

Minutes:

Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel

6-8 PM, Tuesday July 10, 2018

Panel Member attendance:

- Attorney General Appointments: Jessica Brown, Shela Linton, Etan Nasreddin-Longo, Chief Don Stevens, Geoffrey Jones
- Attorney General or designee: Julio Thompson
- Defender General or designee: Rebecca Turner
- Executive Director of State's Attorneys and Sheriffs Department or designee: James Pepper
- Chief Superior Judge: Judge Brian Grearson, Judge Nancy Waples
- Commissioner of Corrections or designee: Lisa Minard
- Commissioner of Public Safety or designee: Major Ingrid Jonas; Lt. Gary Scott
- Commissioner of Department of Children and Families or designee: Ken Schatz
- Guest: Rubin Jennings, Prisoner's Rights
- Guest: Karen Richards, Human Rights Commission (HRC), Executive Director

Absent:

- Executive Director of VT Criminal Justice Training Council or designee

Welcome – Introductions

Approval of minutes

*****Motion to approve November 14, 2017 minutes*****

Chief Stevens moves to approve November 14, 2017 minutes, Judge Grearson seconds

Yeas unanimous (voice vote)

Abstentions: I. Jonas, E. Nasreddin-Longo, J. Waples, S. Linton

Motion passes

*****Motion to approve June 12, 2018 minutes*****

R. Turner moves to approve June 12, 2018 minutes, K. Schatz seconds

Yeas unanimous (voice vote)

Abstentions: L. Menard, I. Jonas, S. Linton, J. Waples

Motion passes

Announcements

No formal announcements

Discussion with Karen Richards, Executive Director, Vermont Human Rights Commission

E. Nasreddin-Longo: Introduces Karen Richards, HRC, to discuss current complaint processes

K. Richards: HRC's jurisdiction includes state government employment; public accommodations, and housing. Investigations are initiated by complainants or public advocacy groups contacting HRC office. HRC has discretion to take/deny complaints; however, if a prima facie case of discrimination can be established than an investigation will occur either by HRC or through a referral.

HRC drafts complaint; complaint signed by complainant; sent to respondent; assigned to an investigator and investigation begins. Investigation may include reviewing documents and interviewing witness. Legal analysis summarizing facts and providing a recommendation will be submitted to board of Commissioners; Respondent and Complainant may address Commissioners; Commissioners vote up or down on recommendation of investigator.

If Commissioners find no reasonable grounds for complaint, then case is dismissed. If Commissioners find reasonable grounds for complaint, then the investigation moves to the Executive Director who has six months to try to resolve the case or file formal proceedings against the respondent in Civil Court.

This process has upsides and downsides, including:

Upsides:

Vast majority of cases settled prior to formal Court proceedings;

As a party to the action, HRC can help negotiate and enforce settlement agreements, including deliverables in support of the public interest (e.g., training, changing policy, etc.).

Downsides:

Process takes a long time; HRC employs 3 investigators each of whom carry 12-16 cases at a time;

The drawn-out nature of the process may result in complainant losing interest;

Statute requires complainant submit complaint under oath but respondent need not respond under oath (implication that complainant might be making false claims);

Notarization of complainant can be a barrier for people without reliable transportation or can't find/afford a notary.

K. Schatz: Do you investigate every complaint?

K. Richards: We take every case that: (1) is within HRC jurisdiction; (2) establishes a prima facie case; and (3) HRC has the resources to investigate.

HRC might turn down a marginal case that is extremely complicated based on insufficient resources. Private employment cases are referred to AG/Julio Thompson. Marginal state employee cases that are denied by HRC are referred to EEOC. Denied housing cases can be referred to HUD. Possible that complicated cases are referred to private council or Legal Aid (but Karen Richards could not presently think of a case that has been handled this way).

E. Nasreddin-Longo: How does public understand what facts establish a prima facie case?

K. Richards: Intake person at HRC will ask all appropriate questions of complainant that are necessary to establish a prima facie case. Biggest obstacle to establishing prima facie case is specific evidence of that discrimination is occurring "because of" race, gender, sexual orientation, disability, etc.

J. Thompson: A prima facie case essentially comes down to: if what you say is true, is it a violation of the law. This is a determination of the AG/HRC staff after basic fact-finding questions with complainant. Typical barriers to moving forward with a complaint: statute of limitations has run; discrimination is not involving a protected class recognized by law; no actual violation of law.

D. Stevens: Do you keep statistics on where complaints are coming from and what roadblocks prevent them from moving forward. Can we identify problem agencies/departments and then mitigate those problem areas?

K. Richards: We log all calls/complaints; subject matter of each complaint; respondent of each; how complainant heard of HRC; town/city of complainant. 6-8 cases of employment discrimination each year on average (not including public accommodation cases). Complaints of

racial discrimination not tracked in the database down to officer level though that information is in the file.

AG: Questionnaires are all logged (name of complainant; name of employer; investigator will know total number of complaints from each company and the specific respondent)

R. Turner: Are there any limitations to HRC jurisdiction if there is a pending criminal/family court case arising out of the same incident as the racial discrimination?

K. Richards: No; HRC could proceed in civil court, and the investigator would try to reach out to defense attorney.

J. Brown: How many complaints of racial discrimination arising from law enforcement or the criminal justice system in general each year?

K. Richards: 1-2 complaints of racial profiling a year.

S. Linton: Are there specific roadblocks or barriers to establishing prima facie case based on race that do not exist for other protected classes?

K. Richards: Generally, no. Disability cases are sometime easier where landlords make specific illegal comments or refuse to provide access to their properties.

S. Linton: In my experience, race almost never raises to prima facie case without overt statements or actions; people are frustrated by a complaint process that is cumbersome and allows nuanced racism to go unaddressed.

K. Richards: Investigators are trained to find racial bias even when it is not overt. They look at overall circumstances and try to discern whether seemingly disparate treatment might have a legitimate reason. They compare actions in present case to other similarly situated individuals.

HRC recognizes that cases take a long time to investigate and that the process is not particularly well-suited to address more nuanced microaggressions; acknowledges that there might be a lack of trust of HRC in minority communities

S. Linton: In my experience, some cases never are made public.

K. Richards: Cases where no reasonable grounds have been found are dismissed; Cases that reach settlement are public and published (without parties' names but with agency name).

S. Linton: Mediation is generally confidential. Does HRC keep track of confidential mediations?

K. Richards: HRC keeps track of the substance of settlements in its database. We don't get many confidential agreements when HRC is involved. Many of the confidential proceedings deal with private parties hiring private attorneys.

I. Jonas: VSP also receives complaints of racial discrimination. VSP will conduct an investigation regardless of other collateral court proceedings or investigations.

J. Brown: How does aggrieved member of the public even know about HRC?

K. Richards: HRC receives many referrals by other advocacy groups. The central office is under resourced, but we would like to do more public outreach.

E. Nasreddin-Longo: how many people do we need for a robust public complaint process [at HRC]?

K. Richards: In an ideal world, we would add the following positions to the current staff: 1 designated legal counsel and 1 outreach/training person (current staff: 1 ED; 1 staff assistant; 3 investigators).

On average, HRC receives 70-80 complaints per year (20 housing; 7-8 employment discriminations; rest are public accommodation). Primary complaining category is disability followed by sexual orientation and/or gender, then age, then race in that order. Approximately ten cases per year related to racial discrimination.

D. Stevens: HRC data might not reflect actual number of complaints – many calls likely go directly to offending agency's H.R. department.

K. Schatz: Complainants should have the choice of whether to proceed with H.R. or H.R.C. Either way, information should be gathered and shared so as to obtain better picture of total number of complaints statewide.

AG: State law requires posting of sexual harassment policy including complaint process through H.R., H.R.C., EEOC, AG, etc.

J. Grearson: Sounds like we may have the appropriate processes in place for dealing with complaints, but we may not be adequately educating the public about them.

S. Linton: And, we need to ensure that they are adequately resourced.

R. Turner: what is this commission's role in light of the recent Executive Order [04-18] related to systemic racism?

AG: Both are important for looking specifically at disparate outcomes that might not actually violate statute but should be addressed; finding statistical disparities or disparate impact cases and addressing them is not necessarily the AG or HRC's role. They focus much more on proving individual cases.

K. Richards: Governor's systemic racism panel could look at, for example, racial disparities in health system; this panel is more focused on criminal justice.

E. Nasreddin-Longo: Based on remaining time, we should consider tabling an agenda item. Any suggestions?

***** Motion to table discussion of Reducing Racial Disparity in the Criminal Justice System article and move on to other agenda items*****

J. Brown: Moves to table discussion of Reducing Racial Disparity in the Criminal Justice System article and move on to other agenda items; Grearson seconds

Motion passes unanimously on voice vote

S. Linton: Which Department's take anonymous complaints?

DOC, VSP, DCF, and AG take anonymous complaints.

S. Linton: Education and outreach on complaint processes is needed; Should citations include information on filing a complaint with HRC or other avenues for redressing grievances? Also, put this information on all state websites.

J. Grearson: Fundamental question for the next stage of our conversation is: are we comfortable with complaint processes in place? Do we need to change these or do a better job of informing people of current processes?

S. Linton: Difficult to answer without first knowing that the current processes are going to be properly funded and/or staffed.

Discussion of Secretary's position and quality of minutes

E. Nasreddin-Longo: Are the minutes detailed enough to adequately help us achieve our statutory requirements and inform the public of what we are doing?

J. Brown: If meetings are recorded, then the level of detail provided in prior minutes is sufficient.

J. Brown: Is meeting live-streamed? [No]

S. Linton: Streaming costs money, however this Board has no budget. I would like the committee to consider streaming as a way to engage public?

D. Stevens: What about a conference line for public to call in?

K. Schatz: How much is streaming?

E. Nasreddin-Longo: \$75 / month

E. Nasreddin-Longo: Shela and Etan will continue this discussion

Scheduling next meeting

E. Nasreddin-Longo: 14th of August is second Tuesday, any objections? [no objections]

Public comments:

Ann Schroeder People Power ACLU

HRC website does not define what/where qualifies as public accommodation or protected status categories.

Distinction between systemic implicit bias vs. perceived implicit bias in statute?

Systemic Racism advisory panel (EO) seems much more internal, no input from public

Please post location of meetings on website

New Business

E. Nasreddin-Longo: Please brainstorm based on conversation with Karen Richards; what do we do with 6A; does HRC perhaps need to be staffed better; next meeting we will start taking notes for a report

D. Stevens: Should we submit our recommendations to the Legislature on a rolling basis or as an entire package?

E. Nasreddin-Longo: Let's table that conversation for a future meeting.

*****Motion to adjourn*****

I. Jonas moves to adjourn; motion seconded by J. Thompson

Adjournment