



Maine Human Rights Commission

51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330
Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711
www.maine.gov/mhrc

Amy M. Sneirson
EXECUTIVE DIRECTOR

Barbara Archer Hirsch
COMMISSION COUNSEL

MEMORANDUM

To: Persons attending public meetings of the Maine Human Rights Commission

From: Amy Sneirson, Executive Director

Date: July 19, 2021

Subject: Policy Regarding Remote Participation in Public Proceedings of the Maine Human Rights Commission

Having given notice to the public of the intent of the Maine Human Rights Commission (“Commission”) to adopt a policy governing remote participation in public Commission meetings, and having held a hearing regarding the same, as of this date the Commission adopted this Policy to govern remote methods of participation in public Commission proceedings. This Policy is effective immediately.

- A. As set forth in the Maine Freedom of Access Act, 1 Maine Revised Statutes §403-B, the Commission may allow or require members of the Commission (“Commissioners”) or the public (“Public”) to attend or participate public Commission proceedings via remote methods as set forth below.
- B. “Remote methods”, defined in 1 M.R.S. §403-B (1), means telephonic or video technology allowing simultaneous reception of information and may include other means when such means are necessary to provide reasonable accommodation to a person with a disability. Public proceedings may not be conducted by text-only means such as e-mail, text messages or chat functions.
- C. Commissioners are expected to be physically present for public proceedings except when being physically present is not practicable. Circumstances in which physical presence for one or more Commissioners is not practicable may include:
 - (1) The existence of an emergency or urgent issue that requires the Commission to meet by remote methods;
 - (2) Illness, other physical condition or temporary absence from the jurisdiction of the Commission that causes a Commissioner to face significant difficulties traveling to and attending in person at the location in the notice under section 406;
 - (3) Significant distance a Commissioner must travel to be physically present at the location in the notice under FOAA Section 406; and
 - (4) The area of the Commission’s jurisdiction includes geographic characteristics that impede or slow travel, including but not limited to islands not connected by bridges.

- D. When Commissioners participate in public Commission proceedings by remote methods, the Commission will provide the Public with a meaningful opportunity to attend those proceedings by remote methods, and reasonable accommodations may be provided when necessary to provide access to individuals with disabilities.
- E. The Commission does not allow an opportunity for public input during Commission meetings and is not required to do so. If the Commission does allow such public input at a meeting, it will provide an effective means of communication between Commissioners and the Public.
- F. The Commission will not determine that public attendance at a public Commission proceeding will be limited solely to remote methods except if there exists an emergency or urgent issue that requires the Commission to meet by remote methods.
- G. When the Commission allows members of the public to attend Commission meetings via remote methods, as described above:
 - (1) The Commission will provide public notice in accordance with 1 M.R.S. §406, and the notice will include the means by which the Public may access the proceeding using remote methods and will identify a location for the Public to attend in person;
 - (2) A Commissioner who participates in a public proceeding by remote methods is present for purposes of a quorum and voting;
 - (3) All votes taken during a public Commission proceeding using remote methods will be taken by roll call vote that can be seen and heard if using video technology, and heard if using only audio technology, by Commissioners and the Public;
 - (4) The Commission will make all documents and other materials it considered available, electronically or otherwise, to the Public who attend by remote methods to the same extent customarily available to the Public who attend Commission proceedings in person, as long as additional costs



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COMMISSION MEETING MINUTES - ZOOM -

July 19, 2021

Commissioner Deborah Whitworth chaired the meeting and called it to order at 8:31 AM. Also present were Commissioners Jefferson Ashby, Edward David, Jill Duson and Julie O'Brien.

AGENDA

Commissioner Ashby moved, seconded by Commissioner David, to adopt the Agenda and Consent Agenda to accept the Investigator's recommended decision in each of the cases listed on the Consent Agenda (see listing on page 3). 4 in favor | 0 opposed (Duson temporarily absent).

MINUTES

Commissioner Ashby moved, seconded by Commissioner David, to adopt the June 14, 2021 Commission Meeting Minutes. 5 in favor | 0 opposed.

ADMINISTRATION

Monthly reports: Executive Director Sneirson discussed reporting on the following Commission activities:

- Personnel: The personnel report was presented and placed in the file. The Commission welcomed Chelsey Krechmer to the Commission in early July, when she filled a vacant Secretary Associate Legal II position.
- Compliance: There are 14 reasonable-grounds cases in active conciliation, and since the last meeting there has been one successful conciliation and have been five unsuccessful conciliations. Commissioner Duson moved, seconded by Commissioner David, to approve the Conciliation Agreement in the reasonable-grounds case Elbarbary v. The Penobscot Company (E20-0150). 5 in favor | 0 opposed.
- New Charges: 71 new complaints filed in June.
- Administrative Dismissals: 15 administrative dismissals issued in June.
- There were 16 predetermination settlement agreements totaling \$457,000 in benefits to complainants.

Quarterly reports:

- Training & Education: Commission staff attended/participated in 12 training or education sessions from April through June 2021, plus multiple legislative hearings.
- Financial Reports: Will be emailed after the meeting.
- Pending Inventory: 732 cases pending at the end of June.
- Resolutions: 39 predetermination settlements.

NEW BUSINESS

Legislative Update.

The Legislature's review and approval of the Biennial Budget has resulted in an approval of baseline funding for the Commission for 2021-22 and 2022-2023. Several of the Commission's requests for increases in general funds were funded by the legislature, including a long-approved reclassification of the MHRC Investigator positions.

Additionally, the vacant paralegal position that was reduced to half-time during the curtailment, and proposed to be reduced permanently in the biennium, has reverted to full time due to the Commission receiving additional general funds for much needed technology operating expenditure increases.

A bill signed by the Governor, LD 32, amended the Freedom of Access Act to require in-person public proceedings for state agency functions like the Commission meetings except in certain circumstances, and requires adoption of policies regarding remote participation in public proceedings. The Commission will return to in-person proceedings for its next meeting on August 23, with meetings to occur at the Commission's building at 19 Union Street in Augusta, in the newly-allocated 3rd Floor Conference room space.

Executive Director Sneirson moved the remaining new business to be reviewed after hearing the cases on the agenda.

At 8:49 AM Commissioner Whitworth began the case hearing agenda.

CASES VOTED ON

E19-0323*: Linda Small (Augusta) v. G.O.G. Enterprises, LLC dba Subway Restaurants (Augusta). Attorney Kristen Aiello restated the position of the Complainant. Nathan Galuch restated the position of the Respondent. Investigator Milo Gitchos reviewed his report and recommendations. Commissioner David moved, seconded by Commissioner Ashby to find no reasonable grounds to believe that G.O.G. Enterprises, LLC dba Subway Restaurant discriminated against Linda Small based on disability by failing to hire her. 4 in favor | 1 opposed (Whitworth opposed). Commissioner Ashby moved, seconded by Commissioner David, to find **reasonable grounds** to believe that G.O.G. Enterprises, LLC dba Subway Restaurant discriminated against Linda Small based on disability by making an unlawful inquiry. 5 in favor | 0 opposed.

E19-0425BC (as to recommended findings ##3, 4 and 5): Michelle MacDonald (Hampden) v. Ms. Breanne Pelletier (Brewer), Mr. Paul Wellman (Brewer), and Brewer School Department/Brewer High School (Brewer). Attorney Daniel McCue restated the position of the Complainant. Attorney Michael Buescher restated the position of the Respondents. Investigator Jane O'Reilly reviewed her report and recommendations #3-5. Commissioner David moved, seconded by Commissioner Ashby, to find no reasonable grounds to believe that Paul Wellman and/or Breanna Pelletier discriminated against Complainant Michelle MacDonald because of association on the basis of sexual orientation and/or gender identity and expression, and no reasonable grounds to believe that Paul Wellman and/or Breanna Pelletier retaliated against Michelle MacDonald for engaging in WPA- and MHRA-protected activity. 5 in favor | 0 opposed. Commissioner Ashby moved, seconded by Commissioner O'Brien, to find no reasonable grounds to believe that Brewer School Department/Brewer High School, Paul Wellman and/or Breanna Pelletier discriminated against Complainant Michelle MacDonald interfered with Michelle MacDonald for engaging in the exercise or enjoyment of the rights granted by MHRA. 4 in favor | 1 opposed (Duson opposed).

H21-0039AB: Andrea Sienna Dode (Bath) v. Pine Hill Association (Bath) and Michelle Bellino (Scarborough). The Complainant was not present. Commissioner Ashby moved, seconded by Commissioner O'Brien, to find no reasonable grounds to believe that Pine Hill Association and/or Michelle Bellino discriminated against Andrea Sienna Dode on the basis of disability or retaliated against her for engaging in MHRA-protected activity. 5 in favor | 0 opposed.

At 10:18 Commissioners took a 5 minute recess.

NEW BUSINESS CONT.

Commissioner Ashby, seconded by Commissioner Duson, to adopt the 2022 proposed meeting schedule.

Legislative Update, continued.

An agency bill that the Commission had introduced, LD 1688, was a replay of a bill approved two years ago to update the MHRA but which died for procedural reasons. Notable changes in the MHRA from LD 1688 include: expanding “familial status” protection to cover people caring for dependent adults as well as children, and adding familial status as a protected class for employment as well; adding age as a protected class in public accommodations; and updating protected classes in education to be consistent with other areas of jurisdiction. . Additionally, we have learned that LD 1294 has gone into effect without the Governor’s signature and adds protection in employment and housing for victims of domestic violence who have obtained permanent protection-from-abuse orders. The Commission will be issuing revised guidance and inquiry guides in the upcoming months on these and other changes.

EXECUTIVE SESSION

At 10:37 AM, Commissioner O’Brien 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 11:32 PM, Commissioner Ashby moved, seconded by Commissioner David, to come out of Executive Session. 5 in favor | 0 opposed.

At approximately 11:33 PM the meeting was adjourned.

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.

E19-0313: Robert Brinkley (Bangor) v. University of Maine (Orono) NRG

E19-0425A (as to recommendations #1 and #2)*:

Michelle MacDonald (Hampden) v. Brewer School Department; Brewer High School (Brewer) **RG**

E20-0168: Nicholas Strout (Poland) v. RSU 16 (Poland) NRG

ED/PA20-0110: Mary Presti obo Daughter, a minor (Vassalboro) v. Vassalboro School Department (Vassalboro) NRG

H/E21-0124: Nichole Leroux (Dover Foxcroft) v. Alfaslopes Farm (Charleston) NRG

H/PA21-0056AB: Mercy Edwin (Hooksett, NH) v. Maine Housing Authority (Augusta) and Community Concepts, Inc.(Lewiston) NRG

*** Indicates a case in which a "reasonable grounds" finding was recommended**

CASES TABLED

H20-0085ABC*: Robin Jannelle (Augusta) v. Mae E. Simmons (South China), Dennis Simmons (South China), Augusta Housing Authority (Augusta), Danielle Thibodeau (Augusta), Logan McNeill (Augusta), Tatiana Nirza (Augusta), Norma Duperre (Augusta), Eileen Williams (Augusta), MaKenzie Hewins (Augusta), John Wilcox (Augusta), and Amanda Olson, Executive Director (Augusta)



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MEMORANDUM

From: Amy Sneirson, Executive Director
Date: July 12, 2021
Subject: Notice of Hearing and Policy Adoption –
Remote Participation in Meetings of the Maine Human Rights Commission

On June 21, 2021, Maine’s Governor signed into law amendments to Maine’s Freedom of Access Act (“FOAA”) - the law which requires Maine governmental entities to operate in a manner open to the public - which require the Maine Human Rights Commission to adopt new policies regarding meeting participation.

During the pandemic’s early days, the Maine Legislature enacted, and the Governor signed into law, a new section of FOAA allowing state government to act via wholly remote proceedings, so as to keep government operating; this was in Section 403-A of Title 1, Chapter 13. Last month, as the Governor was preparing to lift the state of emergency, the Legislature enacted LD 32, “An Act Regarding Remote Participation in Public Proceedings”, as emergency legislation immediately effective.

In LD 32, the Legislature repealed the Section 403-A FOAA amendments allowing for wholly remote governmental proceeding, and put in place a new FOAA subsection, Section 403-B. The new Section 403-B allows members of the Commission (and other entities) to participate in public proceedings using remote methods but only if certain conditions are met; the detailed conditions can be seen in the rule itself. One particular requirement that requires immediate action is that the Commission must “after notice and hearing” adopt a written policy governing the conditions upon which the public and Commissioners can participate in a Commission meeting remotely.

PLEASE CONSIDER THIS TO BE THE NOTICE REQUIRED BY LD 32 THAT THE MAINE HUMAN RIGHTS COMMISSION INTENDS TO ADOPT A POLICY REGARDING REMOTE PARTICIPATION IN COMMISSION MEETINGS.

THERE WILL BE A HEARING ON ADOPTING A POLICY AT THE COMMISSION’S JULY 19 MEETING. THE HEARING WILL COMMENCE AFTER COMPLETION OF THE COMMISSION’S REGULAR HEARING AND OTHER AGENDAS.

For those who wish to observe this hearing but not participate in it, the Commission will post on its website information on how to watch the meeting via YouTube livestream. That link will be posted early on Monday 7/19 in the morning.

For those who wish to participate in the hearing, the Commission will provide Zoom log-in information upon request. Please contact me at amy.sneirson@mhrc.maine.gov to request the Zoom log-in information.

Please feel free to contact me if you have questions regarding this Memorandum.



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