

## MICHIGAN CIVIL RIGHTS COMMISSION MEETING

Monday, May 21, 2018 ~ 1:00 P.M.  
Eagle Crest Conference Center Auditorium, Eastern Michigan University  
1275 S Huron Street, Ypsilanti, Michigan

### MINUTES

PRESENT: Commission Co-Chair Mumtaz Haque  
Commission Co-Chair Laura Reyes-Kopack  
Commission Secretary Rasha Demashkieh  
Commissioner Jeffrey Sakwa (*delayed arrival*)  
Commissioner Stacie Clayton  
Commissioner Ira Combs, Jr.  
Commissioner Alma Wheeler Smith

EXCUSED: Commissioner Ricardo Resio

### **CALL TO ORDER / ROLL CALL**

The meeting was Called to Order at 1:08 p.m. by Commissioner Reyes-Kopack. Roll Call of the Commissioners was taken to determine a quorum. Commissioner Clayton, Commissioner Demashkieh, Commissioner Reyes-Kopack, Commissioner Haque, Commissioner Combs, Commissioner Smith. With six of eight commissioners present, quorum requirements were met. *Commissioner Sakwa arrived later at 2:15 p.m.*

### **AMENDMENT OF MEETING AGENDA**

**MOTION: To Amend the Meeting Agenda by Tabling the Agenda Item entitled “Administrative Rules Changes” until the July 23, 2018 meeting.**

Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Demashkieh) and supported (Commissioner Combs), the Meeting Agenda was Amended.** *Motion carried unanimously.*

### **APPROVAL OF MEETING AGENDA**

**MOTION: To Revise the order of Agenda items and Approve the Agenda as follows: Approval of Meeting Minutes, Approval of Consent Agenda, Public Comment, Ongoing Business, Division Reports, Commission Matters, Commission Committee Reports, New Business, Commissioner Comment, Adjournment.** Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Smith) and supported (Commissioner Combs), the Meeting Agenda was Approved.** *Motion carried unanimously.*

### **APPROVAL OF MINUTES FROM APRIL 17, 2018 SPECIAL MEETING**

**MOTION: To Approve the Minutes from April 17, 2018 Special Meeting as submitted.** Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Smith) and supported (Commissioner Clayton), the Minutes were approved.** *Motion carried unanimously.*

## **APPROVAL OF MINUTES FROM MARCH 26, 2018 MEETING**

**MOTION: To Approve the Minutes from March 26, 2018 Meeting as submitted.** Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Smith) and supported (Commissioner Combs), the Minutes were Approved.** *Motion carried unanimously.*

## **APPROVAL OF MINUTES FROM JANUARY 22, 2018 MEETING**

**MOTION: To Approve the Minutes from January 22, 2018 Meeting as submitted.** Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Demashkieh) and supported (Commissioner Combs), the Minutes were Approved.** *Motion carried unanimously.*

## **ADOPTION OF CONSENT AGENDA**

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

## **PUBLIC COMMENT**

The following brought concerns regarding the Commission's pending decision on the Interpretive Statement on sex.

Ms. Heather Aymer, Affirmations  
Rev. Dr. Roland Stringfellow, Inclusive Justice  
Ms. Dee Church, Farmington Hills  
Ms. Brianna D. Kingsley, Equality Michigan  
Ms. Stephanie White, Equality Michigan  
Ms. Beth Bashert, Ypsilanti City Council  
Ms. Merrill Guerra, Redburn Realty

## **ONGOING BUSINESS**

- **UPDATE ON 2017 ANNUAL REPORT, Director Arbulu and Vicki Levengood**

**MOTION: To Approve the Annual Report as submitted.** Following discussion, the following Motion was brought forth: **On Motion duly made (Commissioner Combs) and supported (Commissioner Haque), the Annual Report was Approved as submitted.** *Motion carried unanimously.*

- **RECONSIDERATION OF EQMI REQUEST FOR INTERPRETIVE STATEMENT**

**Commissioner Smith offered the following Motion:**

***I MOVE THAT THE MICHIGAN CIVIL RIGHTS COMMISSION ADOPT THE FOLLOWING RESOLUTION AS INTERPRETIVE STATEMENT 2018-1 REGARDING THE MEANING OF “SEX” IN THE ELLIOTT LARSEN CIVIL RIGHTS ACT (ACT 453 OF 1976) AND GIVE IT IMMEDIATE EFFECT.***

*WHEREAS, the Michigan Civil Rights Commission finds the language “discrimination because of... sex...” as used in the Elliott Larsen Civil Rights Act ambiguous, leaving the MI Department of Civil Rights without clear authority to accept complaints of discrimination based on “gender identity” and “sexual orientation”, the Commission issues Interpretive Statement 2018-1.*

*WHEREAS, the Michigan Civil Rights Commission finds that the definition of “discrimination because of... sex” under Michigan law has to date been interpreted to be less inclusive than the definitions of other protected classes, and in a way that is contrary to the plain meaning of the language in this context.*

*WHEREAS, The Michigan Civil Rights Commission finds that both discrimination because of gender identity and discrimination because of sexual orientation are forms of discrimination because of sex.*

*WHEREAS, the U.S. 6th Circuit Court of Appeals on March 7, 2018 ruled in the case of EEOC v R.G. & G.R. Harris Funeral Homes Inc. that the same language “discrimination because of ... sex” when used in federal civil rights law protected a transgender Michigan woman who was gender stereotyped and discriminated against for not behaving like a male, and adding Michigan where gender identity and sexual orientation are already federally protected under the definition of “discrimination because of sex.”*

*WHEREAS, The Michigan Civil Rights Commission finds that continuing to interpret the protections afforded by the phrase “discrimination because of... sex” more restrictively by continuing to exclude individuals for reasons of their gender identity or sexual orientation, would itself be discriminatory.*

*WHEREAS the Michigan Constitution of 1963 provides that “no person shall be denied the equal protection of the laws” and directs that “It shall be the duty of the commission in a manner which may be prescribed by law to investigate alleged discrimination against any person... and to secure the equal protection of such [civil](#) rights without such discrimination... The commission shall have power, in accordance with the provisions of this constitution and of general laws governing administrative agencies, to promulgate rules and regulations for its own procedures... and to issue appropriate orders.”*

*WHEREAS, the Administrative Procedures Act (MCL 24.207(h)) defines the interpretive statement as a category of agency action which in itself does not have the force and effect of law but is merely explanatory to be followed by the agency.*

*AND, WHEREAS, The Michigan Supreme Court has ruled in Clonlara, Inc. v. State Board of Education, 442 Mich. (1993). that “agencies have the authority to interpret the statutes they are bound to administer and enforce.” And that Interpretive statements “state the interpretation of ambiguous or doubtful statutory language which will be followed by the agency unless and until the statute is otherwise authoritatively interpreted by the courts.”*

*THEREFORE, IT IS RESOLVED, The Michigan Civil Rights Commission hereby resolves, and adopts as Interpretive Statement 2018-1, that, as used in the Elliott Larsen Civil Rights Act “discrimination because of... sex” includes discrimination because of gender identity and discrimination because of sexual orientation.*

*IT IS FURTHER RESOLVED, that the Department of Civil Rights shall therefore process all complaints alleging discrimination on account of gender identity and sexual orientation as complaints of discrimination because of sex, and therefore discrimination prohibited under the Elliott Larsen Civil Rights Act.*

*The Commission directs that Interpretive Statement 2018-1 shall be distributed to all Department of Civil Rights' offices, be filed with any other office as required by the Administrative Procedures Act.*

**Motion to Adopt Resolution as Interpretive Statement 2018-1 duly made (Commissioner Smith) and supported (Commissioner Demashkieh), followed by Discussion.**

**MOTION TO CALL THE QUESTION duly made by (Commissioner Smith) and supported (Commissioner Demashkieh).** *Action carried by majority vote to end Discussion.*

#### **ROLL CALL VOTE MADE ON THE MOTION TO ADOPT RESOLUTION**

Commissioner Smith – Yea  
Commissioner Combs – Abstain  
Commissioner Haque – Yea  
Commissioner Reyes Kopack – Yea  
Commissioner Demashkieh – Yea  
Commissioner Clayton – Yea

*Motion carried by majority vote of 5 Yea - 0 Nay - 1 Abstention.*

*Resolution was Adopted on May 21, 2018 at 2:12 p.m.*

#### **DIRECTOR'S REPORT**

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

#### **COMMISSION MATTERS**

- **CO-CHAIR REPORT**  
Commissioner Mumtaz Haque provided a status update on Commission activity.
- **ATTORNEY GENERAL REPORT**  
Assistant Attorney General Ron Robinson provided a status update on current cases.
- **COMMISSION COMMITTEE REPORTS**  
This agenda item was waived.
- **PROCEDURAL RULES FOR HEARING ON EDUCATION**  
After discussion, the following Motion was brought forth:  
**MOTION: On Motion duly made (Commissioner Demashkieh) and supported (Commissioner Haque), the Procedural Rules were Adopted.** *Motion carried unanimously.*

**AMENDMENT TO PROCEDURAL RULES FOR HEARINGS ON EDUCATION**  
**MOTION: To Amend the Procedural Rules for Hearing on Education to be used for all future Education Hearings. On Motion duly made (Commissioner Demashkieh) and supported (Commissioner Smith), the Amended Procedural Rules were Adopted and posted in appropriate areas for the public.** *Motion carried unanimously.*

**NEW BUSINESS**

There was no New Business.

**COMMISSIONER COMMENT**

There was no Commissioner Comment.

**ADJOURNMENT**

**MOTION: On Motion duly made (Commissioner Sakwa) and supported (Commissioner Clayton), the meeting of the Michigan Civil Rights Commission at 2:38 P.M. was Adjourned. Motion carried unanimously.**

Next meeting scheduled for July 23, 2018; location and time to be determined.

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Secretary

\_\_\_\_\_  
Executive Director

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