating the bulk of the fair housing complaints and providing technical assistance in support of our limited enforcement efforts. Now that the Commission has “graduated” to a “contributions agency” status, it has full responsibility for processing all fair housing violations within the State.

In order to meet its state and federal responsibilities, the Commission relies heavily on support of the legislative body that created it. As the purpose of Title VIII (fair housing) law is to protect the rights of citizens to be free to live wherever they can afford, the Commission will work to educate and promote a positive attitude of change where a need may exist.

Additionally, the Commission will work to expand its accessibility (through additional staff and fair housing training) across the state to assist those in need of fair housing enforcement and education.

In 2008, this Commission resolved 140 fair housing complaints – a more than 200 percent increase over 2007. The Commission additionally received 208 fair housing inquiries for alleged infractions occurring within the State's borders and the complaint numbers are continuing to rise.

As expected, the number of complaints the Commission processed for 2008 substantially increased once the Commission reached a "contribution" status and the Commission became responsible for 100% of case processing of all fair housing complaints occurring within the State's borders – covering nearly three million residents (2,779,154.00 according to the U.S. Census Bureau) within 75 counties.

In additional to the state's nearly three million "native" residents, the Commission saw an increase in housing complaints from those who sought safe haven within our borders after hurricanes Katrina and Rita. Though considerably smaller than other states, Arkansas admirably led hurricane relief efforts for those less fortunate. Second only to Texas, Arkansas welcomed thousands of evacuees to this state and continues to house many evacuees within our borders.

Just a few years after the hurricanes, the Commission remains active in assisting hurricane survivors who relocated to this state with fair housing issues. The Commission continues to assist evacuees in obtaining equitable housing within the State of Arkansas and to ensure that state housing providers are educated on state and federal fair housing laws. Additional resources and staff are critical in assisting the agency in meeting federal and state statutory enforcement and educational requirements.

The Commission strives always to fulfill its mission of fair housing enforcement and education of fair housing laws throughout the State of Arkansas. In the upcoming years, the Commission will work diligently to reach all corners of the state and hopes to increase its staff in order to adequately reach this goal.

The Commission currently is seeking additional funding through the use of HUD's Community Development Block Grant program administered by Arkansas Economic Development. The agency also is seeking funds from the Arkansas Development Finance Authority, an agency which also receives considerable HUD funding.

The Commission is becoming a powerful symbol of fair housing within the state. Its existence ensures a place for Arkansans to turn which is directly within their reach and not miles across the nation in other states.

The Commission strives to make Arkansas a national leader in fair housing efforts and to place Arkansas on the map for its enforcement of this very basic civil right.

CONCLUSION

The Arkansas Fair Housing Commission will continue to increase public awareness of fair housing; provide technical assistance to housing providers; provide technical and other assistance to federal, state, state, local and other public and private entities that are formulating or operating programs to prevent discriminatory housing practices; and to enforce fair housing laws within the State of Arkansas.