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VERMONT HUMAN RIGHTS COMMISSION
MEETING MINUTES
May 27, 2021

PRESENT: Commissioners: Kevin Christie, Chair, Nathan Besio, Don Vickers, Dawn Ellis, and Joan Nagy. Staff: Bor Yang, Executive Director; Nelson Campbell, Supervising Attorney; Melissa Horwitz and Cassie Burdyshaw, Staff Attorney Investigators; Amanda Garcés, Director of Policy, Education, and Outreach; John McKelvie, Executive Staff Assistant (minutes).

Commissioner Christie called the meeting to order at 9:09 a.m.

BUSINESS MEETING

MINUTES: Commissioner Vickers moved to accept the minutes of the April 22, 2021 meeting as written. The motion was seconded by Commissioner Nagy. Vote 5-0.

EXECUTIVE DIRECTOR REPORT:

Executive Director Yang provided her report to Commissioners. Per the report, the Secretary of Administration (SOA) issued a new memorandum that, for state employees who can work remotely, the authorization to work remotely was extended through September 1, 2021. Beginning September 1st, employees who wish to continue some form of remote work must submit a request under existing Policy 11.9 Telework. It is expected that all state employees will be working under an approved telework agreement or working on-site by November 1, 2021.

In the meantime, appointing authorities are expected to develop a plan for voluntary telework. As such, HRC staff will be engaged in an interactive process to develop a voluntary telework plan, and to define the measurable productivity metrics and discuss steps forward post-pandemic. It is expected that this plan will be presented to the Commissioners on or before the September 2021 meeting.

In terms of the HRC's most recent budget request, the specific request for a litigator and additional staff attorney investigator was denied. However, a one-time fund of \$200,000 was granted to the Department of Human Resources (DHR) for the purposes of "racial equity training support." Per discussions with the Governor's office, this amount was intended to be shared by the HRC and the Office of Racial Equity for educational purposes but because it was provided to DHR, the HRC has no spending authority.

Commissioner Ellis questioned whether this \$200,000 will require the HRC to undertake work that we were not otherwise planning to complete. ED Yang described the origin of the funds in relation to the Governor's Racial Equity Taskforce, and explained that her understanding is that the money is not intended to create more work beyond the current scope of the HRC's projects, but is intended to assist the HRC with its educational programming. However, the money itself is designated to DHR, over which the HRC has no spending authority.

She acknowledged that HRC will stay hopeful but realistic about discretionary authority over these funds.

In response to a question from Commissioner Vickers, ED Yang confirmed that the funds are not necessarily a direct result of federal stimulus money received by the state. Commissioner Ellis noted that, just as the 2020 HRC Civil Rights Conference relied on one-time grant funding, this new funding could be deployed to further the HRC's mission through more conference-like programming. Commissioner Christie recommended that staff and Commissioners discuss the best approach to using these funds during a strategic retreat.

ED Yang notified Commissioners that the House and Senate approved a one-time \$300,000 addition to the HRC's special fund which is reserved for litigation. She has been reaching out to various law firms to discuss potential contracts for litigation. Staff Attorney Campbell noted that one of the law firms with whom ED Yang has spoken was instrumental in assisting the HRC with the Silloway equal pay case several years ago.

ED Yang then outlined the state of the budget and explained that, as previously reported, the HRC is projected to be over-budget in FY2022 by \$30,436 and more so in FY23. The Legislature approved the budget recommended by the Governor, which requires the HRC to use its carryforward funds, approximately \$76,800, to address budget changes. She explained that using carryforward is a temporary solution. If/when a state agency or department is operating over-budget, it may seek funds through the Pay Act and/or seek a budget adjustment through the Governor and Legislature.

Commissioner Ellis asked whether the carryforward funds were connected to litigation, and ED Yang clarified that no, carryforward funds are left over from the overall budget, most likely salary and cost savings in previous HRC budgets. Commissioner Besio asked whether there were better budget prospects for the future, given that the state's revenues appear to be more positive than expected. ED Yang wasn't aware of any specific information along those lines. Commissioner Vickers pointed out that the state government has always been reluctant to add recurring costs like additional personnel, compared to the relative willingness to make one-time contributions to budgets or to purchasing equipment. Commissioner Ellis pointed out the recent migration of individuals to Vermont and how this could contribute to an increase in state revenues. ED Yang discussed how that migration also contributes to the ongoing affordable housing crisis in Vermont.

ED Yang reported that the HRC completed its two-year program assessment review by HUD and was re-certified. The HRC only has one pending partnership grant, the 2020 Partnership Grant related to COVID-19, which she anticipates will wrap up by the end of June.

The HRC continues to offer its monthly Fair Housing trainings. The following trainings and outreach events have occurred since the last ED report:

- 4/20/21 – Workplace Harassment – Staff of the Maritime Museum
- 4/20/21 – A Closer Examination of Bias – Vermont Senate
- 4/28/21 – A Closer Examination of Bias – Vermont House
- 5/4/21 – Implicit Bias II – Vermont Family Network
- 5/10/21-5/28/21 – A series of events on Asian American and Pacific Islander Month – Montpelier H.S.

Policy, Education, and Outreach Director Garcés described the AAPI events in more detail and shared that the HRC is co-sponsoring a free screening of the film *Minari*, to take place on Friday night, May 28th.

HRC staff finished *Funny in Farsi: A Memoir of Growing Up Iranian in America* by Firoozeh Dumas. HRC staff watched and discussed the documentary *Crip Camp: A Disability Revolution*.

HRC staff serve on various taskforces and committees; some of which have been more active than others during the pandemic. These groups include:

- The Governor’s Racial Equity Task Force - Yang
- The Language Access External Advisory Committee for the Vermont Judiciary - Yang
- The Training Council’s Fair and Impartial Policing Committee - Garcés
- Diversifying the Educator Workforce Committee - Garcés
- Hazing, Harassment, Bullying Advisory Panel - Horwitz/Garcés
- Ethnic and Social Standards Advisory Working Group - Garcés (Chair)
- Governor’s Workforce Equity and Diversity Council - Burdyshaw
- Vermont Criminal Justice Council - Burdyshaw
- Vermont Multilingual Communication Task Force - Garcés
- Racial Justice Alliance Student Group - Garcés
- Refugee and Immigrant Service Providers Network - Garcés & Yang
- Thriving Communities Steering Committee - Horwitz & Garcés
- Affordable Housing Coalition - Horwitz
- The School Resource Officer Working Group - Garcés
- Champlain Valley Office of Economic Opportunity Housing Research Project - Horwitz & Yang

POST-CASE UPDATES:

ED Yang provided updates to Commissioners about cases in which they had previously made a reasonable grounds determination:

Cases open only for monitoring:

Hay v. University of Vermont Medical Center

Commission Meeting Determination: May 25, 2017

Settlement Agreement Date: December 7, 2017

As reported, the HRC, DOJ and UVMC entered into a new, clean settlement agreement to streamline the reporting process and incorporate fines for missed deadlines. HRC reviewed the most recent UVMC report and submitted questions and provided feedback to UVMC. UVMC recently provided responses that need review.

Larivee v. Anderson

Commission Meeting Determination: April 23, 2020

Settlement Agreement Date: November 28, 2020

The matter has been settled. It remains open for monitoring only. Respondents have more than a year to provide payment to Complainant.

Sall v. Chittenden State's Attorney's Office (State of VT)

Commission Meeting Determination: June 25, 2020

Settlement Agreement Date: December 18, 2020

The HRC and CSAO reached an agreement without Mr. Sall. That PDCA was approved and signed by the Commissioners at the January 2021 meeting. The case is closed at the EEOC. A Right to Sue letter was issued to Mr. Sall for his Title VII claims. The case remains open at the HRC for monitoring.

Cases in the pre-litigation phase:

Bailey v. Marijo's Properties

Commission Meeting Determination: January 28, 2020

After the Commission meeting, the HRC sent out its form letter asking the parties to get in touch with the Executive Director. ED Yang met with Complainant's attorney on 2/2/21; and followed up with Respondent's attorney Robert Kaplan, Esq. by email on 2/4/21 and 2/18/21 and phone call on 2/26/21. Respondent's attorney has been entirely unresponsive.

Sanchez et. al. v. Polak

Commission Meeting Determination: January 28, 2020

After the Commission meeting, the HRC sent out its form letter asking the parties to get in touch with the Executive Director. Erika Johnson, Esq. has entered appearance for the Complainants for a limited purpose: negotiating and resolving the dispute prior to litigation. ED Yang followed up with Respondent's attorney Robert Kaplan, Esq. by email on 2/12/21 and 2/18/21 and phone call on 2/26/21. Respondent's attorney has been entirely unresponsive. Respondents have filed a civil action against Complainants in court.

Clemmons v. State of Vermont (Vermont State Police)

Commission Meeting Determination: March 25, 2021

Although the Clemmons' private right of action may have expired pursuant to a tolling agreement, the HRC retains its six months to settle the matter. The matter is in negotiations.

Cabral-Hume o/b/o A.H. v. Michaud Properties, LLC and Burke Vacation Rentals

Commission Meeting Determination: March 25, 2021

Commissioners found reasonable grounds to believe that Complainant was discriminated against on the basis of disability when Respondent Michaud Properties denied their reasonable accommodations request and Respondent Burke Vacation Rentals retaliated against them for making reasonable accommodations request. The matter is in negotiations and going to mediation in June.

Cornelius/French v. Cedar Ridge LLC

Commission Meeting Determination: April 22, 2021

Commissioners found reasonable grounds to believe that Respondent discriminated against Complainants when it denied housing because of an assistance animal. The matter is in negotiations.

Cases in litigation:

ED Yang noted that she would discuss some of the pending matters with the Commissioners in Executive Session.

Congress v. Department of Corrections (DOC) and Centurion.

Commission Meeting Determination: April 18, 2019

Statute of Limitations Expires: December 31, 2019

Settlement Agreement Date: TBD

The Commissioners voted to support a recommendation of reasonable grounds that the Department of Corrections violated the Vermont Fair Housing and Public Accommodations Act when it failed to provide hearing aids to Latonia Congress for over 10-14 months. The Commissioners voted to pursue litigation in December 2020. ED Yang provided a brief chronology of events since then, noting that most recently she attended depositions and is responding to the Defendants' second set of discovery requests. Mediation was proposed for June.

2021 LEGISLATIVE SESSION:

ED Yang explained that she and Policy, Education, and Outreach Director Garcés testified on many bills this session, but that the following were items that successfully passed or are expected to pass.

- Since the last report, ED Yang testified in both the House and Senate Committees on Health and Welfare on **J.H.R.6** – a resolution to declare racism a public health emergency.
- **H.128**, an act relating to criminal defenses based on victim identity. This is a bill that seeks to eliminate the “gay panic defense” in criminal cases. This bill passed both the House and Senate and was signed by the Governor on May 5th.
- **S.16**, an act relating to the Task Force on Equitable and Inclusive School Environments. The bill mandates the Task Force make recommendations to end suspensions and expulsions for all but the most serious student behaviors and compile data regarding school discipline in Vermont public and approved independent. This bill passed in both the House and Senate and was signed by the Governor on May 18th.
- **H.428**, an act relating to hate-motivated crimes and misconduct, passed in both the House and Senate and removed the word “malicious” from the hate crime statute. It was signed by the Governor on May 18th.

The HRC also testified in support of adding additional funding and support to the Office of the Director of Racial Equity and Act 1 Working Group, and the Legislature supported additional funding for both. Policy, Education, and Outreach Director Garcés elaborated on **S.115**, which increased the number of appointments and the amount of funding for the Ethnic and Social Equity Standards Advisory Working Group. It has been passed by both House and Senate and is awaiting the Governor's signature.

Commissioner Besio inquired about whether the HUD recertification led to any new parameters or requirements in our work, to which ED Yang explained that the number of housing cases accepted by the HRC is slightly below HUD expectations and to focus on improving that case count.

Commissioner Ellis asked whether the HRC's focus at the beginning of the legislative session on statutory definitions had any impact on the passage of H.428. ED Yang noted that no, the HRC's focus was primarily on adjusting the definition of the severe and pervasive standard for harassment. H.428 focused on hate-motivated crimes, which require criminal acts and therefore fall within the jurisdiction of the Attorney General's Office. If we're able to change the severe and pervasive standard in the future, it will make a difference in how the HRC can find reasonable grounds in harassment cases.

EXECUTIVE SESSION:

At 9:47 a.m., Commissioner Vickers made a motion to go into executive session to hear confidential cases and to discuss pending civil litigation to which the public body is or may be a party. The motion was seconded by Commissioner Nagy. Vote 5-0.

Commissioner Christie brought the VHRC out of executive session at 2:21 p.m.

PRE-DETERMINATION CONCILIATION AGREEMENTS

HRC Case No. E19-0006

EEOC Case No. 16K-2019-00015C; 16K-2019-00016C; 16K-2019-00017C

HRC Case No. HV21-0005

DETERMINATIONS

HRC Case No: PA21-0002

Commissioner Vickers moved to accept the recommendation of no reasonable grounds to believe that discrimination occurred. The motion was seconded by Commissioner Besio. Vote 4-1 (Commissioner Ellis opposed).

HRC Case No: PA19-0018

Commissioner Ellis moved to accept the recommendation of reasonable grounds to believe that discrimination occurred on the basis of race and skin color. The motion was seconded by Commissioner Nagy. Vote 5-0.

NEXT MEETING June 24, 2021.

The meeting was adjourned at 2:38 p.m.

Dated at Montpelier, Vermont this 27th day of May 2021.

Respectfully submitted:

/s/ Bor Yang

Bor Yang
Executive Director