



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

Senator Inn - Embassy Room

284 Western Ave ~ Augusta, Maine 04330

January 28, 2019

Commission Chair Arnold Clark called the meeting to order at 8:32 AM. Present were Commissioners Deborah Whitworth, John Norman, and Fred Oettinger.

AGENDA

Commissioner Whitworth moved, seconded by Commissioner Oettinger, to adopt the Agenda and to accept the Investigator's recommended decision in each of the cases listed on the Consent Agenda (see listing on page 4). 4 in favor | 0 opposed.

MINUTES

Commissioner Oettinger moved, seconded by Commissioner Whitworth, to adopt the December 17, 2018 Commission meeting minutes. 3 in favor | 0 opposed | 1 abstained (Clark).

ADMINISTRATION

Monthly reports: Executive Director Sneirson discussed reporting on Commission activities from December:

- Personnel: Investigator Joseph Hensley has accepted another position, and today is his last day with our agency. The anticipated position vacancy was posted on January 16, 2019; applications will be reviewed beginning in February.
- Compliance: Since the last meeting, there were 5 unsuccessful conciliations and 0 successful conciliation. 6 reasonable-grounds cases remain in active conciliation.
- New Charges: 62 new charges filed in December
- Administrative Dismissals:
 - In December, Commissioners voted to dismiss 35 cases via administrative determinations that constituted "no reasonable grounds" findings.
 - This month, there are 14 cases on the Agenda to be considered for administrative dismissal. Commissioner Oettinger moved, seconded by Commissioner Whitworth, to dismiss each of the cases listed on Agenda as "administrative determinations to be approved" (see page 4) with a statement that dismissal constitutes a "no reasonable grounds" finding. 4 in favor | 0 opposed.
- There were 11 predetermination settlements in December with benefits of \$300,225 to complainants.
- Litigation will be addressed after Executive Session.

Quarterly: Executive Director Sneirson discussed FY2019's second quarter agency performance:

- Training & Education Report: Commission staff presented/attended 15 training sessions during the quarter.

- Financial Report: The report was presented and placed on file.
- Pending inventory: At the end of the quarter on 12/31/18, the Commission had 665 cases pending, with the average age of cases in the agency at 240 days; cases are with investigators for an average of 177 days. ED Sneirson noted that the average age of cases is greatly decreased from four years ago. When discussing how the agency had achieved this given the heavy turnover in the investigator position, Commissioner Whitworth noted that it would not be acceptable if investigators are being unduly overworked.

NEW BUSINESS

- ED Sneirson discussed the new session of the Legislature, in which more than 2000 bill titles have been submitted by legislators. Of those, it appears that over 40 will relate to the Maine Human Rights Act or Commission. The Commission will be submitting its agency bills shortly, by Feb. 1.
- ED Sneirson noted that the proposed amendment of the Commission's Procedural Rule has been approved by the Office of the Maine Attorney General, with one change in place.

At 8:45 AM Commissioner Clark began the case hearing agenda.

CASES VOTED ON

E17-0040-A: Albert W. Bleau (Peaks Island) v. American Legion Randall & MacVane Post142 Lounge (Peaks Island). Complainant did not appear. Commissioner Whitworth moved, seconded by Commissioner Oettinger, to find no reasonable grounds to believe that American Legion Randall & MacVane Post 142 & Lounge retaliated against Albert W. Bleau for engaging in WPA-protected conduct. 4 in favor | 0 opposed.

E17-0068*: Mykayla McCann (Turner) v. St. Mary's Hospital (Lewiston). Attorney Edward Rabasco Jr. restated the position of the Complainant. Attorney David Strock restated the position of the Respondent. Investigator Jenn Corey Meehan restated the facts of the case. Commissioner Norman moved, seconded by Commissioner Oettinger, to find no reasonable grounds to believe that St. Mary's Hospital retaliated against MyKayla McCann for protected activity when it terminated her employment and to find **reasonable grounds** to believe that St. Mary's Hospital discriminated against Mykayla McCann based on disability when it subjected her to a hostile work environment. 4 in favor | 0 opposed.

PA17-0073-B: Nicolas David Bernard Ennis (Windham) v. Penobscot County Jail (Bangor). Complainant was not present. Commissioner Oettinger moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Penobscot County Jail discriminated against Nicholas David Bernard Ennis because of his disability. 4 in favor | 0 opposed.

EDPA17-0208A/B/C: Robert Martin o/b/o minor child (Poland) v. Poland Regional High School – RSU 16 (Poland), Patrick Flynn (Poland), and Cari Medd (Poland). Advocate/Paralegal Claire Nacinovich restated the position of the Complainant. Attorney Bruce W. Smith and Respondent Cari Medd restated the position of the Respondents. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth moved, seconded by Commissioner Norman, to find **reasonable grounds** to believe that Poland Regional High School - RSU 16, Patrick Flynn, and Cari Medd discriminated against Robert Martin o/b/o minor child on the basis of race. 3 in favor | 1 opposed (Clark).

E17-0514*: Victoria G. Schreiber (Minot) v. The Medicine Shoppe (Lewiston). Attorney Adam Lee restated the position of the Respondent. Victoria G. Schreiber restated her position as the Complainant. Investigator Robert Beauchesne restated the facts of the case. Commissioner Whitworth, moved, seconded by Commissioner Oettinger, to find **Reasonable Grounds** to believe The Medicine Shoppe discriminated against Victoria Schreiber on the basis of sex and/or disability in terms and conditions of employment (demotion). 4 in favor | 0 opposed.

E18-0073: Amanda Hayes (Lewiston) v. Community Concepts Inc. (Lewiston). Amanda Hayes restated her position as the Complainant. Attorney Margaret Coughlin LePage restated the position of the Respondent. Investigator Jane O'Reilly restated the facts of the case. Commissioner Oettinger moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Community Concepts Inc. discriminated against Amanda Hayes in employment on the basis of sex or retaliated against her for reporting unsafe or unlawful activity. 4 in favor | 0 opposed.

H18-0314: Kirsten H. MacDonald (Waterville) v. Brown House Properties (Waterville). Complainant was not present. Commissioner Oettinger moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Brown House Properties discriminated against Kirsten MacDonald on the basis of disability in the terms and conditions of her housing by denying her the reasonable accommodation of an assistance animal and no reasonable grounds to believe that Brown House Properties discriminated against Kirsten MacDonald for asserting her rights under the Maine Human Rights Act. 4 in favor | 0 opposed.

EXECUTIVE SESSION

At 10:40 AM, Commissioner Norman moved, seconded by Commissioner Whitworth, to go into executive session to discuss pending or contemplated litigation and the Commission's legal rights and duties with Commission Counsel pursuant 1 M.R.S. §405(6)(E). 4 in favor | 0 opposed.

At approximately 11:51 PM, Commissioner Norman moved, seconded by Commissioner Oettinger, to come out of executive session. 4 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Norman, to approve and adopt the proposed amendment of the Commission's Procedural Rule. 4 in favor | 0 opposed.

At approximately 12:00 PM, Commission Chair Clark adjourned the meeting.

CONSENT AGENDA

The consent agenda is a listing of cases scheduled on the Commission's meeting agenda in which there was no written disagreement to the Investigator's recommendation. Commissioners considered these cases without oral argument by the parties.

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|-------------------|-------------------------------------------------------------------------------------------|-----------|
| PA17-0008: | Tamara Burnham (Auburn) v. Androscoggin Rheumatology Associates/CMMC (Lewiston) | NRG |
| E17-0011AB: | Michael V. Spinney (Minot) v. Mr. Boston Brands of Maine (Lewiston) & H. Lagrange (Minot) | NRG |
| E17-0029:* | Jimmy L. Ford (Portland) v. Home Depot USA (North Windham) | RG |
| E17-0033: | Tammi Snow (South China) v. State of Maine/DHHS (Augusta) | NRG |
| E17-0168: | Melissa J. Thompson (Windham) v. Wal-Mart Associates, Inc. (Falmouth) | NRG |
| E17-0256: | Nicholas E. Orr, Jr. (Brunswick) v. Brentwood Center for Health & Rehab (Yarmouth) | NRG |
| E17-0268: | Julie Freeman (Bath) v. Café Crème (Bath) | NRG |
| E17-0308: | Scott Norton (Brewer) v. Osmose Utilities Services, Inc. (Peachtree City, GA) | NRG |
| E17-0355: | Jennifer Nisbet (Berwick, ME) v. Goodwill Industries of NNE (Somersworth, NH) | NRG |
| PA17-0444: | Daniel Chase (Levant) v. Maine Supreme Judicial Court (Augusta) | NRG |
| E17-0530: | Stanley Carter (Bangor) v. Restaurant Employee Leasing Co., LLC (Rockport) | NRG |
| E17-0533: | Carol Rose (Oakland) v. Maxim Healthcare (South Portland) | NRG |
| PA17-0540: | Robert Bresten (Warren) v. Jennifer Jenkins, Supervisor of Education (Warren) | NRG |
| E18-0003: | Donna-Marie Gallant (Kenduskeag) v. Penobscot Job Corps (Bangor) | NRG |
| E18-0019: | Stephen Tulley (Old Orchard Beach, ME) v. Sure Winner Foods (Syracuse, NY) | NRG |
| E18-0035: | Brent Fanjoy (Auburn) v. PepsiCo (Auburn) | NRG |
| E18-0135: | Luis Morales (Winslow) v. Crisis & Counseling Centers (Augusta) | NRG |

ADMINISTRATIVE DETERMINATIONS

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|--------------|-----------------------------------------------------------------------------------------------|-----|
| PA17-0225: | Larry Conant (Sumner) v. Dollar General (Goodlettsville, TN) | NRG |
| PA18-0253-A: | Nikki Petrovickov (Warren) v. Maine State Prison (Augusta) | NRG |
| E18-0265-A: | Tabatha Hemingway (Farmingdale) v. Walgreens (Gardiner) | NRG |
| PA18-0269: | April M. Sprague (Lewiston) v. Tri County Mental Health (Oxford) | NRG |
| E18-0271-AB: | Bryce Mehnert (Orono) v. K. Rogerson (Zionsville, IN)/Hat World, Inc. D/B/A Lids (Zionsville) | NRG |
| E18-0295: | Ryan M. Leeman (Bangor) v. Bangor Lawn and Landscape (Bangor) | NRG |
| E18-0309: | Tina Foster (Auburn) v. ITC Argo Contact Center (West Point, GA) | NRG |
| E18-0317: | Maxwell Mendez (Saco) v. Anchor Fence (Kennebunk) | NRG |
| E18-0395: | Tanya Van Rose (Naples) v. Thomas Yarcheski, Manager (Naples) | NRG |
| E18-0427: | Roger Chase (Milo) v. JSI Store Fixtures, Inc. (Milo) | NRG |
| PA18-0469: | Mark Chapman (Portland) v. 207 Taxi (Portland) | NRG |
| PA18-0470: | Mark Chapman (Portland) v. Susan Collins's Office (Augusta) | NRG |
| E18-0508: | Peter A. Legendre (Pittston) v. Maine Turnpike Authority (Portland) | NRG |
| PA19-0010: | George Stanley (Greene) v. Wendy's (Auburn) | NRG |