

# New Hampshire Commission for Human Rights



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## NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS COMMISSIONERS' MEETING

October 7, 2021 at 5:00 PM

### MINUTES

**ATTENDANCE:** Commissioners present: Basra Mohamed (Acting chair), Douglas Palardy (by phone – home, alone), Alex Samuel, Elizabeth Asch, and Harvey Keye

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

**Others:** Michael Worsley

Commissioner Mohamed called the meeting to order at 5:16 PM.

#### 1. PUBLIC COMMENT

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

#### 2. APPROVAL OF AUGUST MEETING MINUTES

Commissioner Asch moved and Commissioner Samuel seconded a motion to approve the minutes. Roll call: Commissioner Samuel – Aye; Commissioner Palardy – aye; Commissioner Asch – aye; Commissioner Keye – aye; Commissioner Mohamed – aye. The motion carried.

Commissioner Samuel moved and Commissioner Keye seconded a motion to approve the non-public meeting minutes. Roll call: Commissioner Samuel – Aye; Commissioner Palardy – aye; Commissioner Asch – aye; Commissioner Keye – aye; Commissioner Mohamed – aye. The motion carried.

### 3. OFFICE UPDATES

Director Malachi introduced Michael Worsley. Mr. Worsley presented an Ethnic and Cross Cultural Skill Development Training (“ECCSDT”) to the Department of Justice. He has trained Director Malachi and Assistant Director Burke Cohen to be trainers of this program. Director Malachi stated the NHCHR staff are scheduled to have this training and we believe it would be beneficial for the Commissioners to also complete this training. Mr. Worsley discussed that this training was developed as a training to unite based on the fact that we all have unique ethnic background rather than a traditional diversity training that has the potential to divide. It helps a participant develop skills to help individuals interact with others who have different ethnic backgrounds. This training also takes into consideration the historical background of using race as an identifier. Commissioner Keye asked about the objective of the training as it relates to the NHCHR. Mr. Worsley responded and explained and concurred with Commissioner Keye that race may be a social construct. Commissioner Mohamed asked what the overall goal is. Mr. Worsley replied the goal of the training would be to assist Commissioners with a broader sense of achieving ethnic and cross cultural skill and understanding application in NHCHR cases and in real world experience. Commissioner Asch is looking forward to the training as it is an interesting and positive concept to move away from race to ethnicity and culture. Director Malachi added that importance of this training as a good educational resource and exposure to new themes and information.

Assistant Director Burke Cohen discussed the EEOC’s Models of Proof. The EEOC sent the NHCHR copies for distribution. Assistant Director Burke Cohen explained that these Models of Proof lay out well the burden shifting of cases that fall within the jurisdiction of the EEOC and NHCHR.

Director Malachi discussed the impact of HB2 on the NHCHR. Director Malachi explained how it came to be and the guidance issued by the NHDOJ. She added that HB2 gives an outlet for those covered by the statutory change to make a claim of discrimination if they believe a training/class, etc. was discriminatory in nature. Director Malachi said because the statute was complex and there were no precedents, the NHDOJ issued guidance and an opinion explaining the impact of the law and how the NHCHR should apply the law. AAG Perlow will attend the next meeting to further discuss the new language and answer any questions. Commissioner Mohamed asked what Director Malachi thought inspired the changes to the statute. Assistant Director Burke Cohen and Director Malachi explained that the likely inspiration was that there have been instances in which information has been presented in trainings and K-12 classrooms that states directly and/or impliedly that inherent traits establish a person’s inferiority/superiority. Commissioner Samuel asked if the Legislators came to the NHCHR to discuss this prior to introduction. Director Malachi stated this did not occur and generally does not. Commissioner Keye concurred that from his experience the Legislators would not approach an agency.

Director Malachi discussed that per the audit conducted, a recommendation was made that the NHCHR set a fee schedule. Director Malachi explained the components of the presented fee schedule. She stated the below for vote by the Commissioners:

**Fee Schedule:**

**Copies:**

**Documents:**

**\$30.00 – Administrative Fee**

**\$0.25/page – (There is no charge for requests under 25 pages.)**

**Recordings:**

**\$5.00 – (Recordings are copied onto a DVD.)**

**Trainings:**

**Ethnic & Cross-Cultural Skill Development Training**

**\$800.00 (Full day/6 hours)**

**All Other Trainings**

**\$200.00/hour**

Commissioner Asch moved to accept the presented fee schedule and Commissioner Mohamed seconded. Roll call: Commissioner Samuel – Aye; Commissioner Palardy – aye; Commissioner Asch – aye; Commissioner Keye – aye; Commissioner Mohamed – aye.

The motion carried and the fee schedule was adopted.

Director Malachi asked for the Commissioners to determine a date to complete the Ethnic & Cross Cultural Skills Development Training. The consensus was to schedule the training on a Saturday/Sunday possibly in November.

Director Malachi stated the *Catano* decision has been published and is available on the NHCHR's website. The Complainant's counsel has filed a Motion for Reconsideration, which needs to be ruled on.

Director Malachi stated the Legislative Session for 2022 has opened. She discussed how the process works and gave an overview of the legislation that could impact the NHCHR. Commissioner Keye proposed that the NHCHR add the following language to RSA 354-A that "New Hampshire does not allow discriminatory practices." Director Malachi explained that the proposed statement is more like a preamble. Commissioner Asch stated the statement sounds like a mission statement. Commissioner Keye stated that he would like to add this statement, but will not pursue if the rest of the Commissioners do not want to.

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

Assistant Director Burke Cohen stated the NHCHR staff completed closures to meet our EEOC contract of 200 cases. Director Malachi and Assistant Director Burke Cohen continued to be impressed and grateful to the staff for processing NHCHR cases efficiently and effectively. The Commissioners wanted to send their gratitude to the staff for all their hard work to ensure cases move forward and the EEOC contract fulfillment.

#### **5. HEARING SCHEDULE UPDATE**

Assistant Director Burke Cohen discussed the hearing scheduling and updated it. She explained that there likely will be no upcoming hearing due to settlements or removals to court. There is a possible hearing scheduled for January. Assistant Director Burke Cohen will assign Commissioners to the hearing schedule for 2022 prior to the next meeting.

#### **6. OTHER BUSINESS**

Director Malachi stated Commissioner Kim has been appointed chair of the NHCHR following Commissioner Palardy stepping down as chair.

Commissioner Samuel stated his commission expires on November 1 and he will not be seeking renewal.

Director Malachi stated she will start sending spreadsheets/updates about legislation that pertains to the NHCHR. Director Malachi also stated she is hoping to do a presentation to some of the Legislative Committees that potentially will hear legislation that pertains to the NHCHR, to give the Committee background and information about the NHCHR. Director Malachi explained that she generally goes to the hearings on bills to be present for informational purposes or to make comment to clarify or explain the jurisdiction/process at the NHCHR. Commissioner Asch asked about the time involved with attending hearings. Director Malachi explained it can be time consuming on occasion. Director Malachi also talked about completing fiscal notes for legislation. Director Malachi stated she generally requests additional staff when statutory changes would likely require additional work. Commissioner Asch asked if all current positions are full. Director Malachi stated all funded positions are full, but there are 2 unfunded positions that remain unfilled. Director Malachi said Commissioners are welcome to contact her to discuss legislation and/or legislative process.

#### **7. NON-PUBLIC SESSION**

None.

#### **8. ADJOURNMENT**

Commissioner Keye moved for adjournment and Commissioner Asch seconded. The Commissioner's meeting adjourned at 7:02 PM.