

MICHIGAN CIVIL RIGHTS COMMISSION MEETING

Monday, February 1, 2019 ~ 2:00 P.M.

Detroit Cadillac Place, Grey Room

3054 W Grand Boulevard, Suite 3-600

Detroit, Michigan 48202

MINUTES

PRESENT: Commission Co-Chair Laura Reyes-Kopack
Commissioner Stacie Clayton
Commissioner Ira Combs, Jr.
Commissioner Jeffrey Sakwa
Commissioner Alma Wheeler Smith
NEW COMMISSIONER Denise Yee Grim

EXCUSED: Commission Secretary Rasha Demashkieh
NEW COMMISSIONER Regina Gasco-Bentley

CALL TO ORDER / ROLL CALL

The meeting was Called to Order at 2:31 p.m. by Co-Chair Reyes-Kopack. Roll Call of the Commissioners was taken to determine a quorum. Commissioner Sakwa, Commissioner Clayton, Commissioner Smith, Commissioner Reyes-Kopack, Commissioner Combs, Commissioner (NEW) Grim. With six of eight commissioners present, quorum requirements were met.

INVESTITURE OF NEW COMMISSIONER

Denise Yee Grim took the Oath of Office, sworn-in by Commission Co-Chair Laura Reyes-Kopack.

AMENDMENT OF MEETING AGENDA

MOTION: Move to Amend the Meeting Agenda by tabling Ongoing Business item: “Migrant Farmworker Update” until the next meeting; adding new Agenda item “Remarks by Attorney General Dana Nessel” to follow Agenda Item 3: “Approval of Meeting Agenda”; moving Ongoing Business item: “Request to AG to Reconsider AG Formal Opinion 7305” to follow Agenda item “Remarks by Attorney General Dana Nessel”; adding “Request from Michigan Asian and Pacific Americans Affairs Commission” to Agenda item 11: New Business; moving Agenda item 12: “Public Comment” to follow the Request to AG to Reconsider AG Formal Opinion 7305. Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Sakwa) and supported (Commissioner Combs), the Amended Meeting Agenda was Approved. Motion carried unanimously.**

REMARKS BY ATTORNEY GENERAL DANA NESSEL

PUBLIC COMMENT

Tim Greimmel
Elena Herrada
Teresa Kelly
Dominic Burubard

REQUEST TO AG TO RECONSIDER AG FORMAL OPINION 7305

Michigan Civil Rights Commission Resolution Requesting Reconsideration of AG Opinion 7305

Whereas, on May 21, 2018 the Michigan Civil Rights Commission (Commission) promulgated Interpretive Statement 2018-1, and

Whereas, in that statement the Commission determined the language prohibiting discrimination “because of...sex” was ambiguous as used in the Elliott Larsen Civil Rights Act and interpreted the Act to encompass discrimination because of gender identity and sexual orientation, and

Whereas, on July 20, 2018 the Attorney General issued a formal, Attorney General Opinion No. 7305, and

Whereas, Attorney General Opinion 7305 found that the Commission’s interpretive statement is invalid because it conflicts with the original intent of the Legislature as expressed in what he called “the plain language of the Act, and as interpreted by Michigan’s courts,” and

Whereas, the Commission, determined that Attorney General Opinion 7305 did not void the Interpretive Statement because:

- *By Constitution and Statute, the Commission is the penultimate authority designated to interpret what is determined was ambiguous language in the Elliott Larsen Civil Rights Act, and*
- *Once the interpretive statement was issued, if the Attorney General wished to invalidate the Commission’s determination, he could only do so by bringing a court action challenging it, and*
- *the Attorney General’s opinion was premised upon the statute’s language being “unambiguous”, an untenable position given the opinions of the Sixth Circuit Court of Appeals and other courts that have ruled the phrase “because of sex” is inclusive.*

Thus, the Commission instructed the Department to continue accepting and investigating cases pursuant to Interpretive Statement 2018-1, and

Whereas, the Assistant Attorney General assigned to the Commission informed the Commission that it would not be represented by the Attorney General if it were legally challenged for interpreting the statute differently than as directed by the Attorney General, and he further instructed that Commissioners who supported the Interpretation would waive their statutory immunity by disagreeing with the wishes of Attorney General, and

Whereas, it is necessary that the Commission understands where Interpretive Statement 2018-1 stands legally, and

Whereas, it is necessary that the Commission knows whether the office of the Office of Attorney General will represent the Commission or individual Commissioners if there is litigation to which it or they are a party, and

Whereas, it is necessary that the Commission understands whether the Office of Attorney General will represent the interests of the Department should a legal action be brought challenging the Department’s jurisdiction to investigate a complaint pursuant to Interpretive Statement 2018-1 and contrary to Attorney General Opinion 7305.

It is therefore resolved that the Michigan Civil Rights Commission requests that the Michigan Attorney General review and reconsider the conclusions reached in Attorney General Opinion 7305 promulgated July 20, 2018, and that once adopted this resolution constitutes the request.

It is further resolved that the Attorney General provide the Commission with an assurance that the Assistant Attorney General assigned to act as Commission Counsel will represent the Commission’s interests by presenting it with legally supportable options available to it while

considering an action and defending the Commission's interests and Constitutional Authority even when different than the Office of the Attorney General.

MOTION: Move to Adopt Resolution as presented. Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Smith) and supported (Commissioner Clayton), the Resolution was Adopted.** *Motion carried unanimously.*

ADOPTION OF CONSENT AGENDA

MOTION: Move to Adopt Consent Agenda as presented. Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Combs) and supported (Commissioner Smith), the Consent Agenda was Adopted.** *Motion carried unanimously.*

APPROVAL OF MINUTES FROM November 19, 2018 MEETING

MOTION: Move to Approve the Minutes from November 19, 2018 Meeting as submitted. Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Combs) and supported (Commissioner Sakwa), the Minutes were Approved.** *Motion carried unanimously.*

DIRECTOR'S REPORT

Executive Director Agustin Arbulu provided status updates on the Department's activity.

COMMISSION MATTERS

- **CO-CHAIR REPORT**
Commissioner Reyes-Kopack provided a status update on Commission activity, and will further discuss the Commission Educational Retreat at the next or the following meeting.
- **ATTORNEY GENERAL REPORT**
This agenda item was waived.
- **COMMISSION COMMITTEE REPORTS**
This agenda item was waived.
- **NOMINATING COMMITTEE FOR 2019 ELECTION OF OFFICERS, Jeff Sakwa**
Commissioner Sakwa presented the slate of nominees: Chair – Commissioner Smith; Vice Chair – Commissioner Clayton; Secretary – Commissioner Reyes-Kopack.
MOTION: Move to Appoint slate of nominees as presented. Following discussion, the following Motion was brought forth: **On Motion duly made and supported, the slate of officers was Approved.** *Motion carried unanimously.*

ONGOING BUSINESS

LEGISLATIVE UPDATE AND ACTIVITIES, Lee Gonzales

Mr. Gonzales provided a status update of legislative activities, as well as distributing handouts of 100th Legislature: 2019-2020.

UPDATING OF PROCEDURAL RULES FOR EDUCATION HEARINGS, Director Arbulu

Director Arbulu presented draft revisions of the Procedural Rules for the Education Hearings.

MOTION: Move to Adopt the revised Procedural Rules for the Education Hearings. Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Smith) and supported (Commissioner Sakwa), the revised Procedural Rules were Adopted.** *Motion carried unanimously.*

RESCHEDULING OF EDUCATION HEARING, Director Arbulu

Director Arbulu presented Commissioners' dates of availability for rescheduling of the January 28, 2019 Education Hearing. Following discussion, the Commission agreed to convene the next Hearing immediately following the March 25, 2019 Commission Meeting.

NEW BUSINESS

ADOPTION OF RESOLUTION RECOGNIZING ACHIEVEMENTS OF FRED T. KOREMATSU, Commissioner Grim

Whereas, Fred T. Korematsu was born in Oakland, California on January 30, 1919 as the third of four sons to Japanese immigrant parents, and
Whereas, Fred T. Korematsu was one of the 120,000 Japanese Americans who was interned following the attack on Pearl Harbor by the Imperial Japanese Navy on December 7, 1941, when President Franklin Delano Roosevelt issued Executive Order 9066 on February 19, 1942 authorizing the Secretary of War and military commanders to require people of Japanese ancestry to be placed in internment camps;
Whereas, Fred T. Korematsu appealed his case all the way to the U.S. Supreme Court, resulting in the December 1944 decision of Korematsu v. United States, a 6 to 3 decision that declared the incarceration was justified as military necessity;
Whereas, Fred T. Korematsu later moved to Detroit, Michigan where his younger brother resided, and there he met his wife Kathryn, and the two wed before moving back to California;
Whereas, Fred T. Korematsu's conviction was vacated on November 10, 1983 by U.S. District Judge Marilyn Hall Patel of the Northern District of California, which cleared Fred's name but did not overturn the decision in Korematsu v. United States until the U.S. Supreme Court repudiated and overruled it in June of last year;
Whereas, Fred T. Korematsu remained a civil rights activist throughout his life; and in 1998 he was awarded the nation's highest civilian honor, the Presidential Medal of Freedom from President Bill Clinton;
Whereas, Fred T. Korematsu was recognized in 2010 when the State of California passed the Fred Korematsu Day Bill marking the first day in the United States named after an Asian American of Japanese ancestry;
Whereas, Fred T. Korematsu Day has been recognized in California, Hawaii, Utah, Georgia and Virginia;
Whereas, Fred T. Korematsu is recognized as a national civil rights hero whose legacy continues to inspire activists of all backgrounds;
NOW THEREFORE, the Michigan Civil Rights Commission hereby recognizes the achievements of Fred T. Korematsu as a civil rights hero and encourages the Michigan Legislature and the Governor to join in recognizing Fred T. Korematsu and his contributions to the nation's civil rights movement by advancing civil rights for all people in Michigan and across the nation.

MOTION: Move to Adopt the Resolution recognizing achievements of Fred T. Korematsu. Following Discussion, on Motion duly made (Commissioner Grim) and supported (Commissioner Smith), the Resolution was Adopted. *Motion carried unanimously.*

MAPAAC Request, Commissioner Grim

A request letter was received from the Michigan Asian Pacific American Affairs Commission regarding civility and increasing outreach efforts. Following discussion, a Motion was brought forth.

MOTION: Move to direct MDCR Director to meet with LARA Director where the Michigan Office of New Americans (MONA) is housed to begin discussions on transitioning MONA and the ethnic commissions (Hispanic Latino Commission, Asian and Pacific American Affairs Commission, Middle Eastern American Affairs Commission) to MDCR; for MDCR to prepare a summary regarding the ethnic commissions; and during meeting with Governor to discuss the creation of an African-American Commission. Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Clayton) and supported (Commissioner Combs), the Motion was Approved.** *Motion carried by majority vote (5 Yea, 0 Nay, 1 Abstention).*

COMMISSIONER COMMENT

There was no Commissioner Comment.

ADJOURNMENT

MOTION: Move to Adjourn. On Motion duly made (Commissioner Sakwa) and supported (Commissioner Clayton), the meeting of the Michigan Civil Rights Commission at 4:39 P.M. was Adjourned. *Motion carried unanimously.*

Next meeting scheduled for March 25, 2019 in Lansing or Macomb County; location and time to be determined.

Secretary

Executive Director