

**MAINE HUMAN RIGHTS COMMISSION REVIEW PANEL  
Panel Work Product**

**Table of Contents**

**I. Executive Orders**

- A. Executive Order 2015-007 (4/21/15)
- B. Email dated 10/7/15 re: establishment of Review Panel
- C. Executive Order 2015-009 (10/14/15)
- D. Email exchange dated 10/31/15 re: FOAA

**II. Meeting Minutes (some with attachments)**

- A. Panel Meeting 10/21/15 (Augusta)
- B. Panel Meeting 11/5/15 (Portland)
- C. Panel Meeting 12/3/15 (Portland)
- D. Panel Meeting 12/9/15 (Portland)
- E. Panel Meeting 1/7/16 (Augusta)
- F. Panel Meeting 2/4/16 (Portland)
- G. Panel Meeting 3/31/16 (Augusta)
- H. Panel Meeting 5/3/16 (Portland) (EXH Survey)
- I. Panel Meeting 5/26/16 (Augusta)
- J. Panel Meeting 7/11/16 (Portland) (EXH Heiden memo re ¶ 3(b))
- K. Panel Meeting 8/22/16 (Augusta) (EXH Peard draft re ¶ 3(a))
- L. Panel Meeting 9/23/16 (Portland)

**III. Relevant Correspondence and Attachments**

- A. Correspondence/documents regarding constituent outreach (various emails, letters, and notes to or from individuals and groups in response to request for input from Review Panel)
- B. Correspondence/documents from MHRC Executive Director
  - 1) Chart comparing various state human rights commissions
  - 2) Letter dated 3/5/15 to Maine Legislative Judiciary Committee
- C. Pat Peard's notes regarding MHRC Process and Procedures,
- D. Survey responses: Uhl, Peard, McMorrow, Bailey, and Clifford

**IV. Recommendations to Improve Charge Processing**



OFFICE OF  
THE GOVERNOR

NO. 2015-007  
DATE April 21, 2015

**AN ORDER ESTABLISHING THE GOVERNOR'S PANEL TO REVIEW AND MAKE  
RECOMMENDATIONS FOR IMPROVEMENT OF  
THE MAINE HUMAN RIGHTS COMMISSION AND ITS OPERATIONS**

**WHEREAS**, the Maine Human Rights Commission ("MHRC") is the administrative, governmental agency charged with enforcing the Maine Human Rights Act ("MHRA"), 5 MRS §§4551, *et. seq.*;

**WHEREAS**, the MHRA protects the opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin;

**WHEREAS**, the MHRA protects the opportunity for an individual to secure housing in accordance with the individual's ability to pay, and without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status;

**WHEREAS**, the MHRA protects the opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin;

**WHEREAS**, the MHRA protects the opportunity for every individual to be extended credit without discrimination solely because of any one or more of the following factors: age; race; color; sex; sexual orientation; marital status; ancestry; religion or national origin;

**WHEREAS**, the MHRA protects the opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, sexual orientation, a physical or mental disability, national origin or race;

**WHEREAS**, there is perception in the Maine business community that the MHRC generally views respondents as culpable before any investigation has been conducted;

**WHEREAS**, there is perception in the Maine business community that the MHRC generally views complainants as truthful without affording respondents the same consideration;

**WHEREAS**, there is a perception in the Maine business community that the MHRC investigatory procedures, fact finding conferences, and settlement conferences are generally unfair to respondents, holding them to a higher standard of proof than complainants;

**WHEREAS**, there is a perception in the Maine business community that the MHRC unduly pressures respondents to settle complaints regardless of their culpability;

**WHEREAS**, there is a perception in the Maine business community that the MHRC, through its agents, is more flexible in the application of its rules toward complainants than toward respondents;

**WHEREAS**, the MHRC, through its agents, has implemented investigatory procedures that are overly and unnecessarily burdensome to respondents, particularly during the early stages of the investigatory process;

**WHEREAS**, the MHRC has upheld a finding of reasonable grounds upon which to find discrimination in at least one case where it had actual knowledge that the evidence it relied on and considered "critical" to the investigation was incomplete and inaccurate;

**WHEREAS**, it is necessary to undertake a review of the MHRC's structure and operation to identify factors causing and/or contributing to the perceptions of prejudice against respondents and bias in favor of complainants, to identify rules, practices, and procedures that are unduly and unnecessarily burdensome, and to identify rules, practices, and/or procedures that are unfair;

**WHEREAS**, it is necessary to undertake this review in order to identify problems areas and make recommendations for change in order to ensure fairness and impartiality in the administrative process;

**NOW, THEREFORE**, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. The Governor's Maine Human Rights Commission Review Panel is hereby established;
2. The membership of the Review Panel shall consist of seven (7) persons appointed by the Governor including:
  - a. One attorney who regularly represents respondents before the MHRC
  - b. One attorney who regularly represents complainants before the MHRC
  - c. One (1) person from or recommended by the National Federation of Independent Business;

- d. One (1) person from or recommended by the Maine Apartment Owners and Managers Association
- e. One (1) person from or recommended by Pine Tree Legal
- f. One (1) person with a working knowledge of and familiarity with best administrative investigation practices
- g. One (1) person recommended by the MHRC

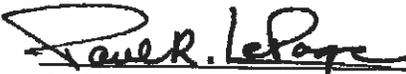
The Governor shall appoint one member of the Review Panel to serve as Chair. All Review Panel members shall serve at the pleasure of the Governor and all members shall serve without compensation.

3. The Review Panel shall:

- a. conduct a review of the structure and operation of the MHRC
- b. identify factors causing and/or contributing to the perceptions of prejudice against respondents and bias in favor of complainants
- c. identify rules, practices, and procedures that are unduly and unnecessarily burdensome to participants in the MHRC administrative process
- d. identify rules, practices, and/or procedures that are unfair to respondents and/or complainants
- e. issue a report to the Governor on or before November 1, 2015, which includes the results of its review in each of the above-listed areas as well as recommendations for improvement in laws, rules, practices, and/or procedures identified as causing or contributing to the problems identified.

4. Pursuant to Title 1, section 402, subsection 2, paragraph F, the meetings of this Review Panel are not "public proceedings" subject to Maine's Freedom of Access Act.

The effective date of this Executive order is 4.20, 2015.

  
Paul R. LePage, Governor

**From:** Montgomery, Cynthia L. Cynthia.L.Montgomery@maine.gov

**Subject:** MHRC Task Force Introductory Meeting

**Date:** October 7, 2015 at 5:54 PM

**To:** euhl@littler.com, james@cliffordclifford.com, bobseavey@myfairpoint.net, eastsider123@gmail.com, D'Alessandro, Frank (fd'alessandro@ptla.org) fd'alessandro@ptla.org, ppearl@bernsteinshur.com, Zachary Heiden (zheiden@aclumaine.org) zheiden@aclumaine.org

**Cc:** Oreskovich, Joyce A Joyce.A.Oreskovich@maine.gov

MC

Dear Panel Members:

Although I've said it once, I want to again thank all of you for your willingness to serve on the MHRC Task Force.

For your information, the panel members are:

1. **An attorney who regularly represents respondents before the MHRC:** Attorney Eric Uhl.
2. **An attorney who regularly represents complainants before the MHRC:** Attorney Jim Clifford.
3. **An individual recommended by the National Federation of Independent Business:** Bob Seavey.
4. **An individual recommended by the Maine Apartment Owners and Managers Association:** Chris McMorrow.
5. **An individual recommended by Pine Tree Legal:** Attorney Frank D'Alessandro.
6. **An individual with a working knowledge of and familiarity with best administrative investigation practices:** Attorney Patricia Peard.
7. **An individual recommended by the MHRC:** Attorney Zach Heiden.

Attorney Eric Uhl has graciously agreed to serve as Chair of the Task Force, and it will be staffed by State BHR Director Joyce Oreskovich.

With this email, I will attempt to schedule the introductory meeting, which I expect will last a half hour or so. I will reserve a room for us, so please report to the Governor's Office unless otherwise notified. Here are three date/time options. Please indicate whether you can make any/all of them.

Friday, October 16, 2015 @ 1:00 p.m.;

Monday, October 19, 2015 @ 10:00 or 1:00;

Wednesday, October 21, 2015 @ 3:00.

Thank you.

Cynthia L. Montgomery, Esq.

Chief Legal Counsel

Office of the Governor

1 State House Station

Augusta, Maine 04333

(207) 287-3531

[cynthia.l.montgomery@maine.gov](mailto:cynthia.l.montgomery@maine.gov)



OFFICE OF  
THE GOVERNOR

NO. 2015-009  
DATE October 14, 2015

**AN ORDER ESTABLISHING THE GOVERNOR'S PANEL TO REVIEW AND MAKE  
RECOMMENDATIONS FOR IMPROVEMENT OF THE MAINE HUMAN RIGHTS  
COMMISSION AND ITS OPERATIONS**

WHEREAS, the Maine Human Rights Commission ("MHRC") is the administrative, governmental agency charged with enforcing the Maine Human Rights Act ("MHRA"), 5 MRS 4551, et. seq.;

WHEREAS, the MHRA protects the opportunity for an individual to secure employment without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin;

WHEREAS, the MHRA protects the opportunity for an individual to secure housing in accordance with the individual's ability to pay, and without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry, national origin or familial status;

WHEREAS, the MHRA protects the opportunity for every individual to have equal access to places of public accommodation without discrimination because of race, color, sex, sexual orientation, physical or mental disability, religion, ancestry or national origin;

WHEREAS, the MHRA protects the opportunity for every individual to be extended credit without discrimination solely because of any one or more of the following factors: age; race; color; sex; sexual orientation; marital status; ancestry; religion or national origin;

WHEREAS, the MHRA protects the opportunity for an individual at an educational institution to participate in all educational, counseling and vocational guidance programs and all apprenticeship and on-the-job training programs without discrimination because of sex, sexual orientation, a physical or mental disability, national origin or race;

WHEREAS, there is perception in the Maine business community that the MHRC generally views respondents as culpable before any investigation has been conducted;

WHEREAS, there is perception in the Maine business community that the MHRC generally views complainants as truthful without affording respondents the same consideration;

WHEREAS, there is a perception in the Maine business community that the MHRC investigatory procedures, fact finding conferences, and settlement conferences are generally unfair to respondents, holding them to a higher standard of proof than complainants;

WHEREAS, there is a perception in the Maine business community that the MHRC unduly pressures respondents to settle complaints regardless of their culpability;

WHEREAS, there is a perception in the Maine business community that the MHRC, through its agents, is more flexible in the application of its rules toward complainants than toward respondents;

WHEREAS, the MHRC, through its agents, has implemented investigatory procedures that are overly and unnecessarily burdensome to respondents, particularly during the early stages of the investigatory process;

WHEREAS, the MHRC has upheld a finding of reasonable grounds upon which to find discrimination in at least one case where it had actual knowledge that the evidence it relied on and considered "critical" to the investigation was incomplete and inaccurate;

WHEREAS, it appears that the MHRC, through its agents, has, in at least one case, unfairly excluded and refused to consider evidence properly submitted for consideration by the MHRC;

WHEREAS, it is necessary to undertake a review of the MHRC's structure and operation to identify factors causing and/or contributing to the perceptions of prejudice against respondents and bias in favor of complainants, to identify rules, practices, and procedures that are unduly and unnecessarily burdensome, and to identify rules, practices, and/or procedures that are unfair;

WHEREAS, it is necessary to undertake this review in order to identify problem areas and make recommendations for change in order to ensure fairness and impartiality in the administrative process;

NOW, THEREFORE, I, Paul R. LePage, Governor of the State of Maine, hereby order as follows:

1. The Governor's Maine Human Rights Commission Review Panel is hereby established;
2. The membership of the Review Panel shall consist of seven (7) persons appointed by the Governor including:
  - a. One attorney who regularly represents respondents before the MHRC
  - b. One attorney who regularly represents complainants before the MHRC
  - c. One (1) person from or recommended by the National Federation of Independent Business;
  - d. One (1) person from or recommended by the Maine Apartment Owners and Managers Association

e. One (1) person from or recommended by Pine Tree Legal

f. One (1) person with a working knowledge of and familiarity with best administrative investigation practices

g. One (1) person recommended by the MHRC

The Governor shall appoint one member of the Review Panel to serve as Chair. All Review Panel members shall serve at the pleasure of the Governor and all members shall serve without compensation.

3. The Review Panel shall:

a. conduct a review of the structure and operation of the MHRC

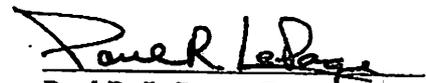
b. identify factors causing and/or contributing to the perceptions of prejudice against respondents and bias in favor of complainants

c. identify rules, practices, and procedures that are unduly and unnecessarily burdensome to participants in the MHRC administrative process

d. identify rules, practices, and/or procedures that are unfair to respondents and/or complainants

e. issue a report to the Governor on or before April 15, 2016, which includes the results of its review in each of the above-listed areas as well as recommendations for improvement in laws, rules, practices, and/or procedures identified as causing or contributing to the problems identified. If the Panel requires more time in which to finalize the report, then the members may have a two (2) month extension in which to complete the report.

This Executive Order is effective October 14, 2015.

  
Paul R. LePage, Governor



**From:** **Montgomery, Cynthia L** Cynthia.L.Montgomery@maine.gov  
**Subject:** MHRC Task Force Introductory Meeting  
**Date:** October 7, 2015 at 5:54 PM  
**To:** euhl@littler.com, james@cliffordclifford.com, bobseavey@myfairpoint.net, eastsider123@gmail.com, D'Alessandro, Frank (fd'alessandro@ptla.org) fd'alessandro@ptla.org, ppear@bernsteinshur.com, Zachary Heiden (zheiden@aclumaine.org) zheiden@aclumaine.org  
**Cc:** Oreskovich, Joyce A Joyce.A.Oreskovich@maine.gov

---

Dear Panel Members:

Although I've said it once, I want to again thank all of you for your willingness to serve on the MHRC Task Force.

For your information, the panel members are:

1. **An attorney who regularly represents respondents before the MHRC:** Attorney Eric Uhl.
2. **An attorney who regularly represents complainants before the MHRC:** Attorney Jim Clifford.
3. **An individual recommended by the National Federation of Independent Business:** Bob Seavey.
4. **An individual recommended by the Maine Apartment Owners and Managers Association:** Chris McMorrow.
5. **An individual recommended by Pine Tree Legal:** Attorney Frank D'Alessandro.
6. **An individual with a working knowledge of and familiarity with best administrative investigation practices:** Attorney Patricia Peard.
7. **An individual recommended by the MHRC:** Attorney Zach Heiden.

Attorney Eric Uhl has graciously agreed to serve as Chair of the Task Force, and it will be staffed by State BHR Director Joyce Oreskovich.

With this email, I will attempt to schedule the introductory meeting, which I expect will last a half hour or so. I will reserve a room for us, so please report to the Governor's Office unless otherwise notified. Here are three date/time options. Please indicate whether you can make any/all of them.

Friday, October 16, 2015 @ 1:00 p.m.;

Monday, October 19, 2015 @ 10:00 or 1:00;

Wednesday, October 21, 2015 @ 3:00.

Thank you.

Cynthia L. Montgomery, Esq.  
Chief Legal Counsel  
Office of the Governor  
1 State House Station  
Augusta, Maine 04333  
(207) 287-3531  
[cynthia.l.montgomery@maine.gov](mailto:cynthia.l.montgomery@maine.gov)

**Maine Human Rights Commission Review Panel**  
**October 21, 2015**  
**Governor's Conference Room**  
**Augusta, Maine**

**Meeting Minutes**

**Present:**     **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
                  **Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
                  **Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of  
                  and familiarity with best investigative practices)  
                  **Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
                  **James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)  
                  **Joyce Oreskovich**, Esq., State of Maine Bureau of Human Resources  
                  **Cynthia Montgomery**, Esq., Legal Counsel to the Governor of Maine

**Absent:**     **Chris McMorro**w (Maine Apartment Owners and Managers designee)

---

**Proceedings:** Meeting called to order at 3:00 p.m. / Introductions

*Introductory comments* by Ms. Montgomery. Ms. Montgomery distributed a revised Executive Order (No. 2015-009 dated 10/14/15) to replace the original Executive Order (No. 2015-007 dated 4/21/15). The revised version may need to be amended to include Paragraph 4 of Order No. 2015-007, e.g., that the proceedings of the Panel shall not be "public proceedings" per Freedom of Access Act, 1 M.R.S. § 402(2)(F).

*Introductory comments* by Panel Chair Eric Uhl. After distributing the Agenda and a draft workflow chart (attached), Mr. Uhl initiated a discussion about the revised Executive Order. Panel members were in agreement that the minutes and other publications of the Review Panel should be made available to the public. Panel members were also in agreement that meetings would be attended by Panel members and invited parties only, but the Meeting minutes, agendas, and other Panel documents or publications would be available to the public.

Panel members agreed to meet on a regular basis over the next 4-6 months. Meetings will alternate between Augusta and Portland

Ms. Peard agreed to draft a *press release* describing the purpose of the Review Panel and the nature of the Panel meetings. Ms. Peard agreed to circulate the release to Panel members, and once approved, Ms. Montgomery will coordinate with her staff for immediate release.

Panel members and Ms. Oreskovich and Ms. Montgomery engaged in a lengthy discussion about the work done by the Maine Human Rights Commission and the policies, procedures, rules, regulations, and statutes governing such work.

Among other topics, the Panel discussed the following:

**Maine Human Rights Commission Review Panel  
November 5, 2015  
One Monument Way, Portland ME**

**Meeting Minutes**

**Present:**     **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
                  **Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
                  **Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of  
                  and familiarity with best administrative practices)  
                  **Frank D’Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
                  **Chris McMorrow** (Maine Apartment Owners and Managers designee)  
                  **James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)  
                  **Joyce Oreskovich**, Esq., State of Maine Bureau of Human Resources

**Absent:**     **Colleen Bailey** (National Business Federation)

---

**Proceedings:** Meeting called to order at 4:30 p.m. / Introductions

***Approval of Minutes:*** The minutes of the October 21, 2015 meeting were approved.

***Introductory comments*** by Panel Chair Eric Uhl. After distributing the Agenda and a draft workflow chart (attached), Mr. Uhl initiated a discussion about the amending the Executive Order that had been discussed at length at the October 21, 2015 Panel meeting<sup>1</sup>. He proposed a vote on the matter. A majority (4-2) of Panel members voted to recommend that the Executive Order be amended to clarify that the Panel proceedings were not “public proceedings”. Voting in favor of the proposal were Mr. Uhl, Ms. Peard, Mr. McMorrow, and Mr. Clifford. Voting against the proposal were Mr. D’Alessandro and Mr. Heiden. Ms. Oreskovich did not vote.

***Constituents:*** Panel members and Ms. Oreskovich engaged in a lengthy discussion about how the Panel could or should gather and express the views of our respective “constituents”, i.e., the entities or parties Panel members were designated to represent. Panel members agreed to initiate discussions with their constituents and report back to the Panel by the next scheduled meeting.<sup>2</sup>

---

<sup>1</sup> See 10/21/15 meeting minutes. At the meeting on 10/21, Ms. Montgomery distributed a revised Executive Order (No. 2015-009 dated 10/14/15) to replace the original Executive Order (No. 2015-007 dated 4/21/15). A discussion followed about whether the revised version should be amended to clarify that the proceedings of the Panel shall not be “public proceedings” per Freedom of Access Act, 1 M.R.S. § 402(2)(F). The Panel was generally in agreement that while the work product and recommendations stemming from the proceedings should be made available to the public, the meetings and proceedings should not be “public proceedings”.

<sup>2</sup> With in put from the MSBA Employment Section co-chairs Dan Rose and Roberta de Araujo and Mr. Clifford, Mr. Uhl drafted a memo and distributed it to MSBA Employment Section members seeking their input. A copy of the email and memo are attached to these minutes.

Mr. McMorrow (Apartment Owners designee) reported that he had already engaged in discussions with various apartment owners and managers. Among other concerns expressed by colleagues, Mr. McMorrow reported the following:

- One apartment owner reported that he/she had been to the Commission to respond to housing charges on three or four occasions. Each time the issue related to service animals. This owner reported that in each case the Investigator told the owner that the case could be settled for “between \$3,000-\$5,000”. This owner was concerned that the Investigators were “negotiating on behalf of tenants” and felt that the entire process seemed abusive or hostile toward landlords
- Another apartment owner reported about his or her negative experience regarding a charge by a tenant who wanted to board a therapy horse on a lot of a very small apartment complex. The owner reported that an Investigator advised the owner that he or she “had no choice but to take the horse”. The owner was troubled by the comments and expressed her frustration with the system.
- Mr. McMorrow reported about his own concerns that the roles of MHRC staff were unclear to him and his colleagues and asked questions about the process. A general discussion followed. Panel members Ms. Peard, Mr. Uhl, Mr. D’Alessandro, and Mr. Clifford attempted to clarify the process (i.e., Investigators do not “negotiate” but are sometimes involved in “conciliation” efforts; MHRC staff most likely did not “issue legal advice” to complainants or respondents but could and often do assist parties with the particulars of intake, pleading, etc.)
- Mr. McMorrow agreed to gather additional comments and information and would report back at the next meeting. Panel members agreed that it would be very helpful for Mr. McMorrow to forward emails and other correspondence from his colleagues to the Panel to supplement the record, subject of course to ensuring that all personally identifying information of parties and MHRC staff would be redacted

Ms. Peard reported that she would be meeting with MHRC Investigators prior to the next scheduled Panel meeting on December 3 to better understand the Commission’s investigative practices. She agreed it would be appropriate for Mr. Heiden (as the Panel’s MHRC designee) to attend the meeting with her.

**Workflow:** Mr. Uhl reported briefly about his discussions with MHRC Executive Director Amy Snierson, particularly with respect to her willingness to meet with the Panel at an upcoming meeting. She and MHRC General Counsel Barbara Hirsch accepted the invitation to attend the December 9, 2015 meeting.

**Adjourn:** 6:00 p.m.

**Next Meeting:** December 3, 2015 at Clifford & Clifford, One Monument Way

- 1) The MHRC Executive Director and her staff worked hard and were committed to fulfilling the statutory purpose of the Commission, to wit: to protect the public health, safety, and welfare of Maine citizens as set forth in the MHRA, 5 M.R.S. § 4552 (Policy);
- 2) The Commission is necessary, does important work, and is underfunded;
- 3) There has been a growing perception among Respondents (particularly employers) that the investigation and enforcement procedures employed by the MHRC were inconsistent, unpredictable, and at times inequitable;
- 4) There has been a growing perception among lawyers for both Respondents and Complainants that the investigation and enforcement procedures employed by the MHRC are inefficient and outdated;
- 5) The Panel agreed it would be prudent to invite the Executive Director and members of her staff to attend an upcoming meeting and offer their perspectives in addition to providing information and documents. The Panel also agreed that Ms. Peard, as the Panel member designated with knowledge of and familiarity with best investigatory practices, should meet with MHRC investigators and other staff to discuss MHRC investigation practices and procedures and report back to the Panel at an upcoming meeting;
- 6) The Panel agreed it would be prudent for each Panel member to reach out to and/or meet with their “constituents” to better understand the interests, goals, objectives, or recommendations of each such constituency. For example, the Maine Apartment Owners designee would reach out to its members and others in the Maine real estate community and the Complainant’s designee would reach out to Disability Rights Maine. After further discussion and a possible format for questions to these stakeholders, each Panel member will report back about their “constituent” perspectives and concerns for further consideration at one of the Panel meetings; and
- 7) Mr. Clifford agreed to serve as Panel Secretary.

A general discussion followed. Panel members discussed their experiences at the Commission, some of the problems faced by their “constituents” and colleagues, and possible topics for discussion in the future, including but not limited to: (i) funding considerations, (ii) modernizing current paper-driven case management practices (i.e., electronic filing); (iii) expanding the current mediation program; (iv) developing separate “tracks” for certain types of cases similar to other states (Connecticut); and (v) creating positions for MHRC Advocates similar to the Workers’ Compensation Board Advocates. These topics were not meant to be exhaustive or comprehensive, but represented some initial input from the members.

**Adjourn:** 4:25 p.m.

**Next Meeting:** 11/5/15 at Clifford & Clifford, LLC One Monument Way, Portland

## Maine Human Rights Commission Review Panel

### Meeting Minutes of December 3, 2015 Meeting at Bernstein Shur (Portland)

**Present:**     **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
                  **Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
                  **Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of  
                  and familiarity with best administrative practices)  
                  **Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
                  **Chris McMorrow** (Maine Apartment Owners and Managers designee)  
                  **James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

**Absent:**     **Colleen Bailey** (National Federation of Independent Businesses designee)

---

**Proceedings:** Meeting called to order at 4:30 p.m.

**Approval of Minutes:** The minutes of the November 5, 2015 meeting were approved.

**Introductory comments** by Panel Chair Eric Uhl. Mr. Uhl initiated a discussion about the various feedback from the meetings and discussion between panel members and their respective "constituents".

**Mr. Uhl** (Respondents' designee) reported that he met with a number of defense lawyers at Drummond Woodsum in Portland on November 19. The meeting was well-attended. Among other concerns expressed by his colleagues, Mr. Uhl reported the following:

- One of the "themes" arising from the discussion was that MHRC should play a stronger "gatekeeping" role (i.e., reject cases with no merit and discourage complainants from pursuing claims where it is clear no violation occurred)
- Another theme was whether MHRC should assign certain cases to certain "tracks". For example, would a "right to sue track" be appropriate for cases where the complainant and respondent are each represented by counsel and each side indicates an interest in bypassing an investigation, fact finding, conciliation, etc? Likewise, would a "mediation track" or "early intervention track" make sense in cases involving current employees, students, pro se litigants, and/or parties mutually interested in early resolution?
- Most of the defense lawyers agreed that MHRC needed additional funding, more resources, and more training for investigators; and
- The defense bar reported that many employers viewed the MHRC investigation process as an unfair process where they needed to disprove the complainant's case rather than placing the burden of proof on complainant

**Mr. D'Allesandro** (Pine Tree) reported that many of the complainants filing housing charges with MHRC did so on a *pro se* basis and most did not understand the MHRC process or the MHRA. He reported that many *pro se* complainants (and some lawyers) found the MHRA housing process to be confusing and intimidating. Mr. D'Allesandro thought an MHRC Advocate, similar to the Workers' Compensation Board Advocates, would be helpful to *pro se* litigants (including *pro se* landlords).

**Ms. Peard** (Best Investigative Practices) reported that she met with MHRC Investigators at MHRC on November 9. She took detailed notes, a copy of which are attached to these minutes. Ms. Peard reported that she met with all five of the Commission's investigative staff and engaged in a lengthy and productive discussion. Among other topics discussed by the investigators, Ms. Peard reported the following:

- **Cheryl** (Intake Coordinator) is the "gatekeeper". Cheryl wears many hats and performs many duties, including assisting *pro se* complainants fill out the intake sheets and follow up with them as the charge becomes final
- **Vicky** (Chief Investigator) also wears many hats and performs many duties. Cheryl processes the charge as it is docketed. Vicky drafts the requests for documents and information, which are then sent to Barbara (Commission Counsel) for review. Once reviewed, Barbara sends the requests to Cindy (Case Manager). Vicky may also flag cases for potential administrative dismissal
- **Cindy** (Case Manager) manages the flow of paper. She is described as the "traffic cop". Vicky and Cindy seem to do much of the "busy work" necessary as the charge, response, and replies are docketed. She also manages email (all of which is printed), "green sheets" (nondisclosure forms), medical records, and requests for medical information.
- There are currently five **Investigators**. Each investigator usually manages 80 cases at a time. They typically handle 350-400 cases annually. Vicky manages the investigators. There are certain benchmarks, goals, and objectives (see Pat's report for details). The Investigators manage fact finding, conciliation, issues & resolution (I&R) conferences, and (in some cases) mediation. They are responsible for writing the "Investigator's Report" and for making a recommendation to the Commissioners.
- Recommendations by investigators and staff: (i) hire more investigators, (ii) hire more administrative staff, (iii) go "paperless", (iv) decrease caseloads, and (v) do away with repetitive steps like multiple "checks"

**Mr. Heiden** (MHRC designee) did not have much time to report back but noted he would provide more detailed feedback at the December 16 panel meeting. Mr. Heiden briefly reported that he has been in regular contact with MHRC Executive Director Amy Sneirson and that he contacted two lawyers to discuss their views about the MHRC: (i) David Webbert of Johnson Webbert & Young in Augusta, and (ii) Kristen Aiello of Disability Rights Maine. Both Mr. Webbert and Ms. Aiello frequently appear before the Commission on behalf of complainants. Ms. Aiello formerly served on the Commission.

**Mr. Clifford** (Complainants' designee) reported that he has not yet had an opportunity to fully discuss matters with his constituents. He reported that he would be meeting with the Maine Employment Lawyers Association (MELA) in Portland on December 4 and was awaiting feedback from legal staff and the Executive Director of Disability Rights Maine (DRM). He will report back to the panel at the next opportunity in December or January.

**Adjourn:** 6:30 p.m.

**Next Meeting:** December 9, 2015 at Clifford & Clifford, One Monument Way

## Maine Human Rights Commission Review Panel

### Meeting Minutes of December 9, 2015 Meeting at Clifford & Clifford (Portland)

**Present:** **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
**Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
**Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of and familiarity with best administrative practices)  
**Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
**Chris McMorrow** (Maine Apartment Owners and Managers designee)  
**Colleen Bailey** (National Federation of Independent Businesses designee)  
**James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

**Also present:** **Joyce Oreskovich**, Esq., State of Maine Bureau of Human Resources  
**Amy Sneirson**, Esq., Executive Director, Maine Human Rights Commission  
**Barbara Hirsch**, Esq., MHRC Commission Counsel

---

**Proceedings:** Meeting called to order at 4:30 p.m.

**Introductory comments** by Panel Chair Eric Uhl. Mr. Uhl initiated a brief discussion about the Executive Order, which in several places references that there is a “perception in the business community” that MHRC is biased in favor of complainants and against respondents. There was some discussion among Panel members about the basis for the stated “perception”. For example, Ms. Bailey and Mr. McMorrow noted that several of their colleagues in the business community strongly agreed with the language in the Executive Order. They agreed to provide additional information and documents at the next meeting. Mr. Clifford questioned the “depth” of this perception (i.e., have employers actually complained?) and objected to the Executive Order’s tone, substance, and allegations of the Commission’s bias and favoritism. Mr. Uhl suggested that the debate be tabled and noted that the Panel has not yet heard from all interested parties. He then introduced MHRC Executive Director Amy Sneirson and MHRC Commission Counsel Barbara Hirsch, who made presentations and answered questions for the remainder of the meeting (5:00 p.m. – 6:45 p.m.).

Amy Sneirson spoke for approximately 15 minutes. She provided a handout (see attached) and discussed the history, purpose, and role of the MHRC. She drew comparisons between the MHRC and other state human rights or EEO offices, including those in neighboring New England states and New York state and New York City. Her point was that MHRC often did “more with less”. She pointed out that 50% of complainants were *pro se* and noted many of the challenges that go along with managing *pro se* cases.

Ms. Sneirson discussed funding and federal oversight (EEOC/HUD). She believes MHRC is seriously short-staffed and underfunded.

Ms. Sneirson took issue with the Executive Order. She objected to any suggestion that the Commission was biased in favor of complainants. She said that the evidence would contradict the perception that MHRC favored complainants.

Ms. Sneirson referenced the March 2015 letter she wrote to the Maine Legislature that has been discussed at a prior meeting (see 11/5/15 minutes). Her letter contains many key statistics and metrics about the types of cases filed with MHRC, the life span of and average time spent on each case, and outcomes of the cases. For example, she noted that 80-85% of all fully contested cases resulted in a “no reasonable grounds” decision. She said that of the 750 charges filed in 2014, the Commission voted on 227 and of these, only 42 resulted with a “reasonable grounds” decision (15%).

Ms. Sneirson finished her initial comments by providing a “bucket list” and goals

- Get Commissioners appointed right away
- Leave politics out of the budget and rulemaking process
- Hire more investigators and spread intake to investigators
- More administrative dismissals for failure to substantiate
- Shorter list of questions and requests for information to employer
- Electronic case filing and allowing electronic signatures
- Automated phone lines
- Issue right to sue letters without a specific request
- More and better outreach/public relations
- Levy sanctions for misrepresentations and failure to cooperate

Ms. Hirsch and Ms. Sneirson then answered many questions and participated in a very general discussion about ways to improve the MHRC. For example, Barbara and Amy seemed receptive to different tracks for *pro se* and fully represented parties.

**Adjourn:** 6:45 p.m.

**Next Meeting:** January 7, 2016 at 4:00 p.m. at the Cross Building in Augusta

## Maine Human Rights Commission Review Panel

### Meeting Minutes of January 7, 2016 Meeting at Cross State Office Building Augusta

**Present:** **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
**Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
**Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of and familiarity with best administrative practices)  
**Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
**Chris McMorrow** (Maine Apartment Owners and Managers designee)  
**Colleen Bailey** (National Federation of Independent Businesses designee)  
**James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

**Also present:** **Joyce Oreskovich**, Esq., State of Maine Bureau of Human Resources

---

**Proceedings:** Meeting called to order at 4:30 p.m.

**Introductory comments** by Panel Chair Eric Uhl. Mr. Uhl initiated a brief discussion about the goals and objectives of the Panel. The Panel was in general agreement that it would meet two or three more times (in February, March, and April) and would draft a final report thereafter.

**Report** by Colleen Bailey. Ms. Bailey presented the Panel with a summary of her discussions with members of the independent business community in Maine. One franchisee expressed his/her frustration with a recent experience at MHRC in which the assigned investigator asked the franchise to pay \$3,000 to settle a case. Ms. Bailey reported that the franchisee felt the investigator overstepped his/her bounds. Another franchisee reported a negative experience with respect to a service animal case a customer brought against the franchise. Ms. Bailey reported that several of her colleagues felt the "system was rigged" against employers and that the employers felt pressured to settle cases by MHRC. Finally, she suggested that MHRC assign an "employer advocate" to assist pro se employers. Ms. Bailey agreed to provide copies of emails she received with the understanding that names and contact information would be redacted. Copies of the emails will be attached to these minutes upon receipt.

**Report** by James Clifford. Mr. Clifford presented the Panel with a summary of his discussions with members of the plaintiff's bar and representatives of Disability Rights Maine. Copies of correspondence from lawyers is attached hereto.

- **Maine Employment Lawyers Association (MELA):** Mr. Clifford, who is a member of MELA, attended the quarterly MELA meeting at Murray Plumb & Murray in Portland on December 4, 2015. Nearly all MELA members in attendance at the meeting expressed their strong objection to the Executive Order creating the Panel. Generally speaking, MELA members believe that there is no authority or legal basis to create the Panel. Some members were concerned with the language of the Executive Order, which implied that the Commission was biased in favor of employees and tenants. Other members pointed to MHRC reports,

including Ms. Snierson's March 2015 report to the Legislature which demonstrates that the Commission found "no reasonable grounds" in the vast majority of cases, cast doubt on any assertion that the Commission was biased in favor of employees.

Mr. Clifford then asked MELA members to provide feedback on some of the proposals outlined in prior Panel meetings. Four particular issues were discussed. First, MELA was generally supportive of potential separate "tracks" for charge processing and review. Second, MELA was generally opposed to the prospect of an "advocate" program similar to the one implemented by the Workers' Compensation Board. Third, MELA members supported any attempts to improve the efficiencies at MHRC (improve the intake process, move toward electronic case filing, streamline exchange of documents and information, etc.). Finally, several MELA members expressed concern that the charging process neglected important employee privacy issues, particularly the fact that employees' protected health information from their medical or mental health records could be inadvertently disclosed and that the MHRC should do a better job to protect any release of this information

- *Disability Rights Maine (DRM)* – DRM Staff Attorney (and former MHRC Commissioner) Kristin Aiello's response to the November 16, 2015 memo to the MSBA Employment Law Section from Mr. Uhl and Mr. Clifford is attached
- *Attorney A.J. Greif* (Gilbert & Greif, Bangor) – Mr. Greif's December 2, 2015 response to the MSBA memo to from Mr. Uhl and Mr. Clifford is attached
- *Attorney James Hunt* (Robinson Krieger) – Mr. Hunt's November 30, 2015 letter to Mr. Uhl and Mr. Clifford is attached
- *Attorney Curt Webber* (Linnell, Choate & Webber, Auburn) – Mr. Webber's November 30, 2015 email is attached

**Adjourn:** 6:00 p.m.

**Next Meeting:** February 4, 2016 at 4:00 p.m. at Clifford & Clifford in Portland

## Maine Human Rights Commission Review Panel

### Meeting Minutes of February 4, 2016 Meeting at One Monument Way, Portland

**Present:** **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
**Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
**Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of and familiarity with best administrative practices)  
**Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
**Chris McMorrow** (Maine Apartment Owners and Managers designee)  
**Colleen Bailey** (National Federation of Independent Businesses designee)  
**James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

**Also Present:** MHRC Commissioner Sally Chandler (with her husband)

---

**Proceedings:** Meeting called to order at 4:30 p.m.

**Introductory comments** by Panel Chair Eric Uhl. Mr. Uhl introduced Commissioner Chandler and engaged a very brief discussion about timing and priorities of the Panel.

**Report by Commissioner Chandler.** Commissioner Chandler described her experiences on the MHRC since her appointment in 2006. She talked about the documents reviewed by the Commissioners in advance of a Commission meeting, how and why Commissioners were to base decisions on the “four corners” of the Investigation Report, and some of the frustrations she and other Commissioners shared with respect to attempts by parties or counsel to go “outside the four corners” of the Investigation Report. She also echoed Executive Director Amy Sneirson’s comments about commonly viewed perceptions and misperceptions, i.e., her belief that “9 out of 10 complainants lose” and that the MHRC was designed to meet the needs of pro se litigants. Commissioner Chandler expressed her fondness for Commission Counsel Barbara Hirsch and her belief that Executive Director Amy Sneirson was “very respectful” of the Commissioners and all parties appearing before the Commission. Among other topics and anecdotes, Commissioner Chandler offered the following:

- Not enough time for parties to present their cases before the Commission
- Discussions following presentations can “get messy”
- The Investigators “get it right most of the time” although there are times when “not enough information is contained in the report”
- There should be more training for Investigators, staff, and Commissioners, and she is surprised EEOC doesn’t provide more outreach or services

Commissioner Chandler reported that she will be resigning from MHRC on 3/15/16

**Report by Eric Uhl** concerning his discussions with former **Commissioner Mavourneen Thompson**. Mr. Uhl summarized Ms. Thompson’s comments:

- She prefers discussion prior to votes (not currently permitted)
- More training needed for Commissioners
- There is a "lot of paper" and a "heavy workload" for Commissioners prior to every meeting (and many cases are not actually voted on)
- Investigation reports need to be cleaner and clearer

A very brief exchange took place following Mr. Uhl's report. Most topics related to assigning "tasks" and delegating responsibility as the Panel begins to wind up affairs.

**Adjourn:** 6:00 p.m.

**Next Meeting:** March 31, 2016 at 4:00 p.m. at Cross Building, Augusta

## Maine Human Rights Commission Review Panel

### Meeting Minutes of March 31, 2016 Meeting at Cross State Office Building Augusta

**Present:** **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
**Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
**Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of and familiarity with best administrative practices)  
**Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
**Chris McMorrow** (Maine Apartment Owners and Managers designee)  
**Colleen Bailey** (National Federation of Independent Businesses designee)  
**James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

**Also present:** **Joyce Oreskovich**, Esq., State of Maine Bureau of Human Resources

---

**Proceedings:** Meeting called to order at 4:00 p.m.

**Report** by Pat Peard. Ms. Peard reported back on her second meeting with MHRC Investigators and staff. Her notes (along with those from her first meeting in November) will be included in the Review Panel's supplementary materials. As set forth more fully in her notes, Pat met with Executive Director Amy Sneirson on January 13. A summary of her discussion follows:

- Commission formed 44 years ago to address pro se litigants; same size and same (low budget). The mission has remained the same
- MHRC relies on HUD and EEOC for most of its funding
- 50% of litigants are pro se
- The Commission is without binding authority
- The intake process is slow, outdated, and very time-consuming
- An average case takes 345 days to resolve
- Only 15% of cases have "reasonable grounds" finding
- 67% of cases end up on a consent agenda; only 30% of cases make it to Commission

Amy's "Wish List" includes:

- Adjudicatory power, just as WCB and Unemployment hearing officers have
- More timely approval of Commissioners
- More money to hire more staff
- Greater efficiency and more scrutiny over facially insufficient cases
- Ability to levy sanctions for breaches of confidentiality, lying, etc.
- Electronic filing
- Automated phone system
- More outreach and training
- Less "hands on" assistance with pro se litigants (she agrees that MHRC should not draft charges)

- Amy feels attacked by the Governor's office and feels that MHRC, as an independent agency, should not be subject to interference

**Adjourn:** 5:30 p.m.

**Next Meeting:** May 3, 2016 at 4:00 p.m. at Clifford & Clifford in Portland

## **Maine Human Rights Commission Review Panel**

### **Meeting Minutes of May 3, 2016 Meeting at One Monument Way, Portland**

**Present:**     **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
                  **Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
                  **Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of  
                  and familiarity with best administrative practices)  
                  **Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
                  **Chris McMorrow** (Maine Apartment Owners and Managers designee)  
                  **Colleen Bailey** (National Federation of Independent Businesses designee)  
                  **James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

---

**Proceedings:** Meeting called to order at 4:30 p.m.

The Review Panel discussed the process and substance of its forthcoming report. A lively discussion took place over 90 minutes. Among other subjects, members discussed the following topics and issues:

- The language of the October 2015 Executive Order (e.g., the “declarations” giving rise to the formation of the Review Panel and a list of “perceptions” by the Maine Business Community);
- Whether and how to reach consensus;
- The prospect of drafting a survey to understand views of the Panel members;
- Status and next steps

Panel members agreed (i) that Jim Clifford would draft and distribute a survey to members seeking input and responses to the October 2015 Executive Order, (ii) that Pat Peard would summarize her notes and distribute a summary of her interviews and findings with respect to the “MHRC process” (the subject of at least two prior Panel meetings), and (iii) to meet again on May 26 in Augusta.

See Survey attached hereto.

**Adjourn:**       6:00 p.m.

**Next Meeting:** May 26, 2016 at 4:00 p.m. at Cross Building, Augusta

## **Maine Human Rights Commission Review Panel**

### **Meeting Minutes of May 26, 2016 Meeting at Cross Building, Augusta ME**

**Present:**     **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
                  **Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
                  **Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of  
                  and familiarity with best administrative practices)  
                  **Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
                  **Chris McMorrow** (Maine Apartment Owners and Managers designee)  
                  **Colleen Bailey** (National Federation of Independent Businesses designee)  
                  **James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

---

**Proceedings:** Meeting called to order at 4:00 p.m.

The Review Panel continued the discussed about the process and substance of its forthcoming report. Among other subjects, members discussed the following topics and issues:

- Feedback from Chris McMorrow, Pat Peard, and Colleen Bailey regarding surveys sent to Panel members (which will be included in the work product notebook);
- Panel findings and recommendations in response to the Executive Order
- Status and next steps

The survey responses will not be summarized in this report. Interested parties can review the contents of the survey results on their own. Panel members discussed a number of possible recommendations intended to improve the internal processes at MHRC, including:

- (i) Separate tracks for pro se and represented parties
- (ii) Increased training/development for MHRC staff and Commissioners
- (iii) Hiring one or more “advocates”, or “navigators” to assist pro se parties from the intake process through resolution
- (iv) Mandatory mediation
- (v) Increased funding to hire more staff and pay for training and development
- (vi) Hiring a management consultant to provide more formal and thorough review and analysis of the inner workings of MHRC staff
- (vii) Separating certain roles and duties by MHRC staff
- (viii) Developing a system to accommodate electronic filing

Panel members agreed to meet again on July 11 in Portland.

See Survey responses attached hereto.

**Adjourn:**     6:00 p.m.

**Next Meeting:** July 11, 2016 at One Monument Way Portland

**ATTACHMENTS: SURVEY RESPONSES PEARED, MCMORROW, BAILEY**

## Maine Human Rights Commission Review Panel

### Meeting Minutes of July 11, 2016 Meeting at One Monument Way, Portland

**Present:** **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
**Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
**Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
**Chris McMorrow** (Maine Apartment Owners and Managers designee)  
**Colleen Bailey** (National Federation of Independent Businesses designee)  
**James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)  
**Joyce Oreskovich**, Esq., State of Maine Bureau of Human Resources (liaison)

**Absent:** **Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of and familiarity with best administrative practices) – *Pat was on vacation*

---

**Proceedings:** Meeting called to order at 4:00 p.m.

The Review Panel discussed the process and substance of its forthcoming report.

Panel Member Zach Heiden presented a report intended to serve as the Panel's response to Paragraph 3(b) of the October 21 Executive Order, which states:

3. "The Review Panel Shall....(b) identify factors causing and/or contributing to the perceptions of prejudice against Respondents in favor of Complainants".

A copy of Zach's report is attached. Interested parties should refer to the report. Panel members discussed the report for the remainder of the meeting. With limited exception, the Panel agreed that the evidence strongly rejects any conclusion that the Commission is ACTUALLY biased in favor of Complainants. For example, the vast majority of cases that are fully investigated at the MHRC result in a "No Reasonable Grounds to Find Discrimination" decision. The breakdown of numbers and findings of the Commission cases was discussed in several prior meetings and was presented in great detail by Ms. Sneirson and Ms. Hirsch in earlier Panel meetings. Ms. Bailey and Mr. McMorrow remained skeptical about the Commission's actual and/or perceived biases. They maintain that members of the business community continue to believe the Commission has a pro-Complainant bias.

Panel members were then polled individually on two questions.

The first question asked members whether they believed there was any factual basis to support a conclusion that the Commission was biased in favor of Complainants. Results below

Yea: McMorrow, Bailey      Nay: Clifford, Heiden, Peard, D'Alessandro, Uhl

The second question asked Panel members whether they favored or opposed certain recommendations for improving efficiencies and performance at MHRC, using those recommendations raised on May 26:

- (i) Separate tracks for pro se and represented parties (all or nearly all in favor, though it was generally agreed that any “opt out” provision for represented parties may require legislation and/or amendments to MHRC rules)
- (ii) Increased training/development for MHRC staff and Commissioners (all in favor)
- (iii) Hiring one or more “advocates”, or “navigators” to assist pro se parties from the intake process through resolution (most in favor, although Clifford noted MELA’s objections to this based on its collective belief that lawyers, rather than “lay” advocates, should provide this advice to employees)
- (iv) Mandatory mediation (some in favor, some against; most favored mediation generally but some viewed it as an unnecessary burden for represented parties)
- (v) Increased funding to hire more staff and pay for training and development (all in favor, though mixed feelings on raising salaries and many skeptical that the money could or would be appropriated)
- (vi) Hiring a management consultant to provide more formal and thorough review and analysis of the inner workings of MHRC staff (most in favor, though some noted that the Panel has made and will make a number of valid recommendations after a very thorough review of the MHRC process by Pat Peard)
- (vii) Separating certain roles and duties by MHRC staff (for example, most opposed the idea of investigators doing intake and drafting complaints) (most in favor)
- (viii) Developing better computerized systems (e.g., electronic filing (all in favor))

OTHER SUGGESTIONS/COMMENTS FROM PANEL MEMBERS:

D’Alessandro: Favors advocates for pro se parties (though he and many others would prefer to come up with another name to reflect a conveyance of information rather than truly “advocating” for the pro se litigant; favors members of the bar serving as volunteers to provide general advice pro se parties)

Heiden: Favors hiring more mediators and investigators; favors better pay for staff; favors upgrades to computer systems and electronic filing; favors hiring a management consultant to improve efficiencies

Bailey: Favors more training and education for staff but also stressed the need for a better informed public (e.g., outreach/public relations); favors simplifying processes; disfavors the practice of limiting parties to 10 minutes per side before Commission

McMorrow: Proposed a filing fee for complainants subject to “in pauperis” waivers; favors more or better training for investigators

Clifford: Favors hiring a management consultant to thoroughly analyze intake and case management processes; supports the idea of “dual tracks” (i.e., permitting parties to opt

out of MHRC investigation process and issuing a right to sue letter), so long as certain steps are taken or criteria are met, including but not limited to developing a checklist whereby reasons for termination expressly stated, personnel files produced, key documents identified and exchanged, possibility of mediation or settlements discussed, and ensuring that other relevant facts or information are disclosed; favors more and better training and education for MHRC staff

Uhl: Favors dual tracks (with similar conditions noted by Clifford); favors hiring a management consultant; favors employing advocates or “advisors” for pro se parties; strongly favors more narrowly tailoring the information and documents requests from MHRC (this sentiment was echoed by Ms. Peard (absent on 7/11) in earlier discussions)

The parties agreed to meet in Augusta on August 22.

**Adjourn:** 6:00 p.m.

**Next Meeting:** August 22, 2016 at 4:00 p.m. at Cross Building, Augusta

**ATTACHMENTS: ZACH HEIDEN MEMO DATED 7/11/16**

## Maine Human Rights Commission Review Panel

### Meeting Minutes of August 22, 2016 Meeting at Cross Building, Augusta

**Present:** **Eric Uhl**, Esq. (Chair), Littler Medelson, P.C. (Respondent designee)  
**Zachary Heiden**, Esq., Maine ACLU (MHRC designee)  
**Patricia Peard**, Esq., Bernstein Shur (designated as person with knowledge of and familiarity with best administrative practices)  
**Frank D'Alessandro**, Esq., Pine Tree Legal (PTLA designee)  
**Chris McMorrow** (Maine Apartment Owners and Managers designee)  
**Colleen Bailey** (National Federation of Independent Businesses designee)  
**James Clifford**, Esq., Clifford & Clifford, LLC (Complainant designee)

---

**Proceedings:** Meeting called to order at 4:00 p.m.

The Review Panel discussed the process and substance of its forthcoming report. Most of the discussion centered on two topics:

- 1) Ms. Peard's draft report in response to Paragraph 3(a) of the October 2015 Executive Order, which reads "The Panel shall....conduct a review of the structure and operation of the MHRC"; and
- 2) Drafting and issuing the Panel's final report and recommendations

Panel members reviewed and discussed Ms. Peard's report for approximately 60 minutes. A copy of the draft is attached to these minutes. Interested parties can review the draft. The discussion was led by Ms. Peard and the general consensus was that the report was diligent and well-drafted. However, the Panel also agreed that the final section of Ms. Peard's report, entitled "Recommendations"–would be edited to more accurately reflect the discussions and positions of Panel members as reflected in the May 26 and July 11 minutes. Mr. Clifford agreed to draft and circulate by September 12.

The Panel then spent the remainder of the meeting discussing the organization and substance of the final report. The parties agreed that the report would be written to respond to the "charge"–set forth in Paragraph 3 of the Executive Order. The parties agreed to draft the following sections and delegated drafting responsibilities to the following Panel members:

Introduction (Eric Uhl) overview of the Executive Order, summary of what the Panel did, when the Panel met, with whom the Panel met and from whom the Panel heard; and a brief overview of the general findings and recommendations of the Panel

Substantive Findings Corresponding to Paragraph 3 of Executive Order

¶3(a) Review of structure and operation of MHRC (PEARD)

¶ 3(b) Identify factors causing or contributing to the perceptions of prejudice against respondents and in favor of complainants (HEIDEN)

¶ 3(c) and (d) Identify rules, practices and procedures that are unduly burdensome or unfair to participants in the MHRC process (PEARL, but note this will be addressed along with response to ¶ 3(a))

¶ 3(e) Recommendations for improvements in laws, rules, practices, or procedures identified as causing or contributing to the problems identified [in ¶¶ 3(a)-3(d)]

**THE PANEL FURTHER AGREED THAT EACH PANEL MEMBER MAY DRAFT AND SUBMIT THEIR PERSONAL CONCURRENCES/DISSENTS**

**Adjourn:** 6:00 p.m.

**Next Meeting:** September 21, 2016 at 4:00 p.m. at Cross Building, Augusta

***ATTACHMENTS: DRAFT REPORT RE PARAGRAPH 3(a) OF EXECUTIVE ORDER***