

# New Hampshire Commission for Human Rights

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## NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS COMMISSIONERS' MEETING

August 3, 2023, at 5:00 PM

### MINUTES

**ATTENDANCE:** Commissioners present: Nancy LeRoy (Acting Chair), Basra Mohamed (via Zoom), Elizabeth Asch, Adrienne Evans, and Melissa Moriarty (@ 5:18)

Commissioners absent: Christian Kim, Doug Palardy

Commission Staff: Executive Director, Ahni Malachi  
Assistant Director, Sarah Burke Cohen  
Investigator, Nicole Lemelin

Commissioner LeRoy called the meeting to order at 5:14 PM.

### 1. PUBLIC COMMENT

Commissioner LeRoy asked if anyone from the public was present and wished to make public comment. There was no one present.

### 2. APPROVAL OF JUNE MEETING MINUTES

Commissioner Moriarty stated her name was spelled incorrectly.

Commissioner Asch moved, and Commissioner Evans seconded a motion to approve the minutes as amended.

Upon a roll call vote, the motion carried: Commissioner LeRoy - yea; Commissioner Mohamed - yea; Commissioner Asch – yea; Commissioner Evans – yea; and Commissioner Moriarty – yea. The motion carried.

### **3. GACDI UPDATE**

Executive Director Malachi discussed the ongoing work of the Governor’s Council on Diversity and Inclusion (“GACDI”). Last meeting (June) different topics GACDI would like to address were discussed. GACDI brainstormed amongst the group to define the scope of topics, importance of each, etc. The next GACDI meeting will work to decide which brainstormed topic to pursue and move forward with accordingly.

### **4. OFFICE UPDATES**

- a.** EEOC Conference: Executive Director Malachi attended with Assistant Attorney General Sean Locke. Assistant Director Burke Cohen attended many of the sessions virtually.

Executive Director Malachi feels Attorney Locke should attend annually moving forward, as Vermont also has a Civil Rights Unit whose AAG attends and feel the interaction would be beneficial to both.

Artificial Intelligence and its role in hiring was a topic at the conference. Executive Director Malachi spoke of potential issues with company use of AI, such as screening out genders. She explained how discrimination can occur because the software is as good as the information it learns. Commissioner LeRoy questioned how AI works. Executive Director Malachi explained computer programming/algorithms. Executive Director Malachi stated the Commission will look to New York who has passed AI usage legislation. NY should be present to discuss AI at September’s EEOC/FEPA Regional Conference.

Executive Director Malachi discussed another session which covered Anti-Semitism and the forms it takes in today’s society.

Executive Director Malachi discussed new laws that have been promulgated including the Pregnant Workers Fairness Act (“PWFA”) and Pump Act. The EEOC held a team’s meeting training on the Pregnant Workers Fairness Act, which Commission staff attended as well as offered additional information at the National Conference. Executive Director Malachi also discussed the annual legal updates session and that the hardcopy of the updates will be available to share with the staff and Commissioners soon.

- b.** Commissioner LeRoy asked for an update on additional staffing the Commission received with the approval of the Governor’s budget. Executive Director Malachi stated the Commission was approved for seven positions all of which were not fully uploaded in the system to begin hiring. Executive Director Malachi plans to

hire soon but wants to confer with the Department of Justice's Business Manager first. The Commission will be hiring five investigators, four being new and one to replace staff leaving. Executive Director Malachi discussed waiting to hire the investigators until after the Commission has moved given the space constraints at the current facility. Assistant Director Burke Cohen stated the Commission was also approved for: full-time Office Manager, full-time Secretary (converted from part-time), part-time Intake Coordinator and full-time Paralegal (converted from part-time). Executive Director Malachi discussed the possibility of hiring these positions prior to the move.

- c. In July, the legislative sub-committee attended a meeting/training at the Commission to get a better understanding of what the Commission does and how it does it. It was in relation to a piece of legislation pending before the Judiciary Committee relative to Respondent's removal to court. Executive Director Malachi was out during the meeting in July. Assistant Director Burke Cohen discussed the presentation given. She said that investigators participated as well as Meryl Gibbs, the Commission's former Executive Director. Ms. Gibbs is member of the House. Assistant Director Burke Cohen noted it was beneficial having Ms. Gibbs attend to give a historical perspective on the Commission and similar issues that remain today. The presentation focused the different ways cases are processed to closure. Although there still seemed to be some confusion, the overall outcome was positive.

Executive Director Malachi stated the Commission invited the entire House Judiciary Committee for a training/presentation once moved into a larger space. Commissioner Asch stated she would be happy to attend a hearing on the matter. Executive Director Malachi will let Commissioner's know when the next hearing is scheduled.

## **5. REVIEW OF INVESTIGATOR CASE LOAD**

Assistant Director Burke Cohen stated Investigators continue to move cases. The Commission is at 87% of contract, which closes on September 30<sup>th</sup>. This equals 147 cases, with 68 closures needed to make contract. Assistant Director Burke Cohen and Executive Director Malachi stated the Commission will not be making contract. Executive Director Malachi estimates the Commission will close 170 cases by September 30<sup>th</sup>, which will still be short of the contracted amount of 215 cases. Executive Director Malachi stated things that have negatively impacted the Commission's contract goal was employee turnover, an uptick in state-only cases and a staff member leaving who closed a lot of cases, albeit numerous cases received motions for reconsideration. Executive Director Malachi stated not making contract happens all the time; however, it is not a practice the Commission will be engaging in. Assistant Director Burke Cohen concurred, noting other states are likely having difficulty with contract due to staffing issues.

## **6. HEARING SCHEDULE UPDATE**

Assistant Director Burke Cohen discussed the public hearing schedule. Public Hearing scheduled for August is stayed by a motion filed with NH Supreme Court regarding the Commission's 24-month part of the statute. Assistant Director Burke Cohen explained the clause in the statute is not jurisdictional for reasons including dismissal due to matters outside of a Complainant's control would not be an appropriate remedy that would further the Commission's overall objective. Further, the second case scheduled for public hearing in August likely will not move forward both parties have indicated they are close to settlement.

There will be a public hearing on November 15, 2023. It is moving forward and the panel has been informed.

The remainder of the cases for September, October & December are still processing through Conciliation/Prehearing and may not go forward. Assistant Director Burke Cohen will continue to keep the Commissioners updated.

## **7. OTHER BUSINESS**

- a.** LBA Performance Audit: Executive Director Malachi discussed the LBA audit requested by 2 members of the House Judiciary Committee. The audit is estimated to be completed in 2024. Commissioners have a printed copy of the 2019 financial audit and the LBA audit draft scope. Director Malachi submitted responses to LBA financial audit update questions and provided a copy to Commissioners. The responses were not reviewed by Commissioners prior to submission due to the response deadline and no Commission meeting in July. Executive Director Malachi stated currently, a lot of identified issues are fully or partially resolved. Assistant Director Burke Cohen stated the performance audit is focusing on 2020-2023, likely a lot of identified issues will be resolved once the additional staff received during the budget cycle is hired.

Executive Director Malachi stated the draft scope of the performance audit will be approved at the August Fiscal Committee Meeting. Commissioners were asked to review. Assistant Director Burke Cohen will email Commissioners the link to the Fiscal Committee meeting to watch. Executive Director Malachi and Assistant Director Burke Cohen will be unable to attend the meeting. Executive Director Malachi requested the Commissioners review the scope and send her any suggested changes via email on or before August 4.

Assistant Director Burke Cohen has a few minor issues with wording in the proposal as it could cause some confusion about the Commission's process and objective. Commissioner Asch noted "education" should be included in the LBA audit proposal.

LBA Auditors have interviewed Executive Director Malachi. The Auditor has requested to interview Commissioner Kim. Executive Director Malachi stated the Auditor may request to interview other Commissioners but as of now, no indication of such has been made. The Auditor will likely also interview Assistant Director Burke Cohen and other staff members.

Assistant Director Burke Cohen questioned the scope proposal's plan of "talking to stakeholders outside of the Commission". This topic was discussed and it was determined that a note of the issues with "stakeholders" would be made to the Auditor.

Commissioner Asch questioned the audit's proposal to "analyze relevant records"; specifically, what records that encompasses and Commissioner LeRoy asked about confidentiality. Executive Director Malachi stated they can pull any records including those from archives. Assistant Director Burke Cohen stated they are subjected to the same confidentiality rules as the Commission.

Commissioner Asch questioned "can they keep submitting the Commission to repeated audits?" Executive Director Malachi responded an audit of the Commission was requested and it could happen again.

- b.** Commissioner Asch stated she and members of her team have reviewed GACDI education toolkit. They found it extremely helpful with a lot of great information that can be applied. Commissioner Asch works with children 6 weeks of age through pre-k, and finds it useful. Executive Director Malachi concurs the toolkit should be distributed to daycare facilities and have an overall better distribution plan.

## **8. NON-PUBLIC SESSION**

None.

## **9. ADJOURNMENT**

Commissioner Asch moved for adjournment, and it was seconded by Commissioner Moriarty. The Commissioner's meeting adjourned at 6:26 PM.