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VERMONT HUMAN RIGHTS COMMISSION

MINUTES

January 26, 2022

PRESENT: Commissioners: Kevin Christie, Chair, Nathan Besio, Donald Vickers, Dawn Ellis, Joan Nagy, and Charles Kletecka, Alternate. Staff: Bor Yang, Executive Director; Cassandra Burdyslaw, Abigail Hartman, and Eli Kriv, Staff Attorneys; Amanda Garcés, Director of Policy, Education, and Outreach; John McKelvie, Executive Staff Assistant (minutes).

Commissioner Christie called the meeting to order at 9:05 a.m.

BUSINESS MEETING

MINUTES: Commissioner Vickers moved to accept the minutes of the December 2, 2021 meeting as written. The motion was seconded by Commissioner Nagy. Vote 4-0 (Commissioner Ellis abstains).

EXECUTIVE SESSION

Commissioner Vickers made a motion to go into executive session to hear confidential cases at 9:07 a.m. The motion was seconded by Commissioner Nagy. Vote 5-0.

Commissioner Ellis recused herself and left the meeting from the executive session at 10:29am prior to the hearing on PA20-0009.

Alternate Commissioner Kletecka joined the executive session at 10:30am.

Commissioner Christie brought the VHRC out of executive session at 12:11pm.

BUSINESS MEETING CONTINUED

Commissioner Ellis returned to the meeting at 12:12 p.m.

HRC Case No: PA20-0009

Commissioner Kletecka moved to accept the recommendation of reasonable grounds to believe discrimination occurred. The motion was seconded by Commissioner Nagy. Vote 5-0. (Commissioners Christie, Besio, Vickers, Nagy, and Kletecka voted in favor, Commissioner Ellis recused).

Commissioners took a break for lunch at 12:21pm. Commissioners reconvened at 1:03pm.

EXECUTIVE SESSION

Commissioner Vickers made a motion to go into executive session to discuss the confidential cases. The motion was seconded by Commissioner Nagy. Vote 5-0. Commissioners went into executive session at 1:09 p.m.

Commissioner Christie brought the VHRC out of executive session at 3:53 pm.

BUSINESS MEETING CONTINUED

HRC Case No: HV22-0004

Commissioner Besio moved to accept the recommendation of reasonable grounds to believe discrimination occurred. The motion was seconded by Commissioner Nagy. Vote 4-1 (Commissioners Christie, Besio, Nagy and Ellis voted in favor; Commissioner Vickers voted against).

ED Yang asked if it would be acceptable to inform the parties that the Commissioners considered all of the factual and legal arguments that were raised in both the responses and at the hearing, prior to reaching a final determination on the recommendation. Commissioners were in support of this.

HRC Case No: PA20-0018

Commissioner Vickers moved to accept the recommendation of reasonable grounds to believe discrimination occurred. The motion was seconded by Commissioner Nagy. Vote 5-0.

EXECUTIVE DIRECTOR'S REPORT

ED Yang explained that she would not be reviewing the entire ED Report in the interest of time, as it was already sent to the Commissioner in advance.

Commissioners were notified that the Governor's Office appointed Bruce Wilson to replace Commissioner Don Vickers. Commissioner Vickers did not seek re-appointment when his term expired in February 2021. It took one year for the Governor's Office to reappoint someone. Mr. Wilson has not yet been confirmed by the Senate, as required by the HRC statute.

ED Yang reviewed the HRC budget, specifically the FY2023 request. ED Yang stated that the HRC is currently operating over-budget for FY2022 because of three things: 1) The Budget as passed did not account for a 27th payroll; 2) Retirement rates had increased; and 3) Salary and benefits had changed. ED Yang explained that so long as it is able to maintain its entire carryforward funds (approximately \$45,000), it would only be over-budget by approximately \$29,000 as reported by the Department of Finance and Management (DFM). The hope and plan then was then to seek funds from the Pay Act to cover this difference. But it was not guaranteed.

ED Yang also reported that the DFM had originally wanted to convert all but \$10,000 of the HRC's carryforward back to the General Funds, then later changed the amount to approximately \$9,000. ED Yang explained that she would be objecting to any funds being reverted back to the General Funds.

Commissioners were informed that Staff Attorney Eli Kriv was leaving the HRC to move to and work in Montreal. ED Yang explained that not filling this position immediately could possibly balance the budget and provide the funds the HRC needs to purchase a case management system. However, the HRC could not keep taking cases on and move them along efficiently without another staff attorney and, even under existing circumstances, ED Yang also expressed concerns about hiring in the middle of the legislative session.

Commissioner Vickers suggested that it was important to prioritize cases and perhaps set aside the goal of purchasing a case management system. ED Yang agreed.

Commissioner Ellis voiced her concerns about not taking cases for the next few months and expressed disappointment and dismay that the HRC had closed intakes from June through September when the Commission was short-staffed.

ED Yang explained that it was not possible to keep taking cases when there were only two Staff Attorney Investigators this past summer and that having to balance the budget against the staff attorneys' needs to maintain a reasonable workload, as well as the mission of the agency, was an impossible task.

Commissioner Ellis shared her opinion that it was important to seize this opportunity to ask for more support for the HRC as it had done in years prior and that the HRC is the only entity doing this work.

ED Yang explained that requests for more financial support are not always well-received since the HRC is engaging in more litigation than ever and is seen as an enforcement entity of governmental departments and agencies. ED Yang stated that often, she is asked how many people are on waitlists or being denied investigations. Thus, our commitment to accept all cases actually hurts our requests for more staffing.

Commissioner Besio stated that he supported whatever decision staff makes in terms of the budget and hiring. Commissioner Vickers concurred.

Commissioners moved on to discuss the written letter submitted by David Searles. ED Yang had attached the letter to the ED Report. ED Yang explained the purpose, intent, and scope of the Americans with Disabilities Act, specifically Section 35.107(b) of the Title II; that the HRC enabling statute was not enacted for the purposes of compliance with this provision of Title II; that the HRC cannot resolve conflicts of laws between state and federal statutes as a matter of course.

Commissioner Ellis inquired why the HRC was able to interpret state and federal statutes in cases but could not do so here.

Commissioner Nagy stated that it was different from what Mr. Searles was asking in his letter.

ED Yang informed the parties that the HRC is able to review laws only in the context of an existing discrimination case. The HRC does not have jurisdiction to review a court's decision even if it is contrary to existing federal law. Furthermore, the HRC's jurisdiction is limited to the state's anti-discrimination laws; it does not enforce the ADA. Because Vermont has so few cases, staff often look to other jurisdictions including federal courts which interpret similar statutes, to anticipate how a court in Vermont might view an existing case. But that this process is very different from opening a case to review a judge's decision, even if that decision was legally wrong.

Commissioner Ellis said she wanted to abstain from signing the letter because she was not sure about the law. ED Yang invited Commissioner Ellis to contact her for further discussion and explained that the letter would be coming from herself with the support of the Commissioners. Commissioners agreed with this approach.

EXECUTIVE SESSION

Commissioner Vickers made a motion to go into executive session to discuss pending legal matters in which the public body is or may be a party, at 4:40 p.m. Commissioner Nagy seconded. Vote 5-0.

Commissioner Christie pulled the Commission out of Executive Session at 4:45 p.m. to address a matter raised by Commissioner Ellis in executive session that should be heard in the business meeting.

Commissioner Ellis said she had reviewed the annual report and would like the Commissioners to consider a recommendation to the Legislature concerning a defendant's right to raise a legitimate non-discriminatory reason. Commissioner Ellis stated that she believes it is too easy for defendants to defeat discrimination claims.

ED Yang explained that the Annual Report was already submitted to the Legislature in January. Also, that we were in the middle of the legislative session and therefore it was probably too late. Furthermore, it is really complicated when one is trying to address burdens of proof since these burdens have long been established by courts. ED Yang suggested that the issue deserved a longer discussion than the Commission had time for this day. ED Yang invited Commissioner Ellis to contact her for a further discussion and/or to table the discussion to this summer when it can strategically plan for policy changes together.

Commissioner Ellis agreed, recused herself from the discussion in Executive Session and left the meeting at 4:50.

Commissioner Vickers made a motion to go into executive session to discuss pending legal matters in which the public body is or may be a party, at 4:50 p.m. Commissioner Nagy seconded. Vote 5-0.

Commissioner Christie pulled the Commission out of Executive Session at 5:04 p.m.

NEXT MEETING March 24, 2022.

The meeting was adjourned at 5:04 p.m.

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

Respectfully submitted:

/s/ Bor Yang

Bor Yang
Executive Director