

New Hampshire Commission for Human Rights



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NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS COMMISSIONERS' MEETING

October 8, 2020 at 5:00 PM

MINUTES

ATTENDANCE: Commissioners present: Douglas Palardy, Sheryl Shirley (@631PM), Nancy LeRoy, Alex Samuel, Christian Kim, Harvey Keye and Basra Mohamed (arrived at 5:55PM)

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

Assistant Attorney Generals: Jill Perlow
Sean Locke

(All participants attended this meeting via Zoom)

Commissioner Palardy called the meeting to order at 5:05 PM.

As Chair of the Human Rights Commission, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are:

- a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means: We are utilizing Zoom for this electronic meeting. All members of the Commission have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this

meeting by contacting the Commission's office at 271-2767 and receiving the meeting id and passcode.

b) Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting telephonically. Instructions have also been provided on the website of the Commission for Human Rights at <nh.gov/hrc>.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access. If anybody has a problem, please call 271-2767 or email at: <humanrights@nh.gov>.

d) Adjourning the meeting if the public is unable to access the meeting. In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that all votes that are taken during this meeting shall be done by roll call vote.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law."

Commissioner Palardy: home, alone; Commissioner Shirley: home, alone;
Commissioner LeRoy: home alone; Commissioner Samuel: home, alone;
Commissioner Kim: home, alone; Commissioner Keye: home; alone;
Commissioner Mohamed: home, alone

1. PUBLIC COMMENT

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

2. APPROVAL OF SEPTEMBER MEETING MINUTES

Commissioner LeRoy moved and Commissioner Shirley seconded a motion to approve the September minutes as amended. Roll call: Commissioner Palardy - yea; Commissioner Shirley - yea; Commissioner Samuel—yea; Commissioner LeRoy - yea; Commissioner Kim—yea and Commissioner Keye - yea. The motion carried.

3. SEAN LOCKE, AAG – DIRECTOR, CIVIL RIGHTS UNIT, DOJ

Director Malachi introduced AAG Locke. He is the Director of the AG's Civil Rights Unit ("CRU"). Attorney Locke wants to address the NHCHR relative to thoughts and ideas related to the CRU and its relationship with the NHCHR. This includes a possible Memorandum of Understanding between the CRU and NHCHR. Attorney Locke

discussed the general objective of the CRU and how the NHCHR and CRU can work best together without duplicating services. The CRU was established in approximately December 2017. Attorney Locke has been the Director for about a year. Attorney Locke gave a summary of his background. The CRU is an arm in the AGs office. It has jurisdiction to bring actions under and/or enforce RSA 354-A and RSA 354-B. Attorney Locke discussed the purpose and objectives of RSA 354-B. Attorney Locke also discussed the role of the CRU relative to bringing actions under RSA 354-A, which requires the AG CRU to file a Charge with the NHCHR. The AG CRU would bring a Charge with the hopes of getting an outcome that could include policy changes and monitoring to ensure business practices have been changed. Attorney Locke talked about working with the NCHR to identify “bigger” picture “bad actors” and allow the CRU to effectuate its objective of protecting the public by seeking policy and business practice changes from those “bad actors”. With that said, an action brought by the CRU would not prohibit an individual to bring a charge and seek appropriate damages. Because the CRU does not advocate for the individual, the CRU would suggest individuals protect their rights by filing as an individual with the NHCHR. Attorney Locke talked about possible changes that would need to be made including a statutory change that would expand the statute of limitations for AG CRU brought claims to ensure the AG CRU could complete its initial investigator prior to bringing a Charge to ensure it is a “valid” claim.

Commissioner Keye asked how many civil rights organizations are in NH? Attorney Locke stated that the AG CRU and NHCHR are the only organizations that can bring civil rights claims. In addition, an individual can bring a claim, but would need to file with the NHCHR first and can be represented by an attorney. Commissioner Keye followed up by asking if “we” are becoming a better state in helping the public. Attorney Locke responded that more available resources, including the NHCHR and AG CRU, for the public allow for the public to feel like their reports are being heard and investigated.

Commissioner Samuel asked in terms of case referrals what type of cases would be referred. Attorney Locke replied that the cases would be those that there are some patterns/practice of inappropriate behavior.

Director Malachi stated the NHCHR has done some review of past cases to determine respondents that have historically had patterns/practice of bad behavior. Director Malachi explained that it would be these respondents that may require additional investigation and/or involvement of the AG CRU to assist with getting the business practice changed.

Commissioner Keye asked what needed to be posted relative to the NHCHR. Director Malachi explained the NHCHR signage is required to be posted at each business. Director Malachi stated the NH Dept. of Labor has our sign available for posing as does the NHCHR on its website. Commissioner Keye said he will look at various businesses to see if their signage is posted. Director Malachi stated the signage should be posted in areas where employees congregate. Commissioner Keye said he is devoted to the state and wants to assist with making it clear that NH is an anti-discrimination state.

Commissioner Shirley asked about employment cases in that the NHCHR in the past has recommended “frequent” offenders to the EEOC and potentially could also do so should there be a HUD contract in the future. Commissioner Shirley asked Attorney Locke to address this. Attorney Locke said that these issues/claims would be processed under state law which is more protective. Certainly, there could be work between EEOC and HUD, but generally the CRU would enforce the measures under state law. Attorney Locke said that he has been working to network with other agencies such as NH Legal Assistance, which is contracted with HUD to investigate some claims, to assist with the CRU getting information on actors that have patterns/practice that are problematic.

Commissioner Palardy asked Attorney Locke if there was a way to get a more formed relationship with the NHCHR and CRU. Attorney Locke said that he has thought about how to better form the relationship between the CRU and NHCHR, but also understands that there needs to be some separation given the CRU brings Charges before the NHCHR. Attorney Locke imagined a potential of Assistant Director Burke Cohen and he meeting every so often to discuss the Charges that have been filed. Attorney Locke talked about the work Director Malachi and he have started relative to COVID-19 related issues such as mask wearing.

Commissioner Keye asked about mask wearing and disabilities. Attorney Locke discussed the interactive process relative to mask wearing. Attorney Locke said it can be a fully formed process in employment, but it can be a bit more complicated when it comes to places of public accommodation.

Attorney Locke said the Commissioners are welcome to contact him should issues or questions that come up to contact him. Attorney Locke said that Director Malachi and Assistant Director Burke Cohen had his contact information.

Attorney Perlow had we had previously discussed the possibility of a Memorandum of Understanding to allow both NHCHR and the CRU to have an understanding of the broad concepts. It seems that the MOU would be the next steps. Director Malachi said we had talked about establishing a periodic meeting to ensure cases don’t get lost by ensuring there was an appointed time to discuss matters with Attorney Locke/CRU.

Commissioner Shirley stated that the NHCHR should be careful in how and what gets referred to ensure that we don’t jeopardize our EEOC contract. Director Malachi explained her thoughts on the ability of the NHCHR to process cases in accordance with EEOC policies/procedures while still allowing the CRU to proceed with its case. Assistant Director Burke Cohen stated the EEOC’s Strategic Plan is very limiting. With that said, Assistant Director Burke Cohen believes EEOC would welcome collaborating with the CRU on cases that have the potential of addressing a “bigger” bad actor.

4. DIVERSITY & INCLUSION COUNCIL UPDATE

Executive Director Malachi updated the Commissioners. The last meeting was September 22, 2020. The Diversity & Inclusion Counsel (“Diversity”) will meet the 4th Tuesday of every month. The Governor’s COVID-19 Equity Response Team (GCERT) was formed to develop and recommend a strategy for the state to address disproportionate impacts of the COVID-19 pandemic. GCERT is a sub-committee of Diversity Council and will focus on and prioritize issues that came of the report that are not already being addressed by another organization.

There is a non-profit organization called “Stay, Work, Play”. It is an “advocacy” group. Its role is to market to and encourage specifically young people to move to the state as well as maintain those that already live here. Members of the Diversity Council, including Director Malachi, participated in the meeting to connect and share ideas for how the two groups can work together going forward.

The Diversity Council at its next meeting will talk about NHCHR and HUD. The Diversity Council is beginning the work of preparing their annual report and will include a request for assistance of the Governor and Legislature to support the NHCHR in getting a HUD contract. Director Malachi also stated Attorney Locke sits on the Diversity Council and so it allows for Director Malachi to connect on a monthly basis with him.

5. OFFICE UPDATES.

Director Malachi discussed the Long Range Planning Committee meeting. She explained that the NHCHR needed to get its lease approved. The meeting was yesterday and Director Malachi attended for the presentation. The lease was approved for the next 3 years. Commissioner Keye asked the landlord’s name. Director Malachi stated it is Gerald McCarthy and he is headquartered in Waltham, MA.

Director Malachi stated she will be attending the upcoming Governor & Council meeting to request permission to accept the additional funds received due to the NHCHR’s upward modification. Director Malachi doesn’t anticipate any issues.

Director Malachi discussed the Administrative Rules and HUD. She said Law Clerk Connor Parent has been an integral part in getting the rules together. Director Malachi, Assistant Director Burke Cohen and Law Clerk Parent met with some gentlemen from the Department of Administrative Services who specialize in the Administrative Rules process.

Director Malachi stated she was close to being able to submit a “LSR” to start the legislative process to get RSA 354-A to a place that would allow for substantial equivalence in accordance with HUD.

Commissioner Keye asked what Legislative Committee the NHCHR legislation would go before. Commissioner Shirley stated the last time it went before the Judicial Committees.

There was a discussion of what committee it would go before. Commissioner Keye and Commissioner LeRoy stated it would be good to know when it goes forward as many of the Commissioners have contacts in the Legislature.

Implicit Bias training. Director Malachi stated it will be mandatory training for the NHCHR staff. The flyer for the training is attached. Director Malachi stated it is also open to the Commissioners as well. Director Malachi stated there is no sign up information yet, but as soon as it is received it will be forwarded to both staff and Commissioners. It is scheduled for November 20th.

6. REVIEW OF INVESTIGATOR CASELOAD

Assistant Director Burke Cohen discussed the NHCHR's caseload. Currently, the NHCHR has closed 225 cases for FFY2020, which is 132% of the EEOC Contract. Assistant Director Burke Cohen stated she was extremely proud of the staff. She added that after assignments this month, the pending file will be at 220 unassigned cases. This is great considering there were 360 unassigned cases in October 2019. Assistant Director Burke Cohen also stated the NHCHR just started FFY2021 and the staff continues to efficiently process its cases.

7. HEARING SCHEDULE UPDATE AND PANEL ASSIGNMENT

Assistant Director Burke Cohen discussed the hearing schedule. The October 28, 2020 hearing will not go forward as the case has settlement. Assistant Director Burke Cohen asked for volunteers for the December 17, 2020 and January 21, 2021 hearing dates. Commissioners Palardy, Keye and Mohamed volunteered for the December 17, 2020 hearing date. Commissioners Palardy, Keye and LeRoy volunteered for the January 21, 2021 hearing date.

An inquiry was made of Commissioner Shirley. Commissioners Shirley stated her term as a Commissioner expires on November 1, 2020. Commissioner Keye stated she should not leave the Commissioner and the Commission needs to see about getting her re-confirmed. Commissioner Shirley stated she is contemplating her options as she is retiring from teaching effective January 8, 2021. The Commissioners echoed their wishes that Commissioner Shirley not leave the Commission. Commissioner Shirley said at this time she is keeping her options open, but, after inquiry from Commissioner Palardy, agreed to serve until a Commissioner is appointed.

8. OTHER BUSINESS

Director Malachi discussed the proposed revision to the NHCHR's investigative process. Commissioner LeRoy asked if this was a new way to do things. Director Malachi explained the process including that it would more closely mirror the EEOC process, which includes a triage process. Director Malachi explained that the hope would be to move through the investigative process more efficiently in less than the statutory 24 months. Director Malachi discussed the logistics of revising the process to get the

investigative process to six months to ensure buy in from both staff and Commissioners. Attorney Perlow discussed her perspective as she assisted Director Malachi and agrees revisions need to be made to move things forward more efficiently. Director Malachi and the Commissioners discussed the “Investigative Process” revisions and its logistics. Commissioner Palardy stated there are great ideas and said if there is a way to reduce the unassigned cases without disenfranchising older cases. Commissioner Keye asked about ensuring more than one person should look at a case before it is dismissed as he stated he needed to discuss a case with the investigator before making a determination. Attorney Perlow said this is appropriate given that the investigator is the eyes/ears of the investigation and it should almost be standard practice to discuss the investigation with the investigator.

Director Malachi stated she is hoping to complete the supplemental job descriptions to allow for the Intake Investigators to be hired. Director Malachi said she would like the process changes to be completed and agreed upon by the Commissioners at the November meeting. She welcomes the Commissioners to submit any further questions and she will attempt to answer them. Director Malachi stated after the Commissioners approved the process that it would be rolled out to the staff. Director Malachi stated that Attorney Perlow would be on hand when the process is rolled out to staff to assist with answering questions.

Commissioner Palardy discussed the hiring process. Commissioner Palardy stated that currently the Commissioners, Director and Assistant Director have the authority to hire. Going forward, Commissioners Palardy would like 2 Commissioners to be involved in the hiring/discipline/discharge process. This would include for hiring the review of resumes and sitting in on interviews and reviewing discipline/discharge.

Commissioner Palardy stated Director Malachi and Assistant Director Burke Cohen have been meeting ½ hour weekly to discuss the going on in the office.

9. NON-PUBLIC SESSION

None.

10. ADJOURNMENT

Commissioner Palardy motioned for adjournment and Commissioner LeRoy seconded. The Commissioner’s meeting adjourned at 7:20 PM.