

New Hampshire Commission for Human Rights

COMMISSIONERS

MATT MAYBERRY, CHAIR
SHERYL L. SHIRLEY, Ph.D
HARVEY KEYE
JOSE R. LUNA
DOUGLAS J. PALARDY
ALEX SAMUEL
NANCY LEROY



2 INDUSTRIAL PARK DR.
CONCORD, NEW HAMPSHIRE 03301-8501
TEL (603) 271-2767
TDD Access: Relay NH 1-800-735-2964
FAX (603) 271-6339
E-MAIL: humanrights@nh.gov
www.nh.gov/hrc

EXECUTIVE DIRECTOR
AHNI MALACHI

ASSISTANT DIRECTOR
SARAH E. BURKE COHEN, ESQ.

INVESTIGATORS
KATRINA E. TAYLOR
NICOLE LEMELIN
DANIEL DEYERMOND
KATE MULLEAVEY
TAMARA SAXBY

ADMINISTRATIVE ASSISTANT

SECRETARY
NANCY RODGERS

NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS COMMISSIONER'S MEETING

September 5, 2019 at 5:00 PM

MINUTES

ATTENDANCE: **Commissioners: Matthew Mayberry (chair) (arrived at 5:20 PM), Harvey Keye, Sheryl Shirley, Douglas Palardy (departed at 6:38 PM), Nancy LeRoy and Jose Luna (arrived at approximately 5:25 PM)**

Absent: **Alex Samuel**

Commission Staff: **Executive Director, Ahni Malachi and Assistant Director: Sarah Burke Cohen**

Public: **Nancy Richards-Stower, Esq.
Lauren Simon Irwin, Esq.**

The meeting was called to order by Commissioner Palardy at 5:18 PM.

1. **PUBLIC COMMENT**

Attorney Richards-Stower discussed her proposal and request for possible support from the Commissioners relative to a change she would like to see in RSA 354-A. She handed out documents to compliment her discussion. Attorney Richards-Stower said she wanted to make a proposed change that would fix a problem by legislative compromise over 20 years ago. She said originally RSA 354-A did not allow either party to remove the case from the Commission and bring an action in court. In 1991, federal law was amended to allow for jury trials, but the state law did not include this. Legislation was introduced in NH to bring NH into alignment and allow Complainant's to remove an action from the Commission and bring it in court. The original proposal received bipartisan sponsorship to allow Complainant only to remove a case from the Commission to court; however, this was amended as a compromise that would allow both parties to remove a case from the Commission to court and have the right to a jury trial. The debate at the time centered on constitutional rights for jury trials. The statute revision was passed, which allowed for

Complainants to remove a case to court at any time throughout the process and to allow Respondents to remove a case to court after a probable cause finding was rendered. This statutory change opened the door to allow Respondents to remove a case to state court as allowed and then, remove a case to federal court. The federal statute does not allow Respondents to remove a case to court at any time during the process. Federal court practice is difficult for an experienced litigator and is near impossible for a *pro se* litigant. In 2009, Attorney Richards-Stower attempted to fix this issue and eliminate Respondent's ability to remove a case to court, but "taking away a "right" is difficult." The proposal was passed through the House Judiciary, but failed when it reached the Senate. Attorney Richards-Stower said she is looking to reintroduce this proposal and has solid Senate sponsor for this bill, Senate Levesque. Attorney Richards-Stower added that Complainants are scared to go to court and often will let a case go if they are unrepresented in court. Attorney Richards-Stower believes there is no right to a jury trial by Respondent. . Attorney Richards-Stower stated that this change will affect a small number of people, but it will really have a big effect. Attorney Richards-Stower reminded the Commission of her service and that, when she served, her commission did get involved with legislative changes and was active. Attorney Richards-Stower wants to protect those that want to get justice without having to get an attorney. Commissioner Shirley reminded Attorney Richards-Stower that the Commission continues to get involved in legislative work as it currently is relative to HUD substantial equivalence. Attorney Richards-Stower doesn't have exact wording and won't until it is introduced. Commissioner Shirley asked if there was bipartisan support for this proposal. Attorney Richards-Stower responded that she was not sure at this time. Attorney Irwin talked with the Commission about cases she has faced in which this is applicable and about her screening process to determine if a case should be in court. With that said, Attorney Irwin explained that she generally doesn't mind taking high level economic cases to court, but lower level cases likely have a better spot at Commission. The Commission requested that Attorney Richards-Stower let us know should the legislation be proposed and the LSR number it is assigned to allow the Commission to follow it.

2. **APPROVAL OF MARCH MEETING MINUTES:**

Commissioner LeRoy moved and Commissioner Shirley seconded a Motion to approve the minutes. The Motion carried. Later, after Commissioner Luna's arrival, an amendment was requested by Commissioner Luna. Commissioner Shirley moved to amend the minutes and Commissioner Palardy seconded the amendment. The Motion carried.

3. **DIVERSITY & INCLUSION COUNCIL REPORT**

Commissioner Luna stated there was nothing to report as there was no meeting in August.

4. **ARCHIVE POLICY**

Director Malachi and Assistant Director Burke Cohen discussed the current archive policy. It is on the agenda to alert the Commissioners that the staff is looking at this policy and how it is applied to our records.

5. **OFFICE UPDATES**

HUD: Director Malachi is attending the Region 1 – FHIP/FHAPs conference next week in Rhode Island. Greg Carson suggested NHCHR's participation to Jeffery Sussman She will report on the conference at the next Commissioners' meeting. Director Malachi is hopeful to meet Susan Forward at this conference and continue to move things forward toward substantial equivalence.

SB263: This law goes into effect on 9/17. Assistant Attorney General Jill Perlow and Director Malachi have a meeting scheduled with Diana Fenton (General Counsel for DoE) to discuss the DoE process and jurisdiction. There will be a larger interagency discussion on this law by the end of the month.

EEOC: EEOC was pleased with the outcome of the week of workshops. EEOC and Director Malachi are discussing scheduling something similar next year. Although the quantity was low, quality was good in that it was beneficial for those who attended. Chairperson Mayberry asked about geographical locations. Director Malachi said that the regions were good but it may be good to slightly shift the specific location i.e. instead of Manchester go to Nashua next year. Commissioner Shirley asked how many commissioners attended the workshops. Director Malachi answer 2.

EEOC Regional Conf.: The regional FEPA conference will be held between 11/13 and 11/15 in Concord. We will invite the Commissioners to come to all sessions.

Additional Space: The additional space is now available to the Commission. The Commission and staff discussed how it will be used.

6. **REVIEW OF INVESTIGATOR CASE LOAD**

The Commissioner and staff discussed that the Commission has met contract and have been approved for an upward modification of 8 cases.

The Commissioners inquired about case maintenance and when they destroy work produce documents. The staff suggested the Commissioners wait at least 30 days to allow the appeal period to pass. Commissioner Shirley inquired about state only cases and the number. Assistant Director Burke Cohen explained there are limited number of state only cases filed and that they are processed the same as those that are dual filed.

7. **HEARING SCHEDULE UPDATE**

The Commissioners discussed the hearing schedule. There is a hearing scheduled for November 5, 2019.

8. **HEARING PANEL TRAINING DISCUSSION**

Postponed.

9. **HRC ADMINISTRATIVE RULES DISCUSSION**

Postponed.

10. **OTHER BUSINESS**

None.

11. **ADJOURNMENT**

Commissioner LeRoy moved for adjournment and Commissioner Luna seconded. The meeting was adjourned at 6:40 PM.