



Maine Human Rights Commission

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COMMISSION MEETING MINUTES

Senator Inn - BOARDROOM

284 Western Ave ~ Augusta, Maine 04330

July 22, 2019

Commission Chair Clark called the meeting to order at 8:30 AM. Present were Commissioners Whitworth, Helberg, Oettinger, and Ashby.

AGENDA

Commissioner Whitworth moved, seconded by Commissioner Helberg, 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 5). 5 in favor | 0 opposed.

MINUTES

Commissioner Helberg moved, seconded by Commissioner Oettinger, to adopt the June 17, 2019 Commission meeting minutes. 3 in favor | 0 opposed | 2 abstained (Whitworth, Ashby abstained).

ADMINISTRATION

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

- Personnel: Investigator Alex Brindley will join the Commission full-time in August, and Katherine Skinner, a law student at the University of Maine School of Law, is interning at the Commission for the summer. The Investigator position was approved for reclassification. Also, the Commission has one new position approved in the Biennial Budget recently signed into law; the intent is for that position to handle all intake and some outreach activity as well..
- Compliance: Since the last meeting, there were 3 unsuccessful conciliations and 2 successful conciliations. 5 reasonable-grounds cases remain in active conciliation.
 - Commissioner Helberg moved, seconded by Commissioner Whitworth, to approve Conciliation Agreements in the two cases which were successfully conciliated, and one case in which agreement was reached after the conciliation period ended::
 - H18-0352-A/B/C: Lavin v. Avesta Housing, M. Urgiles, and N. Kjeldgaard.
 - H18-0496-A/B/C: Asselin v. MPB Properties, L. Colello, and Burnham Towers, LLC
 - ED/PA17-0208-A/B/C : Martin v. Poland Regional High School - RSU 16, C. Medd and P. Flynn
 - 5 in favor | 0 opposed.
 - A conciliated case in which the Commission reached an agreement is ready for dismissal, as all terms in the agreement have been implemented. Commissioner Whitworth moved, seconded by Commissioner Oettinger, to dismiss Case E14-0598, Lagasse v. Giroux Oil Co. Inc. d/b/a GirouxEnergy Solutions. 5 in favor | 0 opposed.

- New Charges: 43 new charges filed in June.
- Administrative Dismissals: The Commissioners reviewed proposed administrative dismissals in eight cases. Commissioner Helberg moved, seconded by Commissioner Whitworth, to issue administrative dismissal in each case (see listing on page 5) with a statement that the dismissal constitutes a finding of “no reasonable grounds” to believe unlawful discrimination occurred. 5 in favor | 0 opposed.
- There were 13 predetermination settlements in June with benefits of \$387,491 to complainants.

Litigation will be addressed after Executive Session.

Quarterly: Executive Director Sneirson discussed FY2019’s fourth quarter agency performance (April - June):

- Training & Education: Commission staff attended/presented at 18 trainings/presentations, in addition to participating in approximately 15-20 legislative hearings.
- Financial Report: Presented and placed on file.
- Pending inventory: As of 6/30, the Commission had 673 cases pending, with the average age of cases in the agency at 251 days; cases are with investigators for an average of 176 days.

NEW BUSINESS

- The Commission is happy to welcome Jefferson Ashby as our newest Commissioner.
- There was a request to withdraw complaint in H19-0101B, Friedman v Mullins, a case listed on the Consent Agenda today. Commissioner Helberg moved, seconded by Commissioner Whitworth, to deny the request to withdraw the complaint. 5 in favor | 0 opposed.
- The Commission tracked or participated in testimony related to approximately 50 bills that related somehow to rights under the MHRA or the Commission in legislative session that ended in June. The Commission itself submitted three agency bills to the Legislature; two of the bills passed with amendments, and the third bill is pending.
- The Commission’s 2020/2021 Biennial Budget submission resulted in legislative approval for one new position, funds for development of an online case management portal, and increases in the Mediation and Seminar fund allocations in anticipation of an increase in program activities.

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

CASES VOTED ON

E17-0247: Delila A. Cloutier (Dixfield) v. Wal-Mart Stores, Inc. (Bentonville, AR): Attorney Marshall Tinkle restated the position of the Complainant. Attorney Jonathan Rue restated the position of the Respondent. Investigator Robert Beauchesne reviewed his recommendation and answered questions about the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that Wal-Mart Stores, Inc. discriminated against Delila A. Cloutier on the basis of sex and No Reasonable Grounds to believe that Wal-Mart Stores, Inc. retaliated against Delila A. Cloutier for asserting her MHRA-protected rights. 5 in favor | 0 opposed.

E17-0407: Michael Connolly (Kennebunk) v. Postal Fleet Services, Inc. (St. Augustine, FL). Michael Connolly restated his position as the Complainant. Attorney Joann M. Bricker restated the position of the Respondent. Investigator Jane O’Reilly reviewed her recommendation and answered questions about the case. Commissioner Helberg moved, seconded by Commissioner Oettinger, to find No Reasonable Grounds to believe that Postal

Fleet Services retaliated against Michael Connolly for engaging in WPA-protected activity. 5 in favor | 0 opposed.

At 9:56AM Chair Clark called for a 10 minute recess.

E18-0367-A/B (taken out of order): John Flewelling (Sanford) v. City of Sanford (Sanford) & Thomas Connolly Jr. (Sanford). John Flewelling restated his position as the Complainant. Attorney Mark Franco restated the position of the Respondent. Investigator Jenn Corey Meehan reviewed her recommendation and answered questions about the case. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find No Reasonable Grounds to believe that City of Sanford and Thomas Connolly Jr. discriminated against John Flewelling in employment on the basis of disability and No Reasonable Grounds to believe that City of Sanford and Thomas Connolly Jr. unlawfully intimidated, interfered with, retaliated against John Flewelling in violation of MHRA. 4 in favor | 0 opposed | 1 abstained (Oettinger abstained).

PA17-0486: Charles A. Jutras (Sabattus) v. B Street Health Clinic (Lewiston). Charles Jutras restated his position as the Complainant. Attorney Kelly M. Hoffman restated the position of the Respondent. Investigator Kit Thomson Crossman reviewed their recommendation and answered questions about the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that B Street Clinic discriminated against Charles A. Jutras based on his disability (use of service animal). 5 in favor | 0 opposed.

E18-0084-A/B*: Sarah Whynaught (Augusta) v. Creative Wood Products of Maine, Inc. (Wilton) and Michael Deschenes (Farmington). Attorney Kristin Aiello restated the position of the Complainant. Respondents were not present. Investigator Jane O'Reilly reviewed her recommendations and answered questions about the case. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find **Reasonable Grounds** to believe that Creative Wood Products of Maine, Inc. and Michael Deschenes discriminated against Sarah Whynaught on the basis of disability. 5 in favor | 0 opposed. Commissioner Whitworth moved, seconded by Commissioner Helberg, to find **Reasonable Grounds** to believe that Creative Wood Products of Maine, Inc. and Michael Deschenes discriminated against Sarah Whynaught on the basis of sex. 4 in favor | 1 opposed (Clark opposed). Commissioner Ashby moved, seconded by Commissioner Oettinger, to find No Reasonable Grounds to believe that Creative Wood Products of Maine, Inc. and Michael Deschenes discriminated against Sarah Whynaught for engaging in MHRA-protected activity. 5 in favor | 0 opposed.

E18-0112: Sunshine Ayer (Bangor) v. Restaurant Employee Leasing Co. sold to Gills Bangor Inc. (Rockport). Complainant was not present. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that Restaurant Employee Leasing Co. sold to Gills Bangor Inc. discriminated against Sunshine Ayer on the basis of disability and No Reasonable Grounds to believe that Restaurant Employee Leasing Co. sold to Gills Bangor Inc. retaliated against Sunshine Ayer for engaging in protected activity. 5 in favor | 0 opposed.

E18-0150: Anthony Perrone (Windham) v. MaineGeneral Medical Center (Augusta). Attorney David Webbert restated the position of the Complainant. Attorney Benjamin Ford restated the position of the Respondent. Investigator Jane O'Reilly reviewed her recommendations and answered questions about the case.

Commissioner Helberg moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that MaineGeneral Medical Center discriminated against Anthony Perrone on the basis of sex. 5 in favor | 0 opposed. Commissioner Helberg moved, seconded by Commissioner Ashby, to find No Reasonable Grounds to believe that MaineGeneral Medical Center retaliated against Anthony Perrone for engaging in WPA- or MHRA- protected activity. 3 in favor | 2 opposed (Whitworth and Oettinger opposed).

At 12:25 Commissioner Clark called for a 5 minute recess.

E18-0462: Brenda L. Coulter (Bath) v. Goodwill Industries (Gorham). Complainant Brenda Coulter was not present. Commissioner Helberg moved, seconded by Commissioner Whitworth, to find No Reasonable Grounds to believe that Goodwill Industries discriminated against Brenda L. Coulter on the basis of disability by denying her a reasonable accommodation and No Reasonable Grounds to believe that Goodwill Industries retaliated against Brenda L. Coulter for engaging in MHRA-protected conduct. 5 in favor | 0 opposed.

H19-0071-A/B/C/D*: Gregory Shaw (Lewiston, ME) v. Genesis Health Care, Inc. (Kennett Square, PA), Kennebunk Operations, LLC d/b/a RiverRidge Center (Kennebunk, ME), Westbrook Operations, LLC d/b/a Springbrook Center (Westbrook, ME), & Scarborough Operations, LLC d/b/a Pine Point Center (Scarborough, ME). Attorney Marrielle Van Rossum restated the position of the Respondent. Attorney Mark Joyce restated the position of the Complainant. Chief Investigator Alice Neal reviewed her recommendation and answered questions about the case. Commissioner Whitworth moved, seconded by Commissioner Oettinger, to find **Reasonable Grounds** to believe that Genesis Health Care, Inc., Kennebunk Operations, LLC d/b/a RiverRidge Center, Westbrook Operations, LLC d/b/a Springbrook Center, **and** Scarborough Operations, LLC d/b/a Pine Point Center discriminated against Gregory Shaw on the basis of disability in the terms and conditions of his housing **and** by denying him the full enjoyment of a place of public accommodation by denying him a reasonable accommodation. 5 in favor | 0 opposed.

EXECUTIVE SESSION

At 1:10 PM, Commissioner Helberg 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). 5 in favor | 0 opposed.

At approximately 1:42 PM, Commissioner Helberg moved, seconded by Commissioner Whitworth, to come out of executive session. 5 in favor | 0 opposed.

Commissioner Oettinger moved, seconded by Commissioner Ashby, to do the following regarding reasonable-grounds cases in which conciliation was unsuccessful:

- (a) to litigate H18-0380-A/B/C (Shawn Loundon v. Victoria Lee, Caincrest LLC, and Alan Shepard), and
- (b) to *not* litigate E17-0091 (Lauren Kennett v. Noble Home Health) and ED/PA17-0208-A/B/C (Robert Martin o/b/o minor child v. Portland Regional High School-RSU 16, Patrick Flynn, and Cari Medd).

5 in favor | 0 opposed.

At approximately 1:44 PM, Commissioner 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.

E17-0279:	Randy Autrey (Bethel) v. Town of Bethel (Bethel)	NRG
E17-0537:	Penny L. Jackson (Caribou) v. Eastern Regional School Unit (Caribou)	NRG
E18-0030:	Rebecca A. Acosta (Rumford) v. Rumford Hospital (Rumford)	NRG
E18-0074:	Kyle Berounsky (North Berwick) v. Oceanside Rubbish (Sanford)	NRG
PA18-0165-A:	Judith Estee (Orland) v. Blush (Bucksport)	NRG
PA18-0165-B*:	Judith Estee (Orland) v. Michael Jacques (Bucksport)	RG
PA18-0171:	Rebecca J. Welsh (Sangerville) v. Bureau of Motor Vehicles (Augusta)	NRG
ED/PA18-0237:	Monicah Paquette (Waterville) v. University of Maine System (Augusta)	NRG
PA18-0253-B:	Nikki Petrovickov (Warren) v. Correct Care Solutions (Augusta)	NRG
E18-0359*:	Tanya Van Rose (Naples) v. Thomas Yarcheski (Naples)	RG
E18-0402:	Rena Newman (Gouldsboro) v. Hannaford Brothers (Ellsworth)	NRG
E18-0489-AB:	Kimberly Tison (Arundel) v. Margaret Pitts (Biddeford) and Jeremy Ray (Biddeford)	NRG
H19-0097-AB:	Ja Nae Gallant (Sanford) v. Phoenix Management Corp. (Portland) & Front Street Associates (Portland)	NRG
H19-0101-B:	Jeffery Friedman (Bangor) v. Nick Mullins (Bangor)	NRG
H19-0109-AB:	Shana Myers (Poland) v. Nicki Fongemie (Auburn)/Auburn Housing Authority (Auburn)	NRG

ADMINISTRATIVE DETERMINATIONS

E18-0376:	Janet Hankins (Gouldsboro, ME) v. Premium Retail Services (Chesterfield, MO)	NRG
PA18-0421:	Richard Fisco (Brunswick) v. Wild Oats Bakery and Cafe (Brunswick)	NRG
E19-0003:	Gregory Tolliver (Auburn) v. FX Marcotte Bros. Co. Inc. (Lewiston)	NRG
PA19-0055:	Kimberly Newhall (Old Orchard Beach) v. Cinemagic Saco ME (Saco)	NRG
H19-0183:	Ernest T. Watson (Brewer) v. Brewer Housing Authority (Brewer)	NRG
E19-0188:	Juan Bustamante (Poland) v. Residential Mortgage Services, Inc. (South Portland)	NRG
E19-0189:	Lawrence Haskell (Buxton) v. Residential Mortgage Services, Inc. (South Portland)	NRG
E19-0249:	Sarah A. Foss (Limerick) v. Buxton Eye Care (Buxton)	NRG

TABLED

E18-0092*:	Gary Crouse on behalf of Dameon Crouse (Augusta) v. Walmart Stores, Inc.; Walmart Stores East, L.P.; and Walmart Supercenter (Bangor)
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