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VERMONT HUMAN RIGHTS COMMISSION

MINUTES

March 25, 2021

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

Commissioner Besio called the meeting to order at 8:42 am.

EXECUTIVE SESSION

Commissioner Ellis recused herself from the first case with the intention of rejoining the Executive Session prior to the second case.

Commissioner Vickers made a motion to go into executive session to hear confidential cases at 8:43 am. The motion was seconded by Commissioner Nagy. Vote 3-0 (Commissioners Christie and Kletecka absent for vote). Commissioner Kletecka joined the meeting at 9:00am and Commissioner Christie joined at 9:15am.

Commissioner Christie brought the VHRC out of executive session at 10:33 am.

BUSINESS MEETING

HRC Case No: PA18-0017/PA19-0006

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

Commissioner Nagy moved to accept the recommendation of reasonable grounds that discrimination occurred on the basis of sex. The motion was seconded by Commissioner Besio. Vote 5-0.

Commissioner Vickers made a motion to go into executive session to hear confidential cases and to discuss pending or probable litigation at 10:41 am. The motion was seconded by Commissioner Nagy. Vote 5-0. Commissioner Kletecka then left the meeting and Commissioner Ellis joined at 11:00 am.

Commissioner Christie brought the VHRC out of executive session at 2:32 pm.

HRC Case No: HV20-0025

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

Commissioner Besio moved to accept the recommendation of reasonable grounds that retaliation by the first Respondent occurred. The motion was seconded by Commissioner Nagy. Vote 5-0.

Commissioner Ellis moved to accept the recommendation of reasonable grounds that discrimination by the second Respondent on the basis of a disability occurred. The motion was seconded by Commissioner Besio. Vote 5-0.

Commissioner Nagy moved to accept the recommendation of reasonable grounds that retaliation by the second Respondent occurred. The motion was seconded by Commissioner Ellis. Vote 5-0.

HRC Case No: E20-0001

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

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

POST-DETERMINATION CONCILIATION AGREEMENTS:

HRC Case No. PA21-0015

EXECUTIVE DIRECTOR REPORT:

Executive Director Yang provided a quick overview of her report to Commissioners.

She noted that per the Secretary of Administration's most recent memorandum, state employees are still planning for remote work through May 31, 2021. Discussing the agency's budget, she described recent discussions with House and Senate legislators concerning additional staff members for the HRC, and she is scheduled to testify before the Senate Appropriations committee next week.

ED Yang explained that HUD's two-year program review is ongoing, and that updates will be provided to Commissioners in future meetings. In other HUD news, the agency will accept cases involving discrimination on the basis of sexual orientation and gender identity, contrary to the previous administration's policy.

ED Yang noted the ongoing work of HRC staff members on task forces and committees, as well as recently completed and upcoming trainings led by the HRC.

POST-CASE UPDATES:

ED Yang provided the following updates to cases that were previously heard by Commissioners:

Francois v. Department of Mental Health (DMH)

Commission Meeting Determination: January 25, 2018

Settlement Agreement Date: July 17, 2018

DMH has completed all trainings and this case is now ready to be closed.

Hay v. University of Vermont Medical Center

Commission Meeting Determination: May 25, 2017

Settlement Agreement Date: December 7, 2017

As previously reported to Commissioners, 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.

Bradford v. Quality Inn

Commission Meeting Determination: September 24, 2020

Settlement Agreement Date: November 5, 2020

The case remained opened for monitoring, but all trainings have been completed and is now ready to be closed.

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.

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. ED Yang will send a certified letter to Mr. Kaplan, Esq. informing him of the HRC's intention to file suit if the matter is not resolved in a timely manner.

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. ED Yang will send a certified letter to Mr. Kaplan, Esq. informing him of the HRC's intention to file suit if the matter is not resolved in a timely manner.

2021 LEGISLATIVE SESSION:

ED Yang and Policy Director Garcés reviewed the bills being monitored by the HRC and received input from Commissioners. In particular, ED Yang, Policy Director Garcés, and HRC Commissioners discussed in detail the HRC's current and future positions on the following bills:

- H.245, an act relating to increasing the membership of and providing funding to the Vermont Ethnic and Social Equity Advisory Working Group. Policy Director Garcés recently testified in support of this bill, and delivered a presentation on the Act 1 Working Group Report to both the House and Senate Committees on Education.
- Policy Director Garcés also testified on S.16, an act relating to the creation of the School Discipline Advisory Council. The HRC provided information and input from stakeholders regarding the bill but did not take a position on the creation of the council.
- Policy Director Garcés testified on H.428, an act relating to hate crimes and misconduct. The HRC was invited to testify on the bill but deferred primarily to the Attorney General's Office as they have jurisdiction over the hate crime statutes.
- Policy Director Garcés testified on H.96, an act relating to creating the Truth and Reconciliation Commission Development Task Force and J.R.H.2, a joint resolution sincerely apologizing and expressing sorrow and regret to all individual Vermonters and their families and descendants who were harmed as a result of State-sanctioned eugenics policies and practices.
- ED Yang testified in support of 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.

ED Yang shared with Commissioners that she met with Representative Kimberly Jessup on the HRC's Budget and testified before the House Committee on Appropriations. Testimony before the Senate Committee on Appropriations has not yet been scheduled.

Additionally, ED Yang testified before the Senate Committee on Education on a proposed bill to require all schools that receive public funding to abide by the anti-discrimination laws of the State. ED Yang provided legal research and background information to the Committee for review and consideration but took no position on the proposed bill.

Also, ED Yang testified in support of H.196, an act relating to supporting the work of the Racial Equity Executive Director.

ED Yang reported that she was working with members of the House Committee on General, Housing and Military Affairs on J.R.H.2 to create a path forward. Commissioners were asked to weigh in on the HRC's capacity to handle a study and/or supervision and management of a study with recommendations related to Eugenics. The Commissioners expressed their concerns about capacity and decided against such a proposal.

ED Yang and Commissioners discussed at length the HRC's degree of participation in H.211, an act relating to recovery residences. Because recovery is a difficult and complex area and primarily outside of the HRC's expertise and statutory mandate, the Commissioners decided against the HRC taking a position on the bill.

Lastly, ED Yang shared that there were preliminary discussions to have the HRC supervise and manage a new program under H.317/S.108, an act relating to establishing the Bureau of Racial Justice Statistics and the Bureau of Racial Justice Statistics Advisory Panel. The HRC is named

as a member of the Panel but has not yet been identified formally as the entity to house the Bureau. The Commissioners discussed the matter at length and determined that because of capacity and the availability of other possible state entities to house the Bureau, the HRC would not be the best place to oversee this new program.

Following this discussion, Commissioner Vickers made a motion to go into executive session to discuss pending or probable litigation at 4:38 pm. The motion was seconded by Commissioner Nagy. Vote 5-0.

Commissioner Christie brought the VHRC out of executive session at 5:00 pm.

NEXT MEETING May 27, 2021.

The meeting was adjourned at 5:01p.m.

Dated at Brookfield, Vermont this 25th day of March 2021.

Respectfully submitted:

Bor Yang

Executive Director