

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-134**

JAMES PATRICK STIPES

APPELLANT

**FINAL ORDER
ALTERING HEARING OFFICER'S
VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**TOURISM, ARTS AND HERITAGE CABINET
BOB STEWART, APPOINTING AUTHORITY**

APPELLEE

*** **

The Board at its regular November 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 26, 2015, having noted Appellee's exceptions, Appellant's response, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background paragraph number 19 and substitute the following:

19. **Pat Stipes** testified that he had worked with the Tourism Cabinet for more than twenty years beginning in December 1993 when he had been put in charge of developing a broadcast media program under Commissioner Stewart. He was hired to develop broadcast programming without any budget. His background was in broadcast media, television, and radio. He used his contacts to get non-paid promotion for the state of Kentucky. Within twenty-four months of his hire he was a regular on eight radio program stations once a week and four to five television shows a month across the state. He also did special events, such as the World Equestrian Games, Ryder Cup, United Way kickoff, etc. Over his years with the state, he had also worked off and on with the Kentucky Film office and helped provide publicity for other departments and agencies. He was over forty years old at the time the changes at issue were made.

- B. **Delete** Background paragraph number 22 and substitute the following:

22. Stipes had the authority to accept which events he would promote. He regularly e-mailed or texted radio and television shows adding to what they were talking about from Tourism when he was hearing them live on air. At times, he was a guest on the Joe B. and Denny show "when Tony Cruise hosted that show."

- C. **Delete** Background paragraph number 33 and substitute the following:

33. Appellant sent his statement in that he was reverting from the special detail to the Kentucky Film Office due to problems there and never made any mention that he was otherwise retiring. An incident occurred when a publicity firm known as Kentucky Kicks Ass was making an issue about trying to change Kentucky Tourism's motto. A USA Today reporter had called the Film Office. At the time he was the only one in the office as it was during Christmas time. He had been out the week before and did not know what was going on with that situation. During the time he had been off, a memo had been issued instructing employees not to speak to USA Today reporters until after the holidays. Appellant did not receive that memo because he was out of the office. He was asked whether Kentucky intended to incorporate the slogan, "Kentucky Kicks Ass." He made the comments that the state would never accept such a logo and a quote was put in the paper about him. He was attacked on Facebook, through the Herald-Leader, and otherwise on a personal basis. He asked the Commissioner to intervene on his behalf and he would not do so.

- D. **Delete** Background paragraph number 38 and substitute the following:

38. **Tiffany Yeast**, at the time that this change was made had been the Executive Director for Human Resources for the Tourism and Arts Cabinet, testified that during that time her duties were to oversee all aspects of human resources for the Cabinet. She explained that the purpose of the performance plan is to set forth expectations annually of what work to be performed and that it is set by the supervisor. Duties can be changed annually, even within the year, if there are needed changes. Yeast verified that Stipes had received an Ace Award and his work had included radio work. She was not personally familiar with how much video work he did. During the special detail that Appellant received to the Film Office in March 2014, there was no annual performance plan because this was a non-merit position. She did not know the reasons that he left this position, but merely did the paperwork to make that transfer out of the role occur. Ms. Yeast testified that Appellant had transferred from the Kentucky Department of Parks to the Kentucky Department of Travel and Tourism on June 16, 2004, as a Travel Marketing Specialist Supervisor and was promoted to an Administrative Branch Manager on October 16, 2008. Appellant also served a special detail as Division Director to the Kentucky Film Office from April 1, 2012, to January 16, 2013, and then reverted back to the Administrative Branch Manager position.

- E. **Delete** Background paragraph number 55 and substitute the following:

55. **Commissioner Michael Mangeot** testified that he has been in that position (Commissioner of Department of Travel and Tourism) since July 1, 2012. Prior to that, he had served seven years as President for the Kentucky Association for Economic Development. He was Deputy Commissioner from 2002 to 2004. His strategic plan was based on the fact that the industry had made a move toward social media. Mangeot testified that it rapidly increased and a lot of money had been invested in that. Aristotle, the company that they work with, pushes for video production and shows that there had been over 1,000 percent growth in that area.

- F. **Delete** the Findings of Fact and substitute the following:

1. The Board finds that Appellant was over forty years old at the time the change of his work duties was made. The Board finds that Scottie Ellis was less than forty years old. She began performing some of the duties that Appellant had previously performed. The Board finds Appellant's duties were changed by Commissioner Mangeot to move Appellant away from broadcast duties to internet related duties, such as production of YouTube films.

2. The Board finds that Scottie Ellis assumed some of Appellant's broadcast duties.

- G. **Delete** Pertinent Law paragraph 3 and substitute the following:

3. To prove age discrimination, the aggrieved party must either show direct evidence of a discriminatory animus and, absent that, must satisfy the burden shifting test of *McDonnell Douglas Corp. vs. Green*, 411 U.S. 792 (1973). The Kentucky Supreme Court in *Williams vs. Wal-Mart* (WL3131460, Ky.) reflects that the purpose of the *McDonnell Douglas* prima facie case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by. This burden-shifting approach allows the victim of discrimination to establish a case through inferential and circumstantial proof. The *McDonnell Douglas* framework requires an aggrieved party to show 1) that he was a member of a protected class, 2) that he suffered an adverse employment action, and 3) that other substantially younger received those benefits of employment. The employer must articulate some legitimate non-discriminatory reason for its actions and then the employee must then be afforded a fair opportunity to demonstrate that [employers] stated a reason for its actions was pretext.

H. **Delete** the Conclusions of Law and substitute the following:

1. The Board concludes that Appellant did make a *prima facie* case of age discrimination when in fact showing that Appellant was an otherwise qualified individual over the age of forty, that a potentially adverse employment action was taken against him, that is, he had duties taken from him and assigned to Scottie Ellis who was substantially younger than Appellant.

2. The Board concludes, however, that the Appellee, Kentucky Tourism, Arts and Heritage Cabinet, did in fact offer legitimate non-discriminatory reasons why it took the action it did. The Board concludes the testimony of Commissioner Mangeot and Ms. Kathy Yount are persuasive in that social media was rapidly evolving and they wished to take advantage of what Ms. Yount described as the “voice of tourism, Pat Stipes.”

3. The Board concludes that Appellant failed to prove that the reasons offered were pre-text. The Board so concludes knowing full well that even though some may disagree with the decision of Commissioner Mangeot, and question the soundness of the business decision, his decision in no way showed any discriminatory animus on the part of the Appellee. Merely questioning the soundness of the business decision would not rise to the level of pre-text.

4. The Board further concludes that Appellant did not meet the burden to demonstrate he was penalized per the definition contained at KRS 18A.005(24). The Board concludes that no longer performing broadcast duties and being required to perform duties including social media and production of YouTube videos does not show some action that would diminish the level, discretion or responsibility of the employee, but rather was merely the assignment of different duties within the Appellant’s general description of duties.

I. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **JAMES PATRICK STIPES V. KENTUCKY TOURISM, ARTS AND HERITAGE CABINET (APPEAL NO. 2014-134)** be **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant’s appeal is **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 24th day of November, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Melany Crawford
Hon. Misty Judy
Hon. Paul Fauri

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-134**

JAMES PATRICK STIPES

APPELLANT

VS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**TOURISM, ARTS AND HERITAGE CABINET
BOB STEWART, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

This matter came on for evidentiary hearing on May 20, 2015, and June 25, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Kim Hunt Price, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, James Patrick Stipes, was present at the hearing, and was represented by Hon. Paul Fauri. Appellee, Tourism, Arts and Heritage Cabinet, was present and was represented by the Hon. Melany Crawford on the first day and by the Hon. Misty Judy on the second day.

BACKGROUND

1. The Appellant timely filed his appeal on June 19, 2014, alleging "Other Penalization," "Involuntary Transfer," and Age "Discrimination." Specifically, he stated the following:

I have been reassigned to duties that include hours and duties that are impossible for me to adhere to. The plan to move me out of my 20 year duty plan was never discussed with me prior and during switch I was and have been damaged personally and professionally due to Comm. Mangeot's handling of entire issue. Dishonest approach and imply that I didn't follow instructions are offensive and untrue. (sic)

Further attached to the Appeal Form was a detailed grievance listing thirteen items of concern. Said grievance is attached hereto as **Recommended Order Attachment A**.

2. Essentially, Appellant alleges that his discretion and responsibility in his work as a radio and TV Broadcaster for the Appellee has been substantially diminished and that his duties were removed and given to a recently hired non-merit female who is younger. In addition, his work hours were changed from what he had done over the last twenty years as most of his newly assigned duties are to fall on weeknights and weekends, rather than a normal Monday through Friday daytime work schedule which he has enjoyed since 1994. Appellant further alleged that that Appellee's actions were an attempt to have him retire.

3. Evidentiary hearings were set up as to Appellant's claim of age discrimination and his claim of other penalization under KRS 18A.005(24) with the burden of proof being upon Appellant by a preponderance of the evidence on each claim.

4. **Meghan Crosman**, former Travel Promotion Specialist Supervisor with Appellee, testified that she had been an employee with the state since August 2012. Her duties were to supervise the planning and development and coordination of travel shows, travel promotion tours, press receptions and other tourism promotion projects; and perform other duties as required. Her Personnel Action Notification shows that she was moved from the Executive Assistant position, a non-merit position, to her current merit position. Her application, which was also introduced as part of Appellant's Exhibit 1, did not have a date on it. Megan Greenwell replaced her in her non-merit position as Executive Assistant.

5. Crosman stated that when Scottie Ellis began her position all employees had an introductory meeting. Ellis took over some of her old Executive Assistant scheduling and communication duties for the Commissioner. Crosman now currently works closely with Ellis.

6. **Scottie Ellis**, who has been working with the Kentucky Department of Travel and Tourism in a non-merit position for two years in November as the current Director of Communications, testified that she is twenty-six years old and had no Commonwealth employment before this job, other than a college internship for six months. Her personnel records were introduced as Appellant's Exhibit 2. She applied for the position of Communications Manager in August 2013. The Position Description, which was attached to her personnel file as part of Appellant's Exhibit 2, does not accurately describe the duties that she performs. Those duties that are described in her Position Description are to "Act as liaison for the Department of Tourism, reviews programs and policies, reports, assists the Department Director with presentation for the Legislators. Other duties as assigned." She does not review programs and policies for the Tourism Department, does not make recommendations on same and does not assist the Deputy Executive Director in preparing presentations or testimony before the Legislative Committee. She does review, analyze, write and monitor correspondence for the Department in relation to media. She serves as liaison for communication purposes with the Department and other agencies. Under her other duties, she does work with the media daily and

pitches stories to both national and international media. She answers media calls and prepares talking points for the Commissioner for interviews and assists with media who come to the state. She writes all communications to the media, but another lady spearheads the Facebook and Twitter campaign. She spearheads the Instagram campaign, which is geared to individuals 18 to 32.

7. Ellis was interviewed by the Deputy Commissioner, Hank Phillips, and Commissioner Mangeot. During her interview there was no discussion of her being an on-air person, but she assumed those duties as of April 2014.

8. Ellis stated that she has no experience in production video and she understood that Appellant did, so they wanted him to move into that area. She had some experience with on-air, including doing RunSwitch, Guthrie Mayes, Peppercomm, Image West, and DVL Internships, as was reflected on her application. On her application she did not list on-air experience because when applying she did not think that broadcasting would be part of her job duties. When Crosman left her position as Executive Assistant and Ellis received Crosman's position on October 16, 2013, there was no discussion with her about the duties that Crosman had performed. The change in her duties to broadcasting was discussed with her by Commissioner Mangeot at the time of the change.

9. Ellis graduated from Western Kentucky University in May 2011 with a degree in Public Relations and Sales. She had two classes in college on broadcast media and her prior broadcast experience was helping develop stories and on-air interviews similar to the radio shows that she now does in place of Appellant. When Mangeot was discussing with her the need for the change to social media, she told him of her experience and the decision was made. She does not work with YouTube which requires video production; all platforms she works with are photo based. In college she had no classes on the production side of video, but did develop content as far as copy and serve as an on-air face. She had no photojournalism, editing or filming classes.

10. Ellis works 40-60 hours a week depending on travel and receives comp time for that. Her regular scheduled hours are Monday through Friday, 8:00 a.m. to 4:30 p.m. She acknowledged that she did not assume any of Crosman's duties.

11. Ellis took over some of the interviews and radio interviews and programs on television that Appellant had been doing. She began interviews on WHAS with Tony Cruise and Terry Meiners in April 2014 once per week per show. She acknowledged that Appellant worked with significantly more stations and there were five of those that he did weekly. No one does those interviews for the state now.

12. Ellis understood that the desired transition was that she was to shadow Appellant and keep a relationship with the radio and television stations, but that did not pan out as planned. She e-mailed Stipes a couple of times and requested station contact information, and he said he was not sure that they would continue once the changes took place. Appellant never introduced her to any of the on-air personalities either. Ellis acknowledged that the radio stations had to agree that the correct person was on the air and they had the programming decision-making. She was also aware that the Commonwealth did not pay for any of the airtime that Appellant had received for the state.

13. **Jack Pattie**, Radio Broadcaster for WVLK in Lexington for over forty years, testified that he does a news talk show format from 6:00 a.m. to 10:00 a.m. in the morning and has done so since 1975. He met Appellant approximately twenty years ago when he was a sales representative for the radio station. Appellant was a regular Wednesday morning feature for years on his program about what was going on in Kentucky tourism. It had all been done without charge over the air, but in recent years other people who were getting such airtime had been charged and the radio station charged about \$500 for a five-minute spot.

14. Pattie testified that he had received e-mails from viewers asking when Stipes with Tourism would be back and Stipes actually had fans on the radio. Pattie felt that Appellant had been a good promoter, an asset for Kentucky Tourism, and an asset to Pattie's radio programming. Stipes called Pattie and told him he would no longer be on air and Pattie called Mangeot and told him he was not trying to tell him how to do his business, but he was making a big mistake and Mangeot was rather rude and said it would not be his first or last time to make a mistake. Pattie told Commissioner Mangeot he was going up the food chain and Mangeot told him to do whatever he needed. Pattie told Mangeot that they would only sell the state radio time from this point forward, and he later received an e-mail from the state that his audience was no longer considered within their demographics. Pattie testified that it would not have mattered if Stipes had brought someone with him and introduced him and had them shadow him, Pattie would not have allowed someone else to be on the air. Pattie felt that Stipes had established himself as the voice of Kentucky Tourism over 15 years and the agreement with his radio station with the Commonwealth was to have Stipes on, not someone else.

15. Pattie testified that his show was in the top three of the demographics, ages 35 to 54, in the twelve central Kentucky counties out of 15 stations. His station would be willing to have Stipes back on-air. Stipes was the only person that he would do radio interviews with before 8:00 a.m. because the viewers tuned in to hear him.

16. **Tony Cruise**, the radio personality at WHAS radio, testified that he has been a producer with WHAS radio since October 1992. He had been on sports talk radio from 1995 to 2004 and had been doing his own morning show since 2004. He had continued the previous morning show with what prior people had been doing with Stipes. When the change was made for him to do the morning show in 2004, it was decided to keep Stipes. Not all other prior people who did radio shows were allowed to continue when he took over.

17. Stipes appeared on Cruise's show every Tuesday morning at 7:35 a.m. Stipes also did shows with Terry Meiners. Sometimes if he brought something up on the air and Stipes was listening to the radio, Stipes would call him or e-mail him with information on it from the Tourism perspective. He always got positive feedback on Stipes and people called when he left wondering where he had gone. He felt that Stipes was like a "Charles Kuralt" of the back roads of Kentucky radio. Stipes did a good job embellishing the assets of Kentucky's parks and making it into a good story.

18. Cruise was surprised when Stipes called him and said that someone else would be doing the show. He felt that Stipes was missed in the continuation of the program with the state. The cost for his show air time is \$130 to \$230 per minute and the ratings are in the top four of the Louisville AM/FM market. Men aged 25-54 are their target demographic group. Commissioner Mangeot did eventually call him or e-mail him to let him know that Scottie Ellis would be coming. There had been discussion in the past when Stipes was still there about charging the state for the air time, but Stipes had talked him out of doing that and thus had saved the state a great deal of money. He stated that now, with the change, Ellis was not the same effect and the discussions are two to three minutes versus the normal five to seven when Stipes was there.

19. **Pat Stipes** testified that he had worked with the Department of Travel and Tourism for more than twenty years beginning in December 1993 when he had been put in charge of developing a broadcast media program under Commissioner Stewart. He was hired to develop broadcast programming without any budget. His background was in broadcast media, television, and radio. He used his contacts to get non-paid promotion for the state of Kentucky. Within twenty-four months of his hire he was a regular on eight radio program stations once a week and four to five television shows a month across the state. He also did special events, such as the World Equestrian Games, Ryder Cup, United Way kickoff, etc. Over his years with the state, he had also worked off and on with the Kentucky Film office and helped provide publicity for other departments and agencies. He was over forty years old at the time the changes at issue were made.

20. Stipes testified in order to do the radio program of five to seven minutes he had to research and develop his script. It would take him substantial time to do this. His work schedule was basically a 7:30 a.m. to 4:00 p.m., five-day a week, Monday through Friday job; he rarely worked on weekends unless there were special events.

21. Stipes testified that he was told there would be duty changes in January 2013. In April 2014 he finished his last radio program. At the time he left, he had been doing weekly programs with several radio stations and then monthly with television stations as well.

22. Stipes had the authority to accept which events he would promote. He regularly e-mailed or texted radio and television shows adding to what they were talking about from Tourism when he was hearing them live on air. He often hosted the Joe B. and Denny show.

23. Appellant's Exhibit 3 was his 2011 Annual Employee Performance Evaluation and it adequately described his duties as Tourism promotion through broadcast and on-line media, 25 points; managing and maintaining a video library, 15 points; production assistance, 10 points; enhancing public relations, 10 points and other duties as assigned, 5 points. His evaluation was "Outstanding" for that year.

24. His 2012 Annual Employee Performance Evaluation was introduced as Appellant's Exhibit 4 and, at that time, the Kentucky Film Office was added to his duties as a temporary assignment for 25 points. For that year, he received a rating of "Highly Effective."

25. His 2013 Annual Employee Performance Evaluation was introduced as Appellant's Exhibit 5 and was the first time that tourism promotion through broadcast and on-line media at 20 points was on his duties. It added the expectation of using all avenues, including new social media. It also included earned or free media as 20 points of his rating. His rating for that year was "Highly Effective." The Kentucky Film Office was taken off that year from his duties. Because of the climate in the film office, Stipes stated he no longer wished to be in that detail to duty. This occurred as a result of a phone conversation with a group.

26. Appellant's Exhibit 6 was his 2014 evaluation. For that year the tourism promotion through video production was added at 25 points, with expectation of four videos per month with filming beginning in April. Earned media was dropped to 10 points. His rating for that year was "Needs Improvement." He understood that his duties changed with the decision to move him to the Broadcast Coordinator position. He would be used in YouTube and social media on-line as an on-air talent to conduct interviews at festivals and attractions. The first time he was told about this was in January 2014 at the evaluation. He was shocked to learn of this. He did go ahead and sign the new duties with Kathy Yount who explained that Scottie Ellis would be placed in the broadcast duties and his was to change to working with videos on a

GoPro camera to shoot festivals. He asked if the decision was personal or professional, who made that decision, and who he could talk to with regard to that; but was told that the decision was final.

27. Appellant testified that he had no training whatsoever in video production. A gentleman named Michael Phoebus does all of his editing at this point.

28. He explained that earned media is free publicity and can be in either print or broadcast forms. Previously, 70 percent of his work time had been doing regular broadcast and 30 percent was trying to get more earned media. He kept records on the value of this work and it was approximately \$500,000 per year for the state.

29. He felt that the change to the new position diminished his duties; as he was no longer on air, did not have full discretion on his program topics, and would need to often work weekends and nights.

30. Appellant stated that he never told the Commissioner he intended to retire. They may have casually mentioned it during a breakroom conversation, but he never gave any notice in any professional capacity. The Commissioner later said in a formal meeting with others that Appellant had indicated that he was ready to retire. Appellant found this to be offensive because that was not his statement.

31. When Appellant arrived back to work after being off for family reasons the week after the Derby in 2014, there was a post-it note on the computer that told him he was no longer permitted to be on-air. This was left by Kathy Yount. One week later it was followed up with e-mails thanking him for his service in that capacity. Scottie Ellis had been assigned his duties during Derby week. That same afternoon that he came back, Ellis sent an e-mail asking for his radio and television contacts. He asked her to come to the office, and he told her this would be awkward and he was not sure he should be carrying out those changes, and that she would need to talk with the Commissioner about it.

32. He felt that the Commissioner's plan of having him introduce Scottie Ellis without telling the radio personalities that she would be taking his place was dishonest and he did not feel he should do that. Therefore, he directed that those individuals talk to the Commissioner about the program.

33. Appellant sent his statement in that he was reverting from the special detail to the Kentucky Film Office due to problems there and never made any mention that he was otherwise retiring. An incident occurred when a publicity firm known as Kentucky Kick's Ass was making an issue about trying to change Kentucky Tourism's motto. A USA Today reporter had called the Film Office. At the time he was the only one in the office as it was during Christmas time. He had been out the week before and did not know what was going on with that situation. During the time he had been off, a memo had been issued instructing employees not to speak to USA Today reporters until after the holidays. Appellant did not receive that memo because he was out of the office. He was asked whether Kentucky intended to incorporate the slogan, "Kentucky Kick's Ass." He made the comments that the state would never accept such a logo and a quote was put in the paper about him. He was attacked on Facebook, by the Herald-Leader, and otherwise on a personal basis. He asked the Commissioner to intervene on his behalf and he would not do so.

34. Appellant acknowledged that he had not done any overtime with his new duties, and because of his home situation Yount had allowed him not to be gone on evenings and weekends. He was given a list of locations to go and shoot and the expectation was four videos per month, with the contents of horses, bourbon and culinary arts, depending on the Production Director Michael Phoebus' schedule and his schedule.

35. He was told at a meeting with Commissioner Mangeot and Yount that there was a plan for transitional and cross-training due to many expected retirements. During a meeting, Commissioner Mangeot told him that Appellant had not been following the transition plan by not introducing Scottie Ellis to the radio personalities. Appellant told him that he had initially told Mangeot that plan would not work because the state was not entitled to dictate to the broadcasters who they would have on their shows.

36. Appellant's new role was a role for social media using a GoPro with YouTube. He did not really understand this because he does not watch YouTube and he does not even have a Facebook account. He has not done production and is, therefore, not versed in on-line and off-line editing. Further, the GoPro camera editing equipment did not arrive until just one month prior to the hearing (over a year after his duties were changed).

37. Appellant felt that Scottie Ellis was more versed in social media as she was younger and knows what that generation likes to see. He could not understand why you would move the old guy who had a long-standing history and relationship with radio and television programs from that position and put him into the social media position while bringing in a young person who was well versed in social media to take over his old duties.

38. **Tiffany Yeast**, at the time that this change was made had been the Executive Director for Human Resources for the Tourism and Arts Cabinet, testified that during that time her duties were to oversee all aspects of human resources for the Cabinet. She explained that the purpose of the performance plan is to set forth expectations annually of what work to be performed and that it is set by the supervisor. Duties can be changed annually, even within the year, if there are needed changes. Yeast verified that Stipes had received an Ace Award and his work had included radio work. She was not personally familiar with how much video work he did. During the special detail that Appellant received to the Film Office in March 2014, there was no annual performance plan because this was a non-merit position. She did not know the reasons that he left this position, but merely did the paperwork to make that transfer out of the role occur.

39. She received an e-mail from Stipes in April 2014 in which he said he had the skills to do the duties set forth in his performance plan and did not indicate to the Agency he could not do it or that the duties were out of the scope of his job specifications. He talked to her about his initial concerns on how the change was going to occur and specifically how he was to deliver the message to radio personalities. He felt that his supervisor needed to do this. When the Agency said that he was not doing his new duties is the first time she heard concerns from Appellant about his new hours for nights and weekends. She reviewed the schedules and where they wanted him to go, but was not really aware of what evenings or weekends he had to work.

40. Yeast understood that even when he was on special assignment with the Film Department, Appellant kept up his radio show duties for the Cabinet.

41. Yeast testified that Scottie Ellis started doing radio coverage while Appellant was on vacation. She was in a non-merit position when she was hired in 2012 or 2013 at the same time the Commissioner came on. She was not involved in Ellis' duties being assigned, but when Mangeot began he was concerned with cross-training. He needed a Director of Communications to lead in the promotions area, but he did not get the person he originally went after, then Ellis was brought in as an Executive Assistant. He wanted a Division Director, but that salary did not fit and the Executive Assistant position was an ungraded salary so there was room to adjust the salary upward. Ellis' Position Description did not say anything about Director of Communications.

42. She stated that no non-merit positions in the Cabinet had correct Position Descriptions and they are not required to. Yeast testified that she was not aware Ellis would be receiving Stipes' duties when she came on, but that it is normal for non-merit employees to be given duties of merit employees. Non-merit employees do not receive evaluations. It was Yeast who suggested a meeting with all parties when it was obvious that Stipes was extremely frustrated. She was concerned if he was going to be gone all of the time. She asked about the

expectations of videos and how many events he was expected to go to. Kathy Yount sent her the ones he would go to. She looked at each one of those to see what was expected and she, Appellant, and Mangeot met in May of 2014. There was an agreement that the communication did not happen well during the transition. There was also an agreement that if Appellant needed flexibility with his travel based on his personal family situation that would be given. There was no documentation of this agreement.

43. **Kathy Yount** testified that she had been the Assistant Director of Marketing and Communications and supervised six employees including the Appellant. By 2012, social media had become vitally important to the Tourism Department's promotion. Social media had rapidly grown and had increased over 47 percent from 2013 as far as views to their website. When Appellant transitioned back from his special duty at the Kentucky Film Office, social media was added to his duties. He regularly appeared on television and had some video for the spring wildflower watch as an on-air host. She felt that Stipes was the voice of tourism. His 2014 performance plan reflected that social media was becoming more important.

44. During the spring of 2013, she and Commissioner Mangeot had discussed the need for video production and who was the best person to do that. They went through everybody in the office to see who was the most qualified without hurting other work that was being done and it kept coming back to her or Appellant being the ones who had the most experience. Her other duties of the website and written materials would not allow her to do these duties.

45. In the late fall of 2013, it was decided to invest in equipment and put a team together to do video production. Appellant and Mike Phoebus were chosen for those positions. Phoebus was to come back from the sites and do the editing. There were discussions in general with this transition and staff meetings, but no one-on-one discussion with individual staff members.

46. Yount stated that she left the meeting with the 2014 performance plan thinking that Appellant was happy with it. She felt that he had the skills to do tourism promotion and his prior video production fell under the area of other duties. There was no production crew as he had before because of the use of new technology. Yount felt that this position would actually offer Appellant a promotional opportunity as he would now be in front of the camera and become the face of tourism, rather than just the voice.

47. Appellant never sent her any e-mails that he did not feel qualified for the position, but he did request a meeting because of his concern with the transition and not being able to work the equipment.

48. When Stipes was off for family situations, it just made sense to go ahead and transition Scottie Ellis into taking over his duties full-time in April of 2014.

49. Yount testified that in the last three years Appellant had made two extended trips to California and since the transition she did not think he had worked any weekends, but may have had one overnight to Owensboro for a festival. There was no accrued overtime in 2014 or comp time to her knowledge.

50. Yount stated that the Cabinet is now buying time on radio media as the budget allows it. They did a campaign for five weeks this year due to extra funding in the budget.

51. Yount testified that they never intended that Appellant carry the burden of telling the radio stations about the change and felt that if he had followed the plan they would have been able to keep four of the five radio stations, rather than only two. She felt like if he had went ahead and done the introductions and the transition as planned, rather than going ahead and telling the radio stations what had happened, things would have worked out better.

52. Yount did not recall leaving the post-it note about the change of duties and that would have not been like her to use a post-it note.

53. Appellant has discretion to choose which projects he wants to do.

54. She acknowledged that Ellis had never been on-air prior to this assignment.

55. **Commissioner Michael Mangeot** testified that he has been in that position since July 1, 2012. Prior to that he had served seven years as President for the Kentucky Association for Economic Development and had previously worked for twenty-three years in Frankfort. He was Deputy Commissioner from 2002 to 2004. His strategic plan was based on the fact that the industry had made a move toward social media. Mangeot testified that it rapidly increased and a lot of money had been invested in that. Aristotle, the company that they work with, pushes for video production and shows that there had been over 1,000 percent growth in that area.

56. He stated that he places a high value on earned media despite his actions taken in this matter resulting in the loss of a great deal of earned media.

57. In 2013, some staff retired and monies were freed up to create the position in which Ellis was placed. In July 2013, her résumé was e-mailed to him by Secretary Bob Stewart and he was impressed with her. Her duties were to help create and push forward in earned media and cultivate trade and sale missions, as well as increase social media. He acknowledged that more staff was needed in that area and that there had been no social media strategy when he started in his position in 2012.

58. Mangeot contended that in January 2013, when Appellant told him he resigned from the Film Department special detail that he did not want to do radio work anymore. He told Appellant that there was not enough staff to fill his position at that time, but Appellant said that he would be interested in moving into another Agency within the Cabinet. He sent an e-mail to Yeast concerning this, which was introduced as Appellee's Exhibit 4. Appellee's Exhibit 4 only stated that Appellant did not want any media relation interviews. It did not specifically say on-air time. Despite this allegation that Stipes requested that he be removed from radio broadcasting completely in 2013, Stipes stayed on the radio until 2014. They thought about bringing an employee in from outside to cover, but he did not want to disrupt other areas.

59. Mangeot also contended that Appellant said in sixteen to seventeen months that he intended to retire and relocate to Florida where his wife was from.

60. He stated that when Ellis was brought on there were a lot of strong personalities in the Division, and he did not want her to fail in transitioning to the radio. They also wanted someone on the staff to build their video library and he felt that Ellis could take on the radio, and Appellant move to that position.

61. He knew that Stipes had a good relationship with radio personalities and wanted a smooth transition. He asked that Appellant tell the radio stations that Ellis was going to be substituting for him from time-to-time and for the transition to take about ninety days. He asked if those were taking place and was told "no." He called the radio stations himself from February 10 to February 13 because they did not want to jeopardize losing the free air time. Some of the places were very contentious and he was told the state would have to pay for their air time and he was told by a couple of them that they would continue to have free air time as long as Appellant was on the radio.

62. He felt this change to video allowed Appellant to have a higher profile position than he had before.

63. He felt that Stipes had video production experience as he had shot video for TV stations based upon his résumé and had been an on-air host of a video wild about flowers show. The Commissioner acknowledged that he did not know the specifics of Appellant's editing experience or actual filming or shooting of video, but knew he had on-air experience.

64. Appellant did tell Mangeot that taking Ellis with him and introducing her, saying she would be substituting from time-to-time would be a lie and he did not understand that position.

65. Mangeot stated the state was currently paying for April, May and June of 2015, \$140,000 for radio advertising to the Kentucky News Network. This was because of extra funding and there were possibilities of more funding being spent on that.

66. He denied making a statement to Jack Pattie that he did not want his audience because they were over 35 years old.

FINDINGS OF FACT

1. Appellant was employed with the Appellee for twenty years with his primary duties being to cultivate earned free media for Kentucky Tourism. He appeared regularly on free radio spots which promoted Kentucky Tourism once a week on about seven different radio shows, as well as additional shows on television.

2. The value of the earned media that Appellant obtained free of charge to the Commonwealth of Kentucky was \$500,000 per year.

3. Appellant did not have any training in video production, other than college classes which were a couple of generations of technology outdated at the time that changes were made to place him in the position of producing videos for social media.

4. Appellant was over 40 years old at the time the change in his position was made.

5. Scottie Ellis, who was hired in the position of Director of Communications, did not ever perform the duties as set forth on her Position Description.

6. Ellis' résumé was forwarded to the Commissioner by the Secretary of the Cabinet and she was hired in a non-merit position in order to get higher pay for her.

7. Ellis is less than 40 years old.

8. Ellis had no prior on-air experience in radio broadcasting other than internship, but was well versed in social media. She had no production experience.

9. Appellant was asked to deceive his connections with the radio broadcasting industry by saying that Ellis would be substituting for him time-to-time, when in fact it was clear that the Cabinet intended on totally placing her into his position. This placed Appellant in a position of being unprofessional and in essence lying to his contacts that he had developed over a career. He voiced his concerns immediately with the Cabinet.

10. Mangeot's statement that he valued earned media, he knew that this decision to take Appellant off the air was going to cost free media prior to the time it was implemented. He has now paid over \$140,000 for just three months of radio advertising for the state.

11. Although Mangeot contends Appellant said he did not want to do radio any longer in late 2012, Mangeot's e-mail in January 2013 to Yeast does not reflect same, but only says "media relations interviews" which is consistent with Appellant's testimony that he did not want to deal with media as the position he held at the Film Office, not that Appellant did not want to be on-air on the radio.

12. Mangeot's actions certainly did not attempt to accommodate Appellant's alleged desire not to be on radio as Mangeot did not implement same until over a year after he alleges Appellant requested not to be on-air.

13. Appellant was moved from being on radio air time on a regular weekly schedule to a position that would put him on social media clips and by his Position Description would require him to work weekends and nights.

14. In his radio on-air work, Appellant had complete discretion on his topics received. In the new position he is required to work certain areas with limited discretion on the topics covered.

PERTINENT LAW

1. KRS 18A.005(24) defines "Penalization" as follows:

'Penalization' means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification

or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees. (Emphasis added.)

2. KRS 18A.095(1) endows classified employees with status rights and states:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

3. To prove age discrimination, the aggrieved party must either show direct evidence of a discriminatory animus and, absent that, must satisfy the burden shifting test of *McDonnell Douglas Corp. vs. Green*, 411 U.S. 792 (1973). The Kentucky Supreme Court in *Williams vs. Wal-Mart* (WL3131460, Ky.) reflects that the purpose of the *McDonnell Douglas* prima facie case is to compensate for the fact that direct evidence of intentional discrimination is hard to come by. This burden-shifting approach allows the victim of discrimination to establish a case through inferential and circumstantial proof. The *McDonnell Douglas* framework requires an aggrieved party to show 1) that he was a member of a protected class, 2) that he suffered an adverse employment action, and 3) that other substantially younger received those benefits of employment.

4. KRS 344.040(1)(a) states:

(1) It is an unlawful practice for an employer:

(a) To . . . otherwise to discriminate against an individual with respect to . . . terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, . . .

CONCLUSIONS OF LAW

1. Appellant did not present direct evidence of discriminatory animus. Therefore, the Hearing Officer must look at the *McDonnell Douglas* framework. Appellant clearly satisfies the first criteria of *McDonnell Douglas* as he is a member of the protected class being over age forty pursuant to the Kentucky Civil Rights Act at KRS 344.040 (1). Appellant also met prong two of the test in that he suffered an adverse employment action as is discussed further below. Lastly, he clearly met the requirements that a substantially younger individual received those benefits in that Scottie Ellis was assigned his duties and received the privileges and discretion he had therein.

2. The change of position did in effect diminish Appellant's duties and responsibilities and penalized him by altering his regular schedule, removing him from his radio presence, and removing significant discretion from him as to what topics he covered. Although accommodations had been made in scheduling, at this date there is no guarantee that will continue into the future as his duties would clearly require such schedule change. It appears this has not occurred yet as the GoPro equipment allowing him to do his duties was only obtained shortly before the hearing.

3. As discussed above, Appellant met the requirements of KRS 18A.005(24) definition of "penalization" as being "any action that diminishes the level, discretion, or responsibility of an employee."

4. The next portion of KRS 18A.005 (24) requires to prove a penalization, the action that diminishes the level, rank or discretion or responsibility of an employee must be without proper cause. There was no proper cause shown in this case for the reason of the change of duties. In fact, although there can be needs for cross-training, that could have been accomplished without changing the duties of the Appellant. For example, Ellis could truly have shadowed Appellant and done radio on occasion. Appellant could have shadowed Ellis and done said social media on occasion. Further, the proper cause that was essentially alleged in this case was the Agency's need to serve the social media market better and obtain more exposure there. The actions they took defy common sense in the method they chose to complete this. They placed a younger individual, who has admitted personal knowledge of social media, into a position when she had no prior experience in on-air radio broadcasting into a radio broadcasting position while taking a person with over twenty years of on-air radio experience and who had no social media experience (even in his personal life), into the person spearheading the main focus of social media.

5. Further, the Hearing Officer believes that this decision is actually detrimental to the Cabinet not only because of the lack of commonsense in the changes of positions, but most importantly because the Cabinet gave up over \$500,000 per year of free air-time when it moved Appellant from his position and thus lost the free air-time. It is frankly infuriating to the Hearing Officer that the Cabinet has paid \$140,000 in tax dollars in just three months for radio time that it could have had in free air time, but for this change in positions.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JAMES PATRICK STIPES VS. TOURISM, ARTS AND HERITAGE CABINET, (APPEAL NO. 2014-134)** be **SUSTAINED**. Appellant shall be reinstated to his former position and duties. Appellee shall reimburse Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and to otherwise make Appellant whole. [KRS 18A.105, 18A.095(25), and 200 KAR 12:030.]

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Kim Hunt Price** this 26th day of August, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Melany Crawford

Hon. Misty Judy

Hon. Paul Fauri

HAC Delin
to Sec. Stewart
6-5-14

Attachment to Grievance: James Patrick Stipes/ KDTT (Mangeot-Yount)

In February of 2014 I was notified by Kathy Yount (first line supervisor) that the Commissioner had made the decision to replace me as broadcast contact and event spokesperson for the Department. After an initial discussion as to why this move was being made I made it clear to Kathy that I respected the decision although I never really understood the common sense or practicality of it. I was instructed by Kathy Yount to let the media contacts know that I would be bringing a new person to the stations. I next alerted each contact that I would be bringing in a co-worker in the next few weeks for an introduction. I did this by phone initially. I HAVE BEEN PROFESSIONAL LY ASSOCIATED WITH THESE CONTACTS FOR MORE THAN 20 YEARS. SO A SIMPLE EMAIL WOULD BE PURELY UNPROFFESIONAL. As I suspected and made it clear to Kathy prior to any contact with the media, that this "plan" was ill advised and that we may have wanted to consider the consequences and possible fall out of "opening this issue up with the media". The media without exception was unhappy and demanded to speak to a supervisor or authority to voice their concerns and what **their** opinion was regarding this decision. Following is a detailed list of actions that have followed most recently as 5-29-2014.

1. I sent numerous emails to Yount, Mangeot and Hank Phillips. (Phillips at the beginning) detailing my displeasure at the awkwardness of the relationship with the media now, due to NOT being contacted by Mangeot as promised. I strongly urged contact and provided cell numbers and office numbers to Commissioner Mangeot and Yount in order for someone to contact the media per their request ASAP. Again, not my request, the media's request.
2. It is purely a dishonest statement for the Commissioner to continue to make the statement ON THE RECORD that he contacted these folks over the next two or three days. It simply did not happen; it was weeks into this "plan" that I was still being asked "when is someone going to call". I reject the idea that Commissioner Mangeot is being honest on this point and am completely comfortable bringing in the media reps themselves to confirm what they told me in real time. At that point it can become an honest debate between Commissioner Mangeot and Tony, Terry, Kelly, Aimee Kidd, Tim Coles, Gator Glass and others. In addition, Jack Pattie with WVLK in Lexington, alerted me to the fact that he had contacted the First Lady days after he had actually done so, NOT TO DEFEND ME or to ask for a stay in the decision, but rather; to let her know how rude and unprofessional Commissioner Mangeot was during the discussion he had with Mike Mangeotso I reject any notion that I put any media person "up to something" or did anything to sabotage this "plan". Again, I am completely comfortable with inviting the media to come and discuss in a formal setting what I said and when I said it and how I handled myself. In fact I encourage a discussion and feel it will make clear just how unsettling this issue has been with regard to me, professionally and personally.
3. The point being made about the method of initial communication to the media and the timeline it took for Commissioner Mangeot to contact them is significant because it RUINED the relationship between the department and some of the stations. In essence just on the financial side, it will cost the state tourism office hundreds of thousands of dollars in free publicity THAT IT WAS GETTING PRIOR TO THIS "PLAN".

4. All media involved and Kathy Yount and Mike Mangeot will have to answer yes to the question of "did Pat Stipes ever detail that he was uncomfortable with the questions and the issue of how this was being handled" and at anytime did Pat Stipes request help and further alert KDTT senior staff that it was getting out of hand, under oath; I believe that the answer will be "yes, he did several times".
5. Recently Commissioner Mangeot for the first time, explained that he felt this "transition" was potentially a temporary or would be a trial period for Scottie Ellis in case she didn't work out or wasn't good on the air. (para. 1, n. 1). I made it clear to Tiffany Yeast on the record that I had never heard that before and its further significant because Kathy Yount followed up with the statement that "well, if Scottie didn't work out we could have just said you were on vacation or took a few weeks off for some reason". This is the crux of the issue. Mangeot directed a "plan" that impacted me personally, and professionally, that he now is pointing at me as a problem causer and that "if I had followed his instructions the plan would have worked and that because I didn't, the plan blew up." I reject on all levels that reasoning and expect to be vindicated fully.
6. I stated early and often in this process TO MANGEOT AND YOUNT, "simply because the Commissioner wanted a plan (an extremely dishonest and impactful one to the integrity of the department and to me personally) to be executed, DOESN'T MEAN THAT OUTSIDE OF STATE GOVERNMENT PARTIES HAVE A DUTY OR URGENT TO COMPLY. IT SIMPLY IS OUTRAGIOUS TO HAVE A SUBORDINATE EMPLOYEE CHARGED WITH EXECUTING A DISHONEST PLAN EVER; BUT FURTHER TO INSINUATE THAT THE EMPLOYEE FAILED IN THE EXECUTION ITSELF. THIS SIMPLY WAS A **SET-UP TO FAIL** SCENERIO BY COMMISIONER MANGEOT to me.
7. As I continued to get negative comments from the media for weeks regarding not only the decision but how this was being handled I made it very clear to each of them that I would offer no longer, any support, or offer opinion to anyone on this matter and that all comments would need to be addressed to Commissioner Mangeot personally.
8. It has been suggested by Commissioner Mangeot that a media contact made the statement that "they would not fight Pat's battles for him". I will be asking Commissioner Mangeot in a formal setting in the future whom made that comment and in **what context it was made**. Its significant because there would be no basis for anyone to make that comment with the imply that Mangeot is suggesting (the media was asked by Stipes to go to bat for him) because the media was never given any reason for a statement like that to become germane other than that he was being transitioned into video production and never gave a supportive or negative indication to any media personnel regarding that move, therefore the context of the statement is vital here. I will be formally requesting that information from Mangeot shortly.
9. The final timing of the "Transition is complete" email from Kathy Yount at Commissioner Mangeots' request probably has the most dramatic affect personally. While undergoing a most difficult family matter, I accepted a week off of the air and certainly understood that given the circumstances of the family issue. however, to my surprise as I arrived in my office the Wednesday after the derby I was notified by said email that I was no longer permitted on the air, subsequently representing the department any longer. professionally I was never given a chance to exit from a 20 year plan I single handily produced and carried out while sick, on vacation, in time zones that were three hours away, in hospitals and other venues that impacted

my personal life many , many times. The timing of such an abrupt exit is exactly what all the media expressed up front to me, don't just be done, you have to give me a final time weeks out, you have to honor the process of programming Pat by giving us plenty of time to plan. (I asked for a final on-air date many times) and was never giving one. BTW.

10. The timing again, as to my vulnerability with regard to my family situation at the time I believe is the most egregious and unprofessional event that I have seen in over 20 years in State Government and it has happened in my own department to me. Over the years I have seen assignments with merit and non-merit staffers that make no sense, staffers that have shown addiction to drug and alcohol while on paid duty and other issues, being treated better than I have. So, for that I am sorry and embarrassed for the department of Travel and Tourism.
11. I believe that the Kentucky for Kentucky debacle "Kentucky Kicks Ass" issue began the dissolution of Commissioner Mangeot with regard to my professional status in this department. On that issue as well I was never given a chance to defend or respond professionally in this office. That issue alone came without any support from Mangeot or Hank Philips publicly; resulting in ridicule and negativity being directed at my home, family and personal reputation. I was left in the cold and without support from any one.
12. Age Discrimination: there have been several instances when Commissioner Mangeot suggested on the record in formal meetings that I made it clear that I was tired or that I was looking at an impending retirement and that he needed to train and replace older employees due to their age and impending departures over the next couple of years. He mentioned. Me, Marge, Wayne and Rhonda and Mary by name. As for me, I asked if I have ever submitted a retirement notice in writing his reply was no. He stated that I told him personally that I was looking at retiring soon. My assumption is that discussions as informal as they are in the break-room and in other casual situations are deemed documented notices in the Commissioners eyes. Why is it that when other employees have made similar or even that exact statement that they have not been re-assigned or punished? Why is it that when, to an employee, if asked whether they would like to retire or not and they answer yes, that they are not moved to different areas? Why is Pat Stipes being singled out for a specific conversation and other employees are not? My contention here is that Commissioner Mangeot is looking for any possibility he can find to make this culture difficult and hostile for me. My understanding is that he needs to "cross-train"; he needs to have his bases covered with areas where impending exits are going to happen in the next few years. To my knowledge there have been no movements in Matching Funds, communications (except for me), welcome centers, (save Judy Thomas) or other areas.

13. Finally the decision to remove me from my current position is curious at best. Consider the following: Commissioner Mangeot's reasoning for "transitioning me out of broadcast" is inexplicable! (the ability and right to do so is certainly not being challenged and NEVER HAS) Commissioner Mangeot is the Commissioner and I understand and respect the office. I want that understood and that has Never been disrespected.)

While the decision to remove me from Broadcast duties is not entirely the issue here, it IS how and why we GOT HERE. To be clear: Kathy Yount explained to me that my duties were changing and that the Commissioner wanted to use my talents in a new video production area. I would be replaced with a new hire with experience in media and that was it. Back to the beginning here ("Pat, please execute the transition "plan" immediately").

Why wouldn't the new hire, a young person seemingly with experience and the flexibility to create and work with the new social media initiative Commissioner Mangeot is promoting be assigned this new and exciting role? Perfect fit anyone would think? The new hire has no relationship with broadcast media and therefore making for any transition difficult and problematic, in other words the decision looks to be ill advised given the specifics of the situation. If Commissioner Mangeot needs to "cross-train" why would he not have started the new employee with experience in a new initiative and begin to build that program first? Why would he disrupt a solid program giving the state nearly \$500,000 dollars in free airtime when it wasn't necessary. Removing a solid employee from a solid program in order to lose the state much needed publicity makes no sense at all. None. I now have been told and sent notice through emails that **my new assignment will force me to work weekends and overtime** and some different work hours. Kathy Yount and all management fully understand that this is an impossibility given my personal life, family obligations (especially now). However the new hire, seemingly mobile, single and with no visible outside obligations takes over my more scheduled and structured duties. I submit to Secretary Stewart, Tiffany Yeast and others that this decision by Commissioner Mangeot is punitive for some unknown occurrence or situation. Simply it makes no financial sense, no media sense, no age and seniority sense and finally no common sense. It does however make perfect sense when an attempt to destroy an otherwise valued employee and employees' dedication to the department is what is desired. Refer to resolution of this issue below.

My resolution in this matter is formally being included in this document but also included on the official form as well.

I am requesting that the Department of Travel and Tourism and the TAH cabinet develop the necessary paperwork and that negotiations begin that allow me to separate from state government totally through a financial settlement involving/including retirement. I without question am unable to work here in the KDTT any longer due to the hostile environment that has been created by Mike Mangeot and feel it's the responsibility of the above mentioned agencies to respond in accordance. I add that due to my distinctive and specialized duties over the last 20 years that involve a skill set that many times over was approved and fostered by administrations that I may not be able to conduct similar duties with any similar level of quality in another department. The dishonest and unprofessional nature of the recent year and months make it impossible to continue here. In addition, I request Commissioner Mangeot be asked to resign therefore making it impossible for him to retaliate in anyway under any circumstances.

Let this be clear. This is NOT a resignation notice, NOR a NOTICE OF RETIREMENT and should not be considered such under any circumstance. This is a resolution request to a most important and career altering situation. I fully intend to pursue this issue. This is not a typical disgruntled employee predicament.