



# Maine Human Rights Commission

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EXECUTIVE DIRECTOR

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## COMMISSION MEETING MINUTES

**\*\*Zoom\*\***

May 4, 2020

Commissioner Deb Whitworth chaired the meeting and called it to order at 8:30 AM. Also present were Commissioners Ted Helberg, Jeff Ashby, and Ed David.

Executive Director Sneirson presented a request for a right to sue in PA18-0463, Chase v City of Bangor, a case appearing on the Consent Agenda. Commissioner Helberg moved, seconded by Commissioner Ashby, to deny the request. 4 in favor | 0 opposed.

### AGENDA

Commissioner Helberg moved, seconded by Commissioner Ashby, 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 6). 4 in favor | 0 opposed.

### MINUTES

Commissioner Ashby moved, seconded by Commissioner David, to adopt the March 2, 2020 Commission meeting minutes. 4 in favor | 0 opposed.

### ADMINISTRATION

Monthly reports: Executive Director Sneirson discussed reporting on Commission activities from March and April:

- **Personnel:** One of our front-office staff positions has become vacant. We had been utilizing a long-term temporary worker to fill the position for months, but that worker has left for other employment. We will be filling the position as soon as possible.
- **Compliance:** Since the last meeting, there were four unsuccessful conciliations and one successful conciliation. Three (3) reasonable-grounds cases remain in active conciliation.
  - The one successful conciliation was in H19-0352-A, Johnson v Ryser. Commissioner Helberg moved, seconded by Commissioner Ashby, to approve the conciliation agreement in that case. 4 in favor | 0 opposed.
  - A previous reasonable-grounds case that had been successfully conciliated case, PA17-0362, McArdle v Cafe Dry Dock Inn, is ready for dismissal, as all terms in the agreement have been

implemented. Commissioner Whitworth moved, seconded by Commissioner Helberg, to dismiss the case: 4 in favor | 0 opposed.

- New Charges: In February, 57 new complaints filed; in March, 66 new complaints filed.
- Administrative Dismissals: In February, 9 issued. In March, 11 issued.
- Pre-determination settlements: In February, there were 14, with benefits of approximately \$214,000.00 to complainants. In March, there were 41 with benefits of approximately \$917,461.64 to complainants.

Quarterly: Executive Director Sneirson discussed FY2020's third quarter agency performance:

- Training & Education: Commission staff attended/presented at 10 trainings/presentations, with many other cancelled as the pandemic arrived.
- Finance: Due to a change in the financial reporting system used by the State of Maine, staff will not be able to complete a financial report until the next quarter. Staff will provide a consolidated report for the third and fourth quarters at the next quarterly meeting (or upon request from Commissioners).
- Pending inventory: At the end of the quarter on 3/31/20, the Commission had 693 cases pending, with the average age of cases in the agency at 219 days. On average, cases going to an investigator are pending for an additional 151 days.

## **NEW BUSINESS**

E.D. Sneirson reported on agency operations in the pandemic, as the planned April meeting had been cancelled. The Commission continues to operate and investigate cases, with adjustments made to operate mostly electronically/remotely and with many extensions of time and accommodations. As the Commission operates using paper files, the Commission had to quickly create methods of handling cases remotely, with Operations Director Melody Piper working feverishly to make that happen. Agency staff are mostly working at home but do go into the office sporadically to review/copy/scan/file items, and someone is in the office part of every day to receive mail and packages and scan them to other staffers for handling. The Commission is holding off on issuing administrative dismissals as much as possible due to concerns about limited court access during the pandemic, but the agency also is keeping an eye on making sure federal HUD and EEOC contract requirements are met. E.D. Sneirson noted that federal funding will be key in the face of expected state budget pressures. The Legislature closed abruptly as the pandemic arrived, and the budget that had been hammered out (with several small items in it for the Commission, mostly funding of approved position reclassifications) was dramatically revised at the last minute. It is believed that the reclassification funding remained in the approved budget, but that has not yet been confirmed.

One of the federal funders, the U.S. Department of Housing and Urban Development, recently awarded the Commission two partnership grants. One grant will allow the Commission to update its popular pamphlet and video resources on assistance animals after the MHRA was amended last fall. Another grant will provide funding for the Commission to do outreach to shelters in Maine about how the MHRA might apply to them; this grant will dovetail with a pilot project starting in July 2020 in which the Commission will receive and assess complaints based on homelessness. Additionally, the federal government's recent CARES Act directed some funding to fair housing assistance program agencies like the Commission related to COVID-19 response; the Commission will be submitting an application for that funding as well.

Previously begun projects within the Commission continue along with case processing and investigation. The Governor's biennial budget last year provided the Commission funding to create a portal system for the

agency's website, which will have an outward-facing public access for filing documents and checking on case status electronically as well as an internal electronic data management program for staff use; this project has been and remains underway. The Commission also had planned outreach to Maine schools about the MHRA and hostile environment issues, which had to be paused; we are considering how to amend the delivery of that outreach now. The Commission did begin delivering continuing legal education seminars toward the new requirement for Maine attorneys that they obtain live training on harassment or discrimination; during the pandemic that is being delivered via webinar but still counts as live for CLE purposes.

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

## CASES VOTED ON

PA18-0178-AB\*: Mark Gelsinger (Gardiner) v. Kennebec Valley Tennis Association (Augusta) and Thomas Suttie (Oakland).

PA18-0179-AB\*: Kenneth Wells (Gardiner) v Kennebec Valley Tennis Association (Augusta) and Thomas Suttie (Oakland).

These cases were argued together. Attorney Stephen Langsdorf restated the position of Respondent Kennebec Valley Tennis Association. Respondent Thomas Suttie did not present. Attorney Donald Lawson-Stoppes restated the position of the Complainants, and Complainants also spoke regarding their position. Investigator Kit Thomson Crossman reviewed their reports and recommendations.

*With respect to PA18-0178 (Gelsinger):* Commissioner David moved, seconded by Commissioner Ashby, to find there are no reasonable grounds to believe that Kennebec Valley Tennis Association discriminated against Mark Gelsinger on the basis of sexual orientation. 2 in favor | 2 opposed (Ashby and David in favor, Whitworth and Helberg opposed); the motion did not pass, with a default finding of no reasonable grounds. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find reasonable grounds to believe that Kennebec Valley Tennis Association discriminated against Mark Gelsinger on the basis of his sexual orientation. 2 in favor | 2 opposed (Whitworth and Helberg in favor, Ashby and David opposed); the motion did not pass, with a default finding of no reasonable grounds. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find there are reasonable grounds to believe that Thomas Suttie discriminated against Mark Gelsinger on the basis of his sexual orientation. 2 in favor | 2 opposed (Whitworth and Helberg in favor, Ashby and David opposed); the motion did not pass, with a default finding of no reasonable grounds.

*With respect to PA18-0179 (Wells):* Commissioner David moved, seconded by Commissioner Ashby, to find there are no reasonable grounds to believe that Kennebec Valley Tennis Association or Thomas Suttie discriminated against Mark Gelsinger on the basis of sexual orientation. 2 in favor | 2 opposed (Ashby and David in favor, Whitworth and Helberg opposed); the motion did not pass, with a default finding of no reasonable grounds.

E18-0356\*: Kasha Hill (Portland) v. Great American Real Food Fast, Inc. Attorney Carol Eisenberg restated the position of the Respondent. Attorney Chad Hansen restated the position of the Complainant. Investigator Robert Beauchesne reviewed his report and recommendations. Commissioner Ashby moved, seconded by Commissioner David, to find there are no reasonable grounds to believe that the Great American Real Fast Food, Inc. discriminated against Kasha Hill on the basis of race (terms and conditions of employment; hostile work environment) or retaliated against her for engaging in WPA-protected conduct. 4 in favor | 0 opposed. Commissioner David moved, seconded by Commissioner Ashby, to find there are **reasonable grounds** to believe that Great American Real Fast Food, Inc. retaliated against Kasha Hill for engaging in MHRA-protected conduct. 4 in favor | 0 opposed.

E18-0368: Shawn Metayer (Litchfield) v. Mid Coast Hospital (Brunswick). With Complainant Shawn Metayer deceased, Marie Metayer represented his estate in restating his position. Attorney Ronald Schneider restated the position of the Respondent. Investigator Jane O'Reilly reviewed her report and recommendations. Commissioner Helberg moved, seconded by Commissioner Ashby, to find no reasonable grounds to believe that Mid Coast Hospital retaliated against Shawn Metayer for engaging in WPA-protected activity. 4 in favor | 0 opposed.

E18-0420-AB\*: Michelle Geaghan (Waterville) v. Coffee News/John Buckley (Bangor) and Bill Buckley (Bangor). Attorney Ryan Dumais restated the position of the Respondents. Michelle Geaghan restated her position as the Complainant. Investigator Alexandra Brindley reviewed her report and recommendations. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Coffee News/John Buckley and Bill Buckley discriminated against Michelle Geaghan on the basis of sex and/or age, and to find **reasonable grounds** to believe that Coffee News/John Buckley and Bill Buckley retaliated against Michelle Geaghan for participating in MHRA-protected activity. 4 in favor | 0 opposed.

E18-0424: Cynthia Dechenes (Brunswick) v. Central Maine Healthcare (Lewiston). Attorney Samuel Riotte restated the position of the Complainant. Attorney Micheal Messerschmidt restated the position of the Respondent. Chief Investigator Alice A. Neal reviewed their report and recommendations. Commissioner Whitworth moved, seconded by Commissioner Ashby, to find no reasonable grounds to believe that Central Maine Healthcare discriminated against Cynthia Dechenes based on her age and/or sex, and no reasonable grounds to believe that Central Maine Healthcare retaliated against Cynthia Dechenes for engaging in WPA-and/or MHRA-protected activity. 4 in favor | 0 opposed.

E19-0034: Nicole Tucker (Levant) v. Emera Maine (Hampden). Complainant Nicole Tucker had been at the meeting earlier but had to leave due to child care needs, and so did not appear at argument. Commissioner Ashby moved to postpone hearing to another date; the motion was not seconded. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Emera Maine discriminated against Nicole Tucker on the basis of sex and/or disability, and no reasonable grounds to believe that Emera Maine retaliated against Nicole Tucker for engaging in MHRA-protected activity. 3 in favor | 0 opposed | 1 abstained (Ashby abstained).

PA19-0035: John Sakowich (Jamestown, TN) v. Inland Fisheries & Wildlife Department (Augusta). John Sakowich restated his position as the Complainant. Attorney Valerie Wright restated the position of the Respondent. Investigator Kit Thomson Crossman reviewed their report and recommendations. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Inland Fisheries & Wildlife Department discriminated against John Sakowich on the basis of disability. 4 in favor | 0 opposed.

E19-0085: Kelsie Upham (Old Town) v. DEWSHO d/b/a Bagel Central (Bangor). Attorney Erik Black restated the position of the Complainant. Attorney James Munch restated the position of the Respondent. Investigator Milo Gitchos reviewed his report and recommendations. Commissioner Helberg moved, seconded by Commissioner David, to find no reasonable grounds to believe that DEWSHO d/b/a Bagel Central discriminated against Kelsie Upham on the basis of religion. 3 in favor | 1 opposed (Ashby opposed).

E19-0148: Amy Hill (Augusta) v. Department of Health and Human Services, State of Maine (Augusta). Attorney Samuel Riotte restated the position of the Complainant. Attorney Valerie Wright restated the position

of the Respondent. Investigator Jane O'Reilly reviewed her report and recommendations. Commissioner David moved, seconded by Commissioner Whitworth, to find no reasonable grounds to believe that Department of Health and Human Services, State of Maine discriminated against Amy Hill on the basis of sex and/or disability, and no reasonable grounds to believe that Department of Health and Human Services, State of Maine retaliated against Amy Hill for engaging in WPA- and/or MHRA-protected activity. 4 in favor | 0 opposed.

H/PA19-0491\*: Billy Nelson (Portland) v. Milestone Recovery Emergency Shelter (Portland). Attorney Frederick Finberg restated the position of the Respondent. Attorney Patricia Ender restated the position of the Complainant. Investigator Alexandra Brindley reviewed her report and recommendations. Commissioner Ashby moved, seconded by Commissioner Whitworth, to find reasonable grounds to believe that Milestone Recovery Emergency Shelter discriminated against Billy Nelson on the basis of sex and/or gender identity in providing access to a place of public accommodation. 2 in favor | 2 opposed (Helberg and David opposed); the motion did not prevail, with a default finding of no reasonable grounds. Commissioner Ashby moved, seconded by Commissioner Helberg, to find no reasonable grounds to believe that Milestone Recovery Emergency Shelter discriminated against Billy Nelson on the basis of sex and/or gender identity in housing. 4 in favor | 0 opposed.

H19-0492-AB\*: Aaron Martin (Richmond) v. Woodland Village, LLC (Portland) and Brunswick Landing Venture, LLC (Portland). Attorney Laura Terrasi restated the position of the Respondent. Complainant Aaron Martin was not present. Investigator Kit Thomson Crossman reviewed their report and recommendations. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find Reasonable Grounds to believe that Woodland Village, LLC, and Brunswick Landing Venture, LLC, discriminated against Aaron Martin in housing on the basis of his familial status. 2 in favor | 2 opposed (Ashby, David opposed). The motion did not prevail, with a default finding of no reasonable grounds.

## EXECUTIVE SESSION

At 04:17 PM, Commissioner Helberg moved, seconded by Commissioner Ashby, 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 4:25 AM, Commissioner Helberg moved, seconded by Commissioner Whitworth, to come out of executive session. 4 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Helberg to do the following:

a. To not litigate the following reasonable-grounds cases in which conciliation was not successful:

- Hunter v. St. Mary's Hospital (E18-0331);
- Gastonquay v. Amatoes (E18-0199); and
- O'Brien-Nolin v. Vincent Herzog (PA18-0009)

**AND**

(b) to litigate the reasonable-grounds cases:

- Pitts v. Jesse Warren (H19-0202-C);
- Miller v. Dunn (H19-0314); and
- Murphy v. Membership Auto, LLC and Ultimate Equity Holdings, Inc. (E18-0294-B/C).

4 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Helberg, to approve a settlement agreement in H18-0466, Kalar v. Maine State Housing Authority, a reasonable-grounds case that had failed conciliation. 4 in favor | 0 opposed.

Commissioner Whitworth moved, seconded by Commissioner Helberg, to approve a settlement agreement in a reasonable-grounds case that failed conciliation, H18-0380-C, Loundon v. Alan Shepard. 4 in favor | 0 opposed. Litigation against the remaining respondents in H18-0380-A/B, which the Commission approved in July 2019, will continue.

At approximately 4:30 PM, Commissioner Whitworth 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.

E18-0328-AB:	Matthew Weidemann (Arundel) v. Maine Behavioral Healthcare & Maine Health	NRG
E18-0355:	Michael Brann (Readfield) v. Pan Am Railways, Inc. (North Billerica)	NRG
E18-0450:	Susan Taylor (Richmond) v. Maine Region Ten Technical High School (Brunswick)	NRG
PA18-0463:	Daniel Chase (Levant) v. City of Bangor (Police Department) (Bangor)	NRG
E18-0487:	Mark O'Brien (Wells) v. Town of Ogunquit (Ogunquit)	NRG
E18-0504:	Fatima Abed (Honolulu, HI) v. The Main Idea (Fairfield, ME)	NRG
E19-0038:	Madonna Moore (Presque Isle) v. The Aroostook Medical Center dba Northern Light A. R. Gould Hospital (Presque Isle)	NRG
E19-0053:	Peter DeGennaro (Cape Elizabeth) v. Lowe's (Scarborough)	NRG
E19-0245:	Marilyn Hudzina (Belgrade) v. University of Maine at Augusta (Augusta)	NRG
E19-0260*:	Pauline Champagne o/b/o Michael Morin (Skowhegan) v. Walmart Stores, Inc.; Walmart Stores East, L.P.; Walmart Supercenter (Skowhegan)	RG

### TABLED

E18-0431-AB\*: Erin Hodgkins (Ellsworth) v. Charlie's Pizza (Ellsworth) and Melvin Lambert (Winterport)