



VT Human Rights Commission
14-16 Baldwin Street
Montpelier, VT 05633-6301
<http://hrc.vermont.gov>

[phone] 802-828-2480
[fax] 802-828-2481
[tdd] 877-294-9200
[toll free] 1-800-416-2010

VERMONT HUMAN RIGHTS COMMISSION

MINUTES

April 22, 2021

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 Burdyslaw, Staff Attorneys; John McKelvie, Executive Staff Assistant (minutes).

Commissioner Christie called the meeting to order at 12:39 p.m.

BUSINESS MEETING:

Commissioner Ellis posed a question about how dissenting votes were recorded in the January or March meeting minutes, and whether non-unanimous votes should include the name of the dissenting Commissioner(s). Staff agreed to consistently note dissenting notes going forward.

EXECUTIVE SESSION:

Commissioner Nagy made a motion to go into executive session to hear confidential cases at 12:43 pm. The motion was seconded by Commissioner Vickers. Vote 5-0

HRC Case No: HV20-0028

Commissioner Christie brought the VHRC out of executive session at 2:13 pm. Commissioner Vickers moved to accept the recommendation of reasonable grounds to believe that discrimination occurred on the basis of a disability. The motion was seconded by Commissioner Besio. Vote 5-0.

BUSINESS MEETING:

MINUTES:

Commissioner Nagy moved to accept the minutes of the January 28, 2021 meeting as written. The motion was seconded by Commissioner Vickers. Commissioner Ellis moved to amend the original motion in order to make a correction to the minutes.

Commissioner Ellis proposed clarifying the vote count at the bottom of page one and top of page two, under HRC Case No: HV20-0023, in order to identify which Commissioner(s) opposed the motion in question. In this case, the corrections would note that Commissioner Vickers opposed the first and second motions in Case No: HV20-0023.

The motion to amend was seconded by Commissioner Vickers. The vote to accept the amended motion passed unanimously. The vote to accept the minutes as corrected passed unanimously.

Commissioner Nagy moved to accept the minutes of the March 25, 2021 meeting as written. The motion was seconded by Commissioner Ellis. Vote 5-0.

PRE-DETERMINATION CONCILIATION AGREEMENTS (by staff)

HRC Case No. HV21-0006

HUD Case No. 01-21-8030-8

HRC Case No. PA19-0009

EXECUTIVE DIRECTOR REPORT:

ED Yang provided her report to Commissioners. There are no updates with regard to Covid-19 procedures or remote work since the last meeting. She explained that the status of the HRC budget remains the same and that she recently testified before the Senate Committee on Appropriations. The House bill that appropriated \$300,000 toward the HRC's litigation fund is now before the Senate.

The status of the HRC's HUD grant remains the same as the previous meeting. There is one final grant that HRC staff are finishing up, specifically by completing the fair housing outreach videos associated with that grant.

HRC staff continue to complete trainings. Policy, Education, and Outreach Director Garcés requested a temporary pause in trainings in order to conduct longer-term strategic planning, so training numbers might dip slightly in the next annual report. ED Yang completed a workplace harassment training earlier this week and Staff Attorney Horwitz is continuing the monthly fair housing trainings.

Staff attended a number of interesting events, including *Fair Housing for Our Future; Law, Justice, Holocaust, How the Courts Failed Germany*; and *Fair Housing Civil Rights Conference*. Staff are reading *Funny in Farsi: A Memoir of Growing Up Iranian in America* by Firoozeh Dumas. Lastly, staff members continue to participate in the many taskforces and committees described in previous meetings.

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 previously 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:

ED Yang noted that she would discuss some of these pending matters with the Commissioners in Executive Session pursuant to 1 V.S.A. § 313(a)(1)(E): Pending or probable civil litigation or prosecution, to which the public body is or may be a party. Initial updates included the following:

Bailey v. Marijo's Properties

Commission Meeting Determination: January 28, 2020

Ms. Bailey was subjected to sexual harassment during her tenancy with Marijo's Properties. The Commissioners determined reasonable grounds to believe discrimination occurred. 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

The Sanchez family were subjected to harassment in housing on the basis of their national origin. The Commissioners found reasonable grounds. 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

The Clemmons were subjected to disparate treatment on the basis of race and color. The Commissioners found reasonable grounds. 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 Complaint 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 a reasonable accommodations request. The matter is in negotiations.

Cases in litigation:

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

Depositions and Discovery are ongoing in this matter.

2021 LEGISLATIVE SESSION:

ED Yang described the legislative work that she and Policy Director Garcés have undertaken. In particular, ED Yang met with representatives of Columbia Law School and The National Women's Law Center on the various policies that followed the "Me Too" movement and H.329, an act relating to amending the prohibitions against discrimination, which in part seeks to amend the severe or pervasive standard for harassment in Vermont.

ED Yang testified in Senate Appropriations on the HRC budget and in Senate Judiciary on 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.

Policy Director Garcés provided testimony on H.245, an act relating to increasing the membership of and providing funding to the Vermont Ethnic and Social Equity Advisory Working Group and S.16, an act relating to the creation of the School Discipline Advisory Council, in the Senate Education Committee.

Commissioner Vickers requested clarification about the discussion around H.128. ED Yang explained that there are two issues of which Commissioners should be aware; the first is the issue of legislators making statements that have been harmful, particularly to people of color and the LGBTQ community, which have perhaps received even more publicity now that all committee meetings are online. The second issue is the language or intent of the bill itself. On one side, the Office of the Defender General makes the argument that a defendant should have the

constitutional right to bring all available defenses and this should prevail over other rights. On the other side, for which ED Yang provided testimony, constitutional rights in criminal proceedings are limited all the time (for procedural reasons, discovery deadlines, rules of evidence, etc.) and this is another justifiable reason to limit rights.

Another important distinction made during discussion about the bill is whether defendants should be able to raise the ‘gay panic defense’ in the sentencing phase, even if the defense is restricted from the guilt-determination phase. ED Yang testified that this should not be allowed either, and that as a society we need to shift our cultural perception around the LGBTQ community which, along with the immigrant community, remains vulnerable to socially acceptable stigmatism and hatred. ED Yang pointed out that this defense is not often raised by defendants, but she felt that it was important the HRC strongly support the LGBTQ community in this area. She noted that the HRC is sympathetic to the argument of protecting criminal defendants’ rights, but in this case it comes into conflict with the rights of vulnerable communities that are crucial to protect.

Commissioner Ellis questioned whether the HRC is examining whether to do anything differently once all staff are vaccinated. ED Yang commented that although we’re thinking about it, we’re waiting on updates to the Governor’s order and the State’s recommendations about remote work. But overall, she’s considering what makes the most long-term sense for the HRC itself and what the impact of ongoing remote or partly-remote may be on the HRC’s work, reputation, and connection to Vermonters. Commissioner Ellis asked whether these questions could be incorporated into strategic planning undertaken by both staff and commissioners.

Commissioner Besio concurred with ED Yang that the HRC should act cautiously and in line with the Governor’s orders. He asked whether the HRC plays any role in advocating for the distribution and acceptance of vaccines. ED Yang noted that she serves on the Governor’s Racial Equity Task Force and part of that work involved vaccine advocacy for protected groups. However, this is largely the job of the Governor and the Department of Health and they’ve been doing effective work. Commissioner Christie acknowledged the importance of continuing to discuss remote work and Covid-19 related questions in future meetings.

ED Yang asked Commissioners on their opinions about how strategic planning around a post-pandemic return-to-work should be developed – whether independently or in consultation with Commissioners. Commissioners Christie, Nagy, and Vickers agreed that HRC staff should develop ideas and suggestions and bring those to Commissioners for bigger picture discussions. Commissioner Ellis agreed in terms of day-to-day office management, and elaborated that she’d like Commissioners to weigh in on the structure of how Commissioners interact with staff and parties going forward. She continued that part of our forward thinking should revolve around “What is it that we can do better? What’s worked well? Where might it have fallen short?”

EXECUTIVE SESSION:

Commissioner Besio made a motion to go into executive session at 3:10 pm to discuss pending or probable civil litigation where premature general public knowledge would clearly place the HRC at substantial disadvantage. The motion was seconded by Commissioner Ellis. Vote 5-0.

Commissioner Christie brought the VHRC out of executive session at 3:44 pm.

NEXT MEETING May 27, 2021.

The meeting was adjourned at 3:44 pm.

Dated at Montpelier, Vermont this 22nd day of April 2021.

Respectfully submitted:

/s/ Bor Yang

Bor Yang

Executive Director