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VERMONT HUMAN RIGHTS COMMISSION

DRAFT MINUTES

May 26, 2022

PRESENT: Commissioners: Kevin Christie, Chair, Nathan Besio, Dawn Ellis (absent from 2:20-3:50), Joan Nagy, Former Commissioner Don Vickers (present from 2:30-3:00 p.m. to hear the confidential case as an alternate) Staff: Bor Yang, Executive Director; Amanda Garcés, Director of Policy, Education, and Outreach; Cassandra Burdyslaw, Staff Attorney, and Big Hartman, Staff Attorney (minutes); Ariel Murphy, Legal Intern.

Commissioner Christie called the meeting to order at 9:32 a.m.

BUSINESS MEETING

MINUTES: Commissioner Besio moved to accept the minutes of the April 28, 2022 meeting as written. The motion was seconded by Commissioner Ellis. Commissioner Nagy was not present at the meeting, and so abstained. Vote 3-0.

EXECUTIVE DIRECTOR'S REPORT

COVID: HRC staff met to review their remote work plan and made minor adjustments. Staff intend to revisit the remote plan periodically in the future

ED Yang reminded Commissioners of Rule 24 of the HRC Rules which say that commissioners are expected to appear in person except for good cause. Commissioners made a decision in December to extend remote meetings through May due to COVID. Commissioner Nagy stated that she would be happy to do meetings remotely if the parties are not in person, but if they are in person then she would like for some Commissioners to be present in the room with the parties. Commissioner Christie noted that transmission rates are varying in different areas of the state, and that COVID continues. Commissioner Besio agreed with what Commissioner Nagy stated, and reiterated that there are challenges with a hybrid model for meetings. Commissioner Besio felt that the rules don't reflect the current times. In response to a question from Commissioner Nagy concerning remote processes at the HRC, ED Yang indicated that for the most part, the parties and their representatives have been comfortable with remote interviews and meetings.

There have been some instances where parties asked to attend in person and the HRC provides that option. Commissioner Ellis discussed the one hybrid meeting that was held in the Fall, and said she supported the hybrid concept, allowing folks to attend virtually or in person.

Commissioner Ellis suggested that we continue to have a “light” burden for good cause to attend virtually. Staff Attorney Burdyslaw indicated that the majority of people she works with are okay with virtual meeting although there are some exceptions to that. ED Yang stated that the world may not return to how things were pre-COVID and that it was important for the HRC to consider a new way of doing things. She suggested that time be made to revisit the rules on this and other topics since it has been six years since the rules have been amended. ED Yang noted the rules say “a commissioner” may appear remotely for good cause. But the Commission could not have predicted a pandemic and that there certainly is good cause given the recent surge in cases. ED Yang indicated the hybrid meeting was actually difficult for people to hear each other and there were challenges with that. Commissioner Ellis felt that she benefited from the hybrid meeting in terms of being able to see body language. Commissioner Ellis argues against changing our rules to have virtual meetings in the future and feels the most just forum we can provide is in person, as modeled by the court system that is envisioning moving towards in-person processes. Garces asked about Act 78 that authorized virtual meetings until January 2023. Commissioner Christie supports planning a series of meetings to review the rules. Commissioner Ellis stated that the HRC is different than other parts of state government, in that we have judicial functions in our meetings, and want to ensure access to justice by allowing in-person attendance at our hearings. Commissioner Christie stated that the remote rules for the judiciary were implemented in order to keep everyone safe, and that has resulted in a backlog of thousands of cases. Commissioner Ellis noted that this is not the only pandemic in history but we are responding to it quite differently in the terms of the services we provide in the meantime. Commissioner Christie stated that the Chief Justice of the Vermont Supreme Court has been vigilant about the access to justice during the pandemic, and agrees that it’s important to keep a high bar for improving that access. Commissioner Christie said we can keep this in place to keep people safe in the current situation. Commissioner Besio agreed that we should start a process for amending the rules. Commissioner Besio recalls when conference calls were also technical challenges long ago, and that we did not have complaints from parties about remote. There have often been instances where people participate by phone due to location/logistics but all others

were present in the room. Commissioner Besio recalled that at one point the rules required everyone attend in person. Commissioner Besio stated that even before COVID people were sometimes participating by speaker phone. ED Yang shared that Act 78 permits public meetings to be held remotely until January 2023. So this time-frame seems reasonable and would give the Commission enough time to reconsider the rules, should they choose to do so. ED Yang noted that it is not a good feeling for the parties if they show up in person and Commissioners were remote. ED Yang noted that unlike courts, the HRC does not receive evidence and is slightly different. Commissioner Ellis stated that she prefers the option to attend in person, and finds value in a hybrid model. ED Yang clarified that even remote meetings would still permit people to appear in person which is what the HRC has been doing. Commissioner Christie encouraged a motion to continue in alignment with Act 78. Commissioner Besio moved that we follow with the Governor's proclamation for public meetings until January 2023. The motion was seconded by Commissioner Nagy. Further discussion: Commissioner Ellis feels that this is a very long time, and encourages the Commission to return to in-person meetings a few times prior to January. Commissioner Christie called for a vote. Motion to continue remote Commission meetings passes unanimously (4-0).

Budget: No changes to our budget. The HRC is headed into the fiscal year in good shape, thanks to vacancy savings. The hope is the HRC can purchase case management software.

The HRC has made an offer to Heather Nodler. Heather comes from HUD and the EEOC, they have a lot of relevant civil rights experience and understands that nature of the HRC's work. They will be joining the HRC in July and hopefully will be present at the retreat.

ED Yang said the retreat date is tentatively scheduled for July 14 but it is not confirmed because not all Commissioners have committed. Commissioner Ellis said she would not join in person and could not commit to any date but hopes she could attend at least part of it, remotely. Staff Attorney Hartman will be leading the Commission in a training on open meeting laws and the public records act. ED Yang will be discussing the HRC statute, rules and commission roles and responsibilities. ED Yang said she would prefer that all Staff and Commissioners attend the training portion of the day, even if remotely. Those trainings would be in the morning and the second half of the day would be the retreat time. Commissioner Ellis asked why a meeting in

July was not scheduled so that Commissioners could have a date set aside. ED Yang said that official meetings are not scheduled in July for the purposes of an annual staff retreat but that in the past, Commissioners and staff have appreciated having a flexible date due to summer vacations. Commissioner Christie stresses the importance of everyone attending the training part of the day. Commissioner Besio said he is now available on July 15th if that works better. Commissioner Ellis and ED Yang will discuss a time that Commissioner Ellis can commit.

No new updates on HUD grant. Director of Education, Policy, and Outreach Garces is working on a video of our human rights conference. Trainings and task forces – as stated in the report. Staff Attorney Burdyslaw stated that the Criminal Justice Council will be revisiting their rules

Director of Education, Policy, and Outreach Garces: The Act 1 Ethnic and Social Standards Advisory Working Group voted for their final set of recommendations to the Education Quality Standards which was submitted to the State Board in April. This is very significant. They will go to public comment in September, rule-making in January, and finalized in February. It will be the culmination of two years of work. The working group is also finalizing an RFP for the remaining of the work and the POOS Coalition is shifting to look at BHH, and creating a storytelling opportunity for families.

Legislative update:

H.320, an act relating to prohibiting agreements that prevent an employee from working for the employer following the settlement of a discrimination claim. This is the “don’t darken my door” bill. Status: Passed in the House. It was voted out of the Senate Committee, then received two readings on the floor before the Senate adjourned.

H.329, an act relating to amending the prohibitions against discrimination. This bill sought to correct the “severe or pervasive” legal standard for harassment cases. This bill did not make cross-over. The provisions relating to extending the statute of limitations to six years for all claims of discrimination, was added to H.729, a miscellaneous judiciary bill. It is before the Governor. The parts of the bill that correct the severe or pervasive legal standing in housing, was added to S.226, a safe and affordable housing bill. That bill is also before the Governor. The parts of the bill that correct the severe or pervasive legal standard in employment was expected

to be added to H.320. But the amendment to H.320 was never made. As mentioned above, H.320 did not pass.

H.96: an act relating to creating the Truth and Reconciliation Commission Development Taskforce. The bill passed in both Chambers and is before the Governor for consideration.

S.140 – an act relating to prohibiting civil arrests at courthouses. The bill passed in both Chambers and is before the Governor for consideration. Migrant Justice held a press conference and the HRC submitted a quote in support of the bill.

H.148 – an act relating to environmental justice in Vermont. This bill proposes to establish an environmental justice policy for the State of Vermont and require the State agencies to incorporate environmental justice into their work. It passed in Senate and House and before the Governor.

Commissioner Christie noted that S.140 was delivered to the governor on the 25th. He can veto, sign, or let it become law without his signature. You can see when a bill has been delivered under “last recorded action” on the bill number on the Vermont General Assembly website.

End of ED Report at 10:32AM.

ED Yang reported that she just heard from Commissioner Wilson who indicated that he will be trying to join if he can but has had a family emergency.

EXECUTIVE SESSION

Commissioner Nagy made a motion to go into executive session to hear confidential cases at 10:34. The motion was seconded by Commissioner Besio. Vote 4-0.

(Staff and Commissioners took a break from 12:15 – 12:45)

Commissioner Christie brought the VHRC out of executive session at 4:02pm.

BUSINESS MEETING CONTINUED

HRC Case No: HV21-0003

Commissioner Nagy moved to find *no reasonable grounds* to believe that discrimination occurred on the basis of race and color. The motion was seconded by Commissioner Besio. Vote 4-0.

Commissioner Nagy moved to find *reasonable grounds* to believe that retaliation occurred. The motion was seconded by Commissioner Besio. Vote 4-0.

HRC Case No: PA20-0016

Commissioner Besio moved to find *reasonable grounds* to believe that discrimination occurred on the basis of disability. The motion was seconded by Commissioner Nagy. Vote 4-0.

Commissioner Besio moved to find *reasonable grounds* to believe that discrimination occurred on the basis of race and color. The motion was seconded by Commissioner Ellis. Vote 4-0.

Pre-determination Conciliation Agreements were reviewed and approved by Commissioners in cases: PA21-0001, HV21-0014, HV22-0005.

The Confidential Matter relating to HRC Case No: PA21-0012 was postponed to the June Meeting due to Commissioner Wilson's unexpected absence.

Commissioner Ellis asked that the minutes reflect that she notified the parties in HRC Case No: HV21-0003, in executive session, that she has a personal relationship with an attorney who works at Vermont Legal Aid, and that the parties did not have an objection. ED Yang expressed some concern about sharing information from the executive session, in the public meeting. ED Yang outlined what constitutes a conflict of interest, what creates the perception of a conflict and when a Commissioner should recuse. Commissioner Ellis observed that what was mentioned in the minutes seemed to be at the discretion of the notetaker.

Commissioner Ellis questioned the amount of \$500 in one PDCA. Staff Attorney Hartman explained the conciliation process in this instance and the parties' reasoning for offering/accepting that figure. ED Yang explained that there are many factors that play into the amounts, some of which have nothing to do with merit. Additionally, Staff Attorneys are impartial and do not weigh in on the amount agreed upon by the parties.

Commissioner Ellis expressed her dissatisfaction with litigation being contracted out to a firm and wanted litigation to return in-house. ED Yang explained that without a full-time litigator, the compromise would be to do less litigation which would not serve the mission. The recent addition to the HRC's special litigation fund has allowed the HRC to file more lawsuits now than

ever before. In the past, when the ED was the sole litigator, there was only time/resources to do one lawsuit at any given time and the HRC turned away many meritorious cases that reached reasonable grounds. Commissioner Ellis said she would like to discuss alternatives, in the future.

NEXT MEETING June 23, 2022.

The meeting was adjourned at 4:42.

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

Respectfully submitted:

/s/ Bor Yang

Bor Yang

Executive Director