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VERMONT HUMAN RIGHTS COMMISSION

MINUTES

September 24, 2020

PRESENT:

Commissioners: Kevin Christie, Chair, Nathan Besio, Donald Vickers, Dawn Ellis, Joan Nagy.
Staff: Bor Yang, Executive Director; Nelson Campbell, Supervising Attorney; Melissa Horwitz and Cassandra Burdyslaw, Staff Attorney/Investigators; India Schoenherr, Vermont Law School Intern; John McKelvie, Executive Staff Assistant (minutes).

Commissioner Christie called the meeting to order at 9:15am.

BUSINESS MEETING

MINUTES: Commissioner Vickers moved to accept the minutes of the August 27, 2020 meeting as written. The motion was seconded by Commissioner Nagy. Vote 5-0.

EXECUTIVE DIRECTOR REPORT:

UPDATES & ACTIVITIES

COVID-19:

Executive Director Yang reported that HRC staff plan to work remotely through the remainder of the calendar year, as required. This remains unchanged from the last Commission meeting.

The Budget:

ED Yang referred Commissioners to the Executive Director Report, which detailed the HRC's FY2020 budget figures and the total carry forward amount for FY2021. The report also specified each component of federal grant funding from HUD, most of which is allocated for projects to improve housing outreach in immigrant communities and to develop culturally appropriate and language accessible messages around housing discrimination and COVID-19.

Outreach & Training:

ED Yang noted that staff is scheduled to engage in a review about implicit bias trainings: their efficacy and effectiveness in mitigating prejudice, encouraging difficult conversations, and inspiring system-wide changes. The conversation will be centered around a review of internal processes at the HRC, what implicit bias looks like in our work and in the community, and

whether we should move forward with the trainings as they currently exist or redevelop them or provide new trainings to meet our statutory mandate and the growing needs of Vermonters.

Director of Policy Garcés recently provided an implicit bias training for preschool teachers; ED Yang developed and delivered a Confirmation Bias Training for Rutland School District and co-hosted the “Know Your Rights” training with the ACLU and NAACP. Staff Attorney Cassandra Burdyslaw conducted an implicit bias training for Cathedral Square. ED Yang provided back to back trainings on housing for legislators, government officials and community organizations as part of our HUD partnership grant.

Commissioner Vickers asked for clarification around fair housing law and the cultivation of marijuana in rental properties. ED Yang described how marijuana cultivation could relate to reasonable accommodation requests on the basis of a disability, but to her knowledge there is no legal precedent on the issue. In response to a follow-up question from Commissioner Vickers, she clarified that without a connection to a protected category, a landlord has a right to set rules that restrict marijuana cultivation in rental properties.

Commissioner Besio asked ED Yang about the interplay between state and federal law on this topic, and both she and Staff Attorney Horwitz explained that federally-funded housing providers may have an undue burden argument against marijuana-related accommodation requests because their funding could be at risk. Commissioner Christie added that the legislature discussed these concerns when considering the legislation and until there are test cases and legal precedent, it’s largely a question of interpretation.

Policy Director Garcés described recent outreach activities including a webinar discussion between educators, students, social workers, community members on whether police belong in Vermont schools. A second session will occur on October 15th. She also described a bystander intervention webinar conducted along with the Peace & Justice Center and Showing Up for Racial Justice.

Policy Director Garcés explained the tentative timing and structure of a civil rights conference she’s coordinating for the middle of November. Richard Rothstein, author of *The Color of Law*, will be a keynote speaker. Workshops will focus on state and federal housing laws, historical and current housing segregation, and reparations.

Commissioner Ellis asked for clarification about the target audience of the conference and suggested methods of expanding and enabling access for individuals without institutional support or reliable internet connections. She encouraged staff to consider options where safe, in-person gatherings in community spaces could allow access to those who may otherwise have a difficult time attending.

ED Yang went into more detail about the structure of the conference, the work of Richard Rothstein, and the connection between housing discrimination and educational, economic, and health disparities. Commissioners discussed other logistical concerns and Commissioner Christie suggested that he, ED Yang, and Policy Director Garcés meet to discuss sources of additional

funding. He commended both staff members on the preparation and hard work they've invested in the planning process.

Taskforces and Committees:

ED Yang described the involvement of staff members in various task forces and initiatives, some of which have been more active than others during the pandemic.

- The Governor's Racial Equity Taskforce (RETF) – Yang
 - The RETF issued its first report and recommendations to the Governor on September 2, 2020.
- The Language Access External Advisory Committee for the Vermont Judiciary – Yang
- The Training Council's Fair and Impartial Policing Committee – Garcés
- The New England-wide project to design a framework to support the diversification of the educator workforce – Campbell
- Hazing, Harassment, Bullying Advisory Panel – Horwitz
- Ethnic and Social Standards Advisory Working Group – Garcés (Chair)
- Governor's Workforce Equity and Diversity Council – Yang
- The AGO's Fair and Impartial Policing Committee on Language under FIPP – Yang
- Vermont Multilingual Communication Task Force – Garcés
- Immigrant Relief Fund Coalition – Garcés
 - Policy Director Garcés noted that bill in the legislature included \$5 million in funding and had already been passed by the House.
- Farmworker Health & Service Providers – Garcés
- Refugee and Immigrant Service Providers Network – Yang and Garcés
- Thriving Communities Steering Committee – Horwitz and Garcés
- Affordable Housing Coalition – Horwitz
- Montpelier-Roxbury School District, Equity Committee – Garcés

POST-CASE UPDATES

ED Yang provided the following case updates to Commissioners:

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.

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 a Memorandum of Understanding 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 is in negotiations. If it does not resolve amicably, the HRC will pursue litigation as this is a housing matter.

Bradford v. Travelodge

Commission Meeting Determination: April 23, 2020

Latest: The matter has been resolved and requires approval from 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: ED Yang filed a lawsuit in Washington Superior Court before March 31, 2020. Centurion filed an Answer. The State filed its Answer. DRVT joined the lawsuit. The Courts dismissed the Defendants' Motion to Dismiss on procedural grounds. The parties entered into a stipulated discovery schedule. The HRC was served with interrogatories and is working with DRVT to provide a response.

2020 LEGISLATIVE SESSION

The 2020 Legislative session is coming to an end. ED Yang expressed disappointment that S.83, an act relating to prohibiting agreements that prevent an employee from working for the employer following the settlement of a discrimination claim (Don't Darken My Door), would not be passed this session. On the positive side, S.119, an act relating to use for force, did pass both House and Senate.

EXECUTIVE SESSION:

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

At 1:20pm, Commissioner Ellis excused herself from the Executive Session. The remaining Commissioners engaged in a conversation regarding a confidential case.

Commissioner Christie brought the VHRC out of executive session at 1:34pm.

HRC Case No: PA20-0010

Commissioner Ellis moved to accept the recommendation of reasonable grounds that discrimination occurred. The motion was seconded by Commissioner Nagy. Vote 4-1 (Commissioner Vickers opposed).

HRC Case No: PA18-0028

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

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

BUSINESS MEETING CONTINUED

PRE-DETERMINATION CONCILIATION AGREEMENTS:

HRC Case No. HV20-0024

Commissioner Vickers moved to approve the conciliation agreement. The motion was seconded by Commissioner Nagy. Vote 5-0.

HRC Case No. PA21-0004

Commissioner Vickers moved to approve the conciliation agreement. The motion was seconded by Commissioner Nagy. Vote 5-0.

POST-DETERMINATION CONCILIATION AGREEMENTS:

HRC Case No. PA20-0011

Commissioner Nagy moved to approve the conciliation agreement. The motion was seconded by Commissioner Ellis. Vote 5-0.

Commissioner Vickers asked whether the HRC could create a public education campaign about discrimination against individuals with service animals. Commissioner Besio pointed out that more individuals may be aware of their rights than in the past, hence the frequency of these cases.

Commissioners briefly discussed the cancellation of the annual staff and commissioner retreat and whether an informal meal or gathering could occur instead. No official decisions were made.

NEXT MEETING October 22, 2020.

The meeting was adjourned at 2:29 pm.

Dated at Brookfield, Vermont this 24th day of September 2020.

Respectfully submitted:

/s/ Bor Yang

Bor Yang

Executive Director