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## VERMONT HUMAN RIGHTS COMMISSION

### MINUTES

**December 3, 2020**

**PRESENT:** Commissioners: Kevin Christie, Chair; Nathan Besio, Donald 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 & Outreach; India Schoenherr, VLS Intern; John McKelvie, Executive Staff Assistant (minutes).

Commissioner Christie called the meeting to order at 9:06 a.m.

#### **BUSINESS MEETING**

MINUTES: Commissioner Vickers moved to accept the minutes of the October 22, 2020 Commission meeting as written. The motion was seconded by Commissioner Ellis. Vote 5-0.

Commissioner Besio moved to accept the minutes of the November 13, 2020 special Commission meeting as written. The motion was seconded by Commissioner Nagy. Vote 5-0.

#### EXECUTIVE DIRECTOR REPORT:

Budget: Executive Director Yang described the HRC's FY2022 Budget request, which asks for increased funds based on changes in salaries and benefits that occurred in FY2020. She noted that a request for more funds is contrary to the Governor's instructions to all state agencies and departments to produce multiple plans (for a level funded budget, 1%, 2% and 3% decreased budget), but explained that the adoption of any of these plans would eliminate a position at the HRC. ED Yang is scheduled to meet with the Department of Finance and Management next week, during which this request will be discussed.

Commissioner asked ED Yang about a variety of cost-cutting measures related to remote-working and she explained that savings in the operations budget would not necessarily buffer the HRC's budget, but would likely be reappropriated into the State's general fund.

ED Yang also mentioned the possibility that the Governor's Racial Equity Taskforce may recommend increased staffing at the HRC. Whether or not that occurs, this year's budgetary challenges were bound to occur because the HRC has relied on vacancy savings to cover increases in raises and benefits for the past several years. With the HRC fully staffed, there are minimal or no vacancy savings to provide that buffer.

Commissioner Ellis asked whether the possible increase in staffing could lead to a larger buffer in future budgets. ED Yang replied that no, the buffer in the budget is always likely to be narrow because most of the agency's operational costs are fixed and there's minimal room to find savings there. Further, any fluctuations in salaries and benefits cannot be taken into account ahead of time and cannot be offset in advance with carryforward funds.

Commissioners discussed how this creates a disincentive for agencies to prioritize saving, and discussed disadvantages of the budget planning process. Commissioner Ellis encouraged staff to think of other creative methods to find funds for capacity building at the HRC.

Outreach & Training: ED Yang described the success of the HRC's Civil Rights Conference, which occurred on November 17-19<sup>th</sup>. It was well attended and received great reviews. The Director of Policy, Education and Outreach, Amanda Garcés, will be following up with conference-related content to share in webinars, on our website, on social media, and in future trainings.

Fair housing trainings continue on the second Mondays of the month and are hosted by Staff Attorney Melissa Horwitz. Interest in this training saw an uptick following the conference last month.

Taskforces and Committees: According to ED Yang, many of the taskforces that HRC staff serve on are picking up the pace of their work. As part of the Governor's Racial Equity Taskforce, she's been meeting with the group twice a week and finalizing the recommendations for a second report, which will be focused on hate crimes, bias incidents, and freedom of speech.

Outreach Director Garcés is the chair of the Ethnic and Social Standards Advisory Working Group, which is hard at work on a report that is due December 15<sup>th</sup>. The working group has created a tool that will be outsourced to educators to collect information about the standards that they use, and is developing another survey for parents and caregivers, and another for students.

Staff Attorney Investigator Burdyshaw recently stepped in for ED Yang on the Governor's Workforce Equity and Diversity Council, which has broken into subgroups to discuss issues such as the reciprocity of benefits between states, and the implementation of exit interviews.

Commissioner Ellis pointed out the burden of staff member's involvement in the many work-intensive task forces and asked whether any of these groups could be synthesized to reduce the demands on time and resources of those involved. Outreach Director Garcés explained that there are ten separate task forces that have mandatory reporting requirements, and aside from the HRC's involvement there is not significant overlap between participants. She also noted that Xusana Davis, Executive Director of Racial Equity, has created a symposium where several groups come together to find areas where they would benefit from collaboration. However, many of them have specific reporting requirements and/or require unique work that shouldn't be combined.

POST-CASE UPDATES:

Francois v. Department of Mental Health (DMH)

Commission Meeting Determination: January 25, 2018

Settlement Agreement Date: July 17, 2018

*Latest:* The status remains unchanged since the last commission meeting. DMH rolled out a new training program in March that would have satisfied the terms of the agreement. However, the last scheduled training was cancelled due to COVID-19.

Hay v. University of Vermont Medical Center

Commission Meeting Determination: May 25, 2017

Settlement Agreement Date: December 7, 2017

*Latest:* The HRC, DOJ and UVMC entered into a new, clean settlement agreement to streamline the reporting process and incorporate fines for missed deadlines. The hospital has submitted its latest report to the HRC and DOJ for review.

McGurl v. Agency of Transportation

Commission Meeting Determination: January 24, 2019

Settlement Agreement Date: May 17, 2019

*Latest:* The status remains unchanged since the last Commission meeting. ED Yang met with DHR General Counsel to discuss an MOU around the sharing of data and information pertaining to discrimination claims at DHR and the Hire-Into-Range policy. DHR is reviewing the recommended changes and MOU submitted by ED Yang.

Larivee v. Anderson

Commission Meeting Determination: April 23, 2020

*Latest:* The matter has been settled. A PDCA will be provided to the Commissioners.

Bradford v. Quality Inn

Commission Meeting Determination: September 24, 2020.

*Latest:* The matter has been settled. A PDCA will be provided to the Commissioners.

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

Commission Meeting Determination: June 25, 2020

*Latest:* The matter is in negotiations.

LITIGATION:

Congress v. Department of Corrections (DOC)

Commission Meeting Determination: April 18, 2019

Statute of Limitations Expires: December 31, 2019

Settlement Agreement Date: TBD

*Latest:* The HRC served its response to Defendants' First Set of Interrogatories. The HRC must disclose its experts by January 4, 2021 and is working with DRVT in this regard.

Commissioner Vickers expressed concern about the lengthy delays in the Congress v. DOC case, pointed out that cases involving the State as a respondent appear to take the longest to resolve, and asked whether there was any way to shorten the process. ED Yang replied that this particular case involves state contractors, in addition to the state government, which complicated matters. Further, any changes to the HRC's rules (such as an increase in the statute of limitations or restructuring the negotiation framework) would require a significant investment of time and resources so that the process involves comprehensive rather than piecemeal adjustments. Perhaps such an involved discussion could occur during a staff and commissioner strategic retreat, she noted.

#### 2021 LEGISLATIVE SESSION:

ED Yang remarked that there are no legislative updates to provide to Commissioners yet; that staff are primarily focused on day-to-day work and responsibilities stemming from various taskforces. However, ED Yang and Director of Outreach Garcés intend to sit down for a strategic planning session on legislative priorities soon.

#### **EXECUTIVE SESSION**

Commissioner Nagy made a motion to go into executive session to hear confidential cases at 10:08am. The motion was seconded by Commissioner Ellis. Vote 5-0.

Commissioner Christie brought the VHRC out of executive session at 12:03pm.

HRC Case No: HV20-0021

Commissioner Vickers moved to accept the recommendation of no reasonable grounds that discrimination occurred. The motion was seconded by Commissioner Nagy. Vote 5-0.

#### **BUSINESS MEETING CONTINUED**

#### PRE-DETERMINATION CONCILIATION AGREEMENTS:

HRC Case No. HV20-0019

#### POST-DETERMINATION CONCILIATION AGREEMENTS:

HRC Case No. HV20-0006

HRC Case No. PA20-0010

#### ANNUAL REPORT:

ED Yang shared an initial draft of the HRC's FY20 annual report and reviewed her recommendations to the Governor and the Legislature. Commissioners provided feedback and discussed in detail ED Yang's recommendations on topics such as reporting requirements for harassment complaints in employment, and incorporating evidence of implicit bias into

discrimination cases brought under the VFHPAA and VFEPA. ED Yang will finalize the annual report and share with Commissioners and staff before submitting to the Governor and Legislature at the end of the year.

**NEXT MEETING January 28, 2021.**

The meeting was adjourned at 2:32 p.m.

Dated at Brookfield, Vermont this 3<sup>rd</sup> day of December 2020.

Respectfully submitted:

/s/ Bor Yang

Bor Yang

Executive Director