

New Hampshire Commission for Human Rights

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NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS COMMISSIONER'S MEETING

January 3, 2019 at 5:00 PM

MINUTES

ATTENDANCE: Commissioners: Matthew Mayberry (chair), Jose Luna, Harvey Keye, Alex Samuel, Sheryl Shirley and Nancy LeRoy

Absent: Douglas Palardy

Commission Staff: Executive Director, Ahni Malachi and Assistant Director: Sarah Burke Cohen
Administrative Assistant: Lois Monette

Assistant Attorney General: Jill Perlow

The meeting was called to order by Chairman Mayberry at 5:08 PM

1. Approval of the July 25, 2018 and September 13, 2018 Minutes

Chairman Mayberry moved to approve the July 25, 2018 minutes. The motion was seconded and approved with one vote abstained. Chairman Mayberry moved to approve the September 13, 2018 minutes. The motion was seconded and approved with one vote abstained.

2. Welcome to New Commissioner Nancy LeRoy:

Chairman Mayberry welcomed new Commissioner Nancy LeRoy. Ms. LeRoy gave a brief talk of her background with the NH Real Estate Commission.

3. Office Updates:

Executive Director Malachi stated we have hired a office manager, Lois Monette; she worked here previously and thoroughly understands the job. We are working on next hiring the part time and full time investigator, the jobs have been posted internally and externally, the applicants have been reviewed and we are starting to call candidates for interviews. Interviews for the part time position will be first as that position is the most critical to fill

4. EEOC Contract

Executive Director Malachi stated for this year we have contracted with the EEOC for 186 cases. Last year our contract was 166 cases and at the end of the year we had about 20 cases in reserve. We are having a lot of success with expanding the Mediation program and negotiating settlements. That will help with our closing numbers.

Chairman Mayberry asked how we expanded our mediation program. Executive Director Malachi stated that Investigator Katrina Taylor has revamped the program; Investigator Taylor reached out to the NH Conflict Resolution Association. That has brought more mediators into the program. Another thing that has been helpful is that we have opened up our office to holding mediation here which has increased the program. Commissioner Luna asked if former Commissioners can mediate. Assistant Director Burke Cohen stated that if they have been removed long enough from their service to the Commission so that there isn't any conflict on a case then they could possibly mediate. Chairman Mayberry stated if you know anyone with an interest have them contact Assistant Director Burke Cohen or Executive Director Malachi. Chairman Mayberry asked how many cases we can bring to mediation. Assistant Director Burke Cohen explained that we can only bring a case to mediation if both parties are willing. If the complainant is interested in mediation we ask the respondent if they are willing to participate. The parties don't always want to participate in mediation. Commissioner Shirley asked if it would be possible to see over the last 5 years how many cases have gone to meditation. Commissioner Luna asked if current Commissioners could be mediators, Assistant Director Burke Cohen replied that it could be difficult because of conflicts that can occur that would leave them conflicted out if it went to a public hearing.

5. Review of Investigator Case Load

Most of the investigators are carrying around a load of 50 cases. Assistant Director Burke Cohen assigns 4 cases a month to each investigator.

6. Hearing Schedule Update

Assistant Director Burke Cohen reviewed the Hearing Schedule with the Commissioners.

7. HRC Administrative Rule Discussion

1. Addition – Section 102.01 and 202.03(a) (8): Adding “gender identity” as a protected class. Chairman Mayberry asked is everyone agreed. All responded aye, motion passed
2. Addition – Section 204.03: Attorneys appearing pro hac vice must pay a filing fee equal to that of the Superior Court (currently \$250.00). Assistant Attorney General Jill Perlow asked if we had authority to inflict a fee through our statutes. Commissioner Luna suggested we table this until we have researched the statutes more. Chairman Mayberry motioned to table #2 addition. All responded aye, addition is tabled.

3. Removal – Section 315.03(a): When the complainant is not represented by an attorney, the case in support of the complainant shall be presented by a member of the commission staff or by an attorney representing the commission. Chairman Mayberry made the motion to not remove the language in 315.03(a), motion was seconded and passed
4. Recommendation – To add provision implementing mandatory mediation: Chairman Mayberry made a motion to withdrawn said proposed provision, motion was seconded and passed.
5. Removal – Eliminate rules for pre-determination conferences and pre-determination agreements in Section 208.01-208.05.
Addition to Section 208: Investigators shall discuss possible modes of settlement and assist parties in settlement negotiations as necessary.
Removal – Section 206.03(b) (1-3): Eliminate with regards to the role of the Investigator.
Commission Luna moved to accept the recommendations as stated, seconded and motion was passed
6. Removal – Section 211.01-211.03: Elimination of Conciliation negotiation.
Chairman Mayberry made a motion to the elimination of Section 211.01 and 211.03 and to move Section 211.01 and 211.03, into Section 300. Motion was seconded and passed. Assistant Director Burke Cohen will clarify the language.
7. Addition – Re-implement HUM 201.06: A complaint of employment discrimination shall be within the jurisdiction of the commission if the employer has had at least 6 full-time, part-time, permanent, and/or temporary persons in its employ at any time during the 180 days prior to the filing of the complaint. Chairman Mayberry made the motion to accept this addition, seconded and passed
8. Addition – Section 204.01(b) (1: Permit executive director or designee (in addition to commission) to approve pro hac vice representations. Chairman Mayberry made the motion to approve this addition, seconded and passed with one nay.
9. Removal – Section 103.02(b): Eliminate the following provision “The commission shall make no copying charge for 25 or fewer pages. The commission shall charge the commission’s cost for more than 25 pages.” Chairman Mayberry made the motion to reject this removal, seconded and passed
10. Addition – Section 206.03(b) (2): During the investigation of a case, the investigator shall encourage settlement and/or mediation. Chairman Mayberry made the motion to

adopt this addition, seconded and passed

11. Addition – Section 207.03: Conditional Default by Respondent: The Respondent’s failure to comply with sec. 207 can result in a conditional default. An investigator shall have authority to declare conditional default after reasonable attempts to obtain respondent’s compliance in providing information as outlined in Hum 207. Chair Mayberry moved to table this addition, seconded and passed
12. Addition – Section 214, 216: Interrogatories and Depositions should be available to parties post-Probable Cause determination only; available earlier for investigator if they desire. Chairman Mayberry moved to adopt this addition, seconded and passed.
13. Addition – Section 317.03(b): Rephrase to ensure that commission chair will make determination of whether bias or conflict of interest exists before appointing a new panel. Chairman Mayberry made the motion to table this addition to work out the language, seconded and passed.

Commissioner Luna brought up the point of Commissioner Palardy comments on the Investigator’s closing report – Section VI. He commented that the last sentence “Based on the foregoing evidence and analysis the undersigned recommends a finding ofon the issue of.....” Discussion ensued; Chairman Mayberry suggested holding further discussion until Commissioner Palardy is present. Discussion ended.

8. Other Business

Chairman Mayberry discussed his and Executive Director Malachi’s attendance at the Governor’s Inaugural and he heard from multiple people that Executive Director Malachi is doing a networking and getting to know people.

We have been notified that the case that was in the court system has been resolved.

Commissioner Luna asked what is happening with the hearing that needs to be redone.

Executive Director Malachi stated she will be working on it.

9. Adjournment

Chairman Mayberry moved to adjourn this meeting, motion was seconded. The Commission voted unanimously to adjourn at 7:53PM.