

New Hampshire Commission for Human Rights



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NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS COMMISSIONERS' MEETING

April 1, 2021 at 5:00 PM

MINUTES

ATTENDANCE: Commissioners present: Nancy LeRoy, Basra Mohamed, Alex Samuel, Christian Kim and Harvey Keye

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

Assist. Attorney General: Jill Perlow

(All participants attended this meeting via Zoom)

Acting Chair Commissioner Nancy LeRoy called the meeting to order at 5:02 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 LeRoy: home alone; Commissioner Keye: car, alone, but unable to participate fully until 5:29 PM; Commissioner Mohamed: office, alone; Commissioner Kim: home; alone; Commissioner Samuel: home; alone

1. PUBLIC COMMENT

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

2. APPROVAL OF MARCH MEETING MINUTES

Commissioner Samuel moved and Commissioner Kim seconded a motion to approve the March minutes. Roll call: Commissioner LeRoy - yea; Commissioner Samuel - yea; Commissioner Kim—yea; Commissioner Mohamed —yea. The motion carried.

3. OFFICE UPDATES

We are in our staff hiring faze. We are hiring p/t Paralegal, p/t Secretary and f/t Intake Coordinator. All positions have been posted and have now been closed. We have completed interviews for the Paralegal and have offered a position and she has accepted. She will start on April 9, 2021. She will likely be in 5 days per week. The Paralegal will be clerking the public hearing. Executive Director Malachi discussed her experience and what she will likely be doing at the NHCHR.

The DOJ to which the NHCHR is administratively attached is reviewing the applicants to the f/t Intake Coordinator position and is currently certifying the applicants. Executive

Director Malachi and Assistant Director Burke Cohen will review those that certify and schedule interviews accordingly.

The p/t Secretary position has been reposted and as soon as we receive certified applicants the Executive Director Malachi and Assistant Director Burke Cohen will review those that certify and schedule interviews accordingly.

Executive Director Malachi previously sent via email a legislative update/review to the

4. REVIEW OF INVESTIGATOR CASE LOAD

Assistant Director Burke Cohen stated the NHCHR does not currently have a contract amount for EEOC; therefore, the number is defaulted to the amount of last year's contract, which was 170 cases. The NHCHR is currently at 52% of its proposed contract.

Assistant Director Burke Cohen said the cases continue to be filed at about 15-20 per month. As you can see from March, there were 22 cases filed and 31 closed with 26 full credit contract cases. The staff continues to close cases as promptly as possible including working to assist with direct negotiations and getting cases scheduled for mediation using the Commission's free mediation program. However, the NHCHR continues to receive the same or more cases filed as it is closing. So, it has been difficult to reduce the unassigned case load. Assistant Director Burke Cohen is hopeful that once the Intake Coordinator is hired, the paralegal and with the addition of an intern that some of the pending file cases will be able to be moved to closure through resolution and reduce the number of unassigned cases. The new hires will also allow the investigators to refocus on their own caseloads and move their cases toward closure.

5. HEARING SCHEDULE UPDATE

Assistant Director Burke Cohen discussed the hearing scheduling. She stated a hearing is scheduled for April 20, 2021. There may be another hearing scheduled for June depending on how the Prehearing/Conciliation goes next week.

HEARING PREPARATION TRAINING/REVIEW

AAG Perlow talked about the upcoming Administrative Law Day during which the AGs office presents a training for State Boards/Commission. She said it will be a little different this year and would suggest the Commissions participate.

AAG Perlow discussed the process of a public hearing. Things to think about initially are ethics, conflict of interest and/or bias. Certainly. Ethically, Commissioners should not pre-judge a case or base it on any information not part of the hearing. In addition, Commissioners should not hear a case in which there is a conflict and if there is concerns about a conflict, AAG Perlow can discuss in great detail on a case by case basis. Finally,

a Commissioner should not show a bias relative to specific types of cases and/or certain parties.

AAG Perlow stated evidence weighed at a hearing must be evidence from the actual hearing. It cannot be from the newspaper, other media sources and/or information from friends/family.

AAG Perlow stated these are interesting legal issues to look at and that as the adjudicator you can be as engaged in the process as you like, which includes asking questions of the parties and witnesses. As the adjudicators, it is your job to determine if there is a preponderance of the evidence to determine which party is successful. The adjudicators must determine where the tipping point of the scale of preponderance of evidence is. In doing so, this means the adjudicators must ensure they have collected enough evidence from the parties to make a determination. It is ok to ask questions to the parties and attorneys to ensure they are presenting evidence to prove their perspective of the case.

AAG Perlow discussed deliberations. Executive Director Malachi and AAG Perlow stated the deliberations are public. Because it is public, it is good to ensure the deliberations fully discuss the case to demonstrate the panel has an understanding of the case and the evidence presented by the parties. Discussions will also assist with making a final determination.

AAG Perlow asked if Commissioner LeRoy had any input as she has done numerous public hearings. AAG Perlow and Commissioner LeRoy discussed what to do when a witness or attorney seems to go on for a bit. AAG Perlow stated that the panel has the authority to stop people should it find the statements to be not relevant or duplicative.

Commissioner LeRoy asked about Assistant Director Burke Cohen's role as an attorney. Assistant Director Burke Cohen reminded the Commissioners that she can answer process questions, but that the AAG represents the NHCHR and is the only authority that can provide legal advice. Executive Director Malachi stated she usually reminds AAG Perlow of the date of the public hearing and if AAG Perlow is not available, then AAG Perlow gives us another contact at the AGs office who can offer legal advice during the hearing by phone if needs be. The NHCHR has taken advantage of having an AAG available to answer legal questions by phone at past hearings.

Commissioner LeRoy asked about getting exhibits ahead of time. Assistant Director stated during this hearing, the parties will have agreed to the exhibits to be presented as part of the record; however, generally, the exhibits may not be agreed upon ahead of time. So, if any exhibit is reviewed ahead of time prior to the hearing and does not end up being submitted, a panelist cannot "un-see" that evidence. In addition, it becomes problematic reviewing evidence out of the context that could be added with witnesses at the hearing. Reviewing documentary ahead of time could yield prejudgment and/or bias.

Commissioner Samuel asked about the rules of evidence. AAG Perlow and Assistant Director Burke Cohen explained that the rules of evidence are not enforced pursuant to

the NHCHR's rules. Instead, evidence is judged based on whether it's relevant and non-duplicative.

AAG Perlow reiterated what she had discussed and welcomed any questions should they arise.

6. OTHER BUSINESS

None.

7. NON-PUBLIC SESSION

None.

8. ADJOURNMENT

Commissioner Samuel moved for adjournment and Commissioner Keye seconded. The Commissioner's meeting adjourned at 5:58 PM.