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**VERMONT HUMAN RIGHTS COMMISSION
MINUTES
(DRAFT)
Thursday, January 26, 2023**

PRESENT: Commissioners: Kevin Christie, Chair, Bruce Wilson, Joan Nagy Nathan Besio, and Dawn Ellis (joined at 10:33 a.m.). Staff: Bor Yang, Executive Director; Big Hartman, Cassie Burdyshaw, Daniel Flynnjac, Staff Attorneys; Amanda Garcés, Director of Policy, Education, and Outreach; Maia Hanron, Executive Staff Assistant (minutes).

Commissioner Christie called the meeting to order at 9:26 a.m.

BUSINESS MEETING

MINUTES:

Commissioner Nagy moved to accept the minutes of the December 1, 2022 meeting as written. The motion was seconded by Commissioner Besio. Vote 4-0

EXECUTIVE DIRECTOR REPORT:

ED Yang: Welcome to new ESA, Maia Hanron.

Maia thanked ED Yang and shared a little bit about herself.

ED Yang shared Covid 19 update and information about H.42, an act that would permit a body like the Commission to hold a meeting without designating a physical location until July 2024. Chair Christie reported that it just passed but the Governor still needs to sign. Amanda Garces, Director of Policy, Education and Outreach, confirmed that Gov. Scott signed the bill yesterday.

Commissioners engaged in an in-depth discussion about the pros and cons of in person vs. remote meetings. ED Yang stressed the importance of setting clear expectations for parties. If the Commission were to conduct in-person meetings, it would be important for all Commissioners to attend in person. Commissioners discussed weather, parking issues in Montpelier during the legislative session and the Commission building being under construction.

Commissioners agreed that good cause existed to continue remote meetings with the option for Commissioners, staff and the public to appear in person.

Chair Christie suggested a motion should be made. Commissioner Nagy moved to conduct Commission meetings in person, with the option to appear in person for all, based upon a finding of good cause and in light of H.42. Commissioner Besio seconds. Vote 4-0

EXECUTIVE SESSION:

Commissioner Besio made a motion to go into executive session to hear confidential cases at 9:51am. The motion was seconded by Commissioner Nagy. Vote 4-0.

The Commission came out of executive session at 10:26am.

BUSINESS SESSION:

The Commission took a short break. Commissioner Ellis joined the Commission meeting at 10:33 a.m. At 10:40 a.m., Commissioner asked if it was possible to return to the Executive Session to discuss the confidential matter as she had something to say about the case.

Commissioners discussed whether they should go back into executive session to discuss a confidential matter if Commissioner Ellis was not present for the hearing with the parties. Commissioner Ellis said she would not be voting but because she had read the report, wanted to weigh in.

Motion to return to Executive Session by Commissioner Nagy to discuss a confidential case. The motion was seconded by Commissioner Ellis. Vote 5-0.

EXECUTIVE SESSION:

The Commission went into executive session at 10:41 and came out at 12:15pm.

Commission took a lunch break from 12:15pm to 1:00pm

BUSINESS MEETING:

At 1:08pm Commissioner Ellis made a motion to go back into executive session. Commission Nagy seconded. Vote 5-0.

EXECUTIVE SESSION:

The Commission went into executive session at 1:10pm and came out at 1:28pm

BUSINESS MEETING:

Commissioner Ellis made a motion that when Commissioners participate in any part related to a case, that they appear on the vote but may choose to abstain. The motion was not seconded. Commissioner Christie said without a second motion, it could not carry. Commissioner Ellis asked if the motion failed or is tabled. Staff Attorney Hartman responded that it fails if it's not seconded.

ED Yang stated that when Commissioners miss a Commission hearing regardless of the reason, they should not be part of the vote. A vote cannot simply be based upon reading the report. It is contrary to the HRC process and fundamentally unfair to the parties.

Commissioner Besio stated that there are three facets to hearing a case; reading the report, hearing from the parties and participating in the deliberation. A Commissioner that misses any part should remain outside of the vote. Commissioner Nagy agreed with Commissioner Besio. Chair Christie reminded the Commission that we need to be very protective of our process.

Commissioner Ellis said there needed to be clarification around the use of abstention or how to document the recused, or at what point the recused should be brought back in to be involved in a matter.

Chair Christie said questions about the law or ethics should be directed to ED Yang since she is our legal counsel. Commissioner Besio gave examples of when he recuses in cases.

Commissioner Ellis wondered about how recusals are reflected in the minutes and how the Commission record recusals and thinks we might want to consider a process around it.

ED Yang stated that she had been trying to do an ethics training for a while but has been unable to get all Commissioners present. She summarized the ethics rules around conflicts and recusals and the HRC process. Anytime a Commissioner feels they cannot be fair, they should recuse themselves from that case and it would be honored. That Commissioner should then refrain from all subsequent discussions or deliberations relating to that matter. The staff just asks that Commissioners review cases immediately upon receipt for conflicts so that alternates can be found. Recusals on the day of the hearing or near the hearing make it impossible for staff to manage. When Commissioners may have a conflict but believe they can be fair, that potential conflict should be shared so that a discussion can be had about recusals.

Chair Christie urged all Commissioners to be present at the future ethics training.

PUBLIC VOTE ON CASES:

In HV22-0008, Commissioner moved to find that there are no reasonable grounds to believe that discrimination occurred on the basis of national origin. The motion was seconded by Commissioner. Vote 4-0

In E21-0005, Commissioner Nagy moved to find that there no reasonable grounds are to believe that discrimination occurred on the basis of disability. The motion was seconded by Commissioner Besio. Vote 4-0; and

Commissioner Besio moved to find that there are reasonable grounds to believe that retaliation occurred. The motion was seconded by Commissioner Nagy. Vote 4-0

ED REPORT CONTINUED:

ED Yang asked for additional thoughts on the annual report before she sent it to the Legislature.

Commissioner Nagy read it through, stated that it's very comprehensive and surprising in some ways but will give the Legislature a picture of what we do now, compared to over time and what the needs are in regard to litigation. Commissioners Wilson and Besio both agreed.

Commissioner Ellis expressed a concern over a trend of accepting less cases stating that administrative dismissal is one thing but capacity is another and if we are narrowing the capacity it's hard for people in the field to see us as the place to go to address their needs.

ED Yang explained that it would be premature to assume there is a downward trend since FY22 was an anomaly; The HRC operated without a staff attorney investigator for several months and made a strategic decision to stop accepting employment and public accommodations cases. The chart will show that the number of housing cases, which the HRC continued to accept, actually rose in comparison.

Director of Policy, Education and Outreach Garces said that she felt Commissioner Ellis' comments about the data and report failed to consider the impact of these cases on staff well-being. Commissioner Ellis said she heard this.

Commissioner Bruce Wilson said he felt like the Commission staff was doing a great job and that he was learning a lot and appreciated being part of the Commission.

Commissioner Ellis observed that disability claims continued to be the primary claims at the HRC and suggested that perhaps it was because there were more disability advocates and organizations in the State of Vermont and the Commission needed to address that.

ED Yang responded that disability claims occur most frequently at HUD and across every state enforcement entity in the country not because people with disabilities experience more discrimination but because they have additional rights under anti-discrimination laws. Reasonable accommodations and reasonable modifications cases are driving the numbers.

Chair Christie encouraged everyone to read the report and believed that it makes the case for supporting an expansion of the VHRC.

ED Yang reported that the HUD partnership grant was underway via Attorneys Hartman and Burdyslaw as well as Director Garces. Furthermore, the HRC is currently undergoing its two year program review and will keep Commissioners updated as it progresses.

ED Yang discussed upcoming legislative bills and the likelihood that "Don't Darken My Door," "Amending Equal Pay" and "Severe or Pervasive" will be introduced. ED Yang asked Commissioners to weigh in on H.68, a housing bill that seeks to amend the HRC statute. It would permit the HRC to refer cases to the Attorney General's Office and the State's Attorney's Office. It would also grant these offices jurisdiction to enforce the Fair Housing and Public Accommodations Act.

Commissioner Ellis said she had a conflict and would not weigh in on the bill.

The remaining Commissioners discussed the need for such referrals and suggested that what really needed to happen was for the HRC to have a litigator. Commissioners supported extending the statute of limitations an additional 90 days, post-determination. Commissioners also wanted to know if this bill was supported by the community at large and the importance of sharing with the Legislators why the Commission was chosen to enforce these laws.

ED Yang said in the interest of time, she would be skipping the rest of the ED report and get straight to the case updates.

ED Yang presented the PDCA in Scales v. TIP Development, Hallisey v. DOC. A settlement also occurred in Bailey v. Marijio Properties which was in litigation. Commissioners gave permission to sign both PDCAs.

ED Yang said she wanted to discuss pending litigation. Commissioner Besio made a motion to go into executive session to discuss pending or probable litigation to which a public body is or may be party and confidential attorney-client communications, pursuant to 1 V.S.A. § 313(a)(1)(E) and (F). Commissioner Nagy seconded. Vote 4-0.

ED Yang said let the meeting minutes reflect that Commissioner Ellis recused herself from hearing some of the cases and will be asked to leave the meeting before those matters are discussed in executive session.

The Commissioner went into executive session at 2:56. The Commission came out of executive session at 3:40 p.m.

The meeting was adjourned at 3:41pm.

NEXT MEETING: Thursday, Feb 23, 2023.

Dated at Montpelier, Vermont this 26th day of January 2022.

Respectfully submitted:

/s/ Bor Yang

Bor Yang
Executive Director