

## **CEDAR RAPIDS CIVIL RIGHTS COMMISSION**

### **MEETING MINUTES**

Commissioners and staff met for the regular meeting of the Cedar Rapids Civil Rights Commission at 5:30 p.m., Wednesday, November 19, 2008, at the Islamic Center of Cedar Rapids.

Commissioners Present: Ms. Miriam Amer, Chair  
Mr. Roy Porterfield  
Ms. Nancylee Ziese  
Ms. Laura O'Leary  
Mr. Eric Lam (arriving at 5:34 p.m.)  
Ms. Tara Youells  
Mr. Momodu Kamara  
Mr. Rick Zingher  
Mr. Kavi Parupally (arriving at 6:30 p.m.)

Commissioners Absent: Mr. George Holmes, Vice Chair (because of illness)

Staff Present: Mr. Darryl Lipscomb, Interim Executive Director  
Ms. Michelle McMurray, Staff Investigator  
Ms. Stefanie Robinson, Administrative Assistant

Guests: Ms. Conni Huber, City of Cedar Rapids, Human Resources Dept.  
Mr. Bill Wright, Office of City Attorney, Cedar Rapids  
Prof. Leonard Sandler, U of I College of Law Clinical Professor  
Lauren Hansen, U of I College of Law Student  
Jayne Lady, U of I College of Law Student  
Mr. Robin Nash, Neighborhood News  
Ms. Elisha Ebaugh, Cedar Rapids Gazette  
Mr. Scott Seibert, City of Cedar Rapids Housing Dept.  
MD Wolfgram

Noting a quorum, Miriam Amer, Chair, called the meeting to order precisely at 5:30 p.m.

### **APPROVAL OF MINUTES OF OCTOBER REGULAR MEETING**

Roy moved to approve the minutes from the October meeting. The motion was duly seconded. Tara pointed out a typo, and Eric will correct the typo. The minutes were then passed unanimously, as corrected.

## **APPROVAL OF MINUTES OF NOVEMBER 5, 2008 MEETING**

A draft of the November 5, 2008 meeting was circulated to all Commissioners, on a confidential basis. The November 5 meeting focused on personnel issues, and the bulk of the meeting was held in closed session. Therefore, the minutes are to be kept confidential. Roy moved to approve the minutes. Tara seconded. NancyLee, Roy, and Laura pointed out several typos, Eric will correct the typos. The motion to approve the minutes, as amended, passed.

## **CLOSED SESSION**

Tara then moved to close the meeting. NancyLee seconded. The closure was requested so that the Commissioners, and only the Commissioners, could receive a confidential attorney-client privileged report from Assistant City Attorney Bill Wright and Human Resources Department personnel Conni Huber on pending litigation. The portion of the closed meeting was recorded on an audio tape. Conni Huber is the custodian of the audio tape. During the closed session, Bill tendered a report to the Commissioners concerning litigation. The complainant apparently is acting pro se, without counsel. Bill will finalize the City's/Commission's opposition paper to be filed with the appropriate agency.

After the report from Bill and Conni, Tara moved to re-open the meeting. NancyLee seconded the motion. The motion passed.

## **OLD BUSINESS**

**A. New Executive Director Search.** Search committee chair Momodu reported that additional background, etc. checks have been performed on the three finalists, and so far there has not been any problem. Momodu and Miriam observed that a motion to make offers to the candidates arguably should be conducted in open session. NancyLee moved that the Commission and the City extend an offer to the highest-ranked candidate. Tara seconded the motion. Roy offered a friendly amendment, to the effect that the offer should be made to the highest-ranked candidate, and then if that candidate does not accept the offer or otherwise is disqualified, then an offer be made to the second-ranked candidate, et seriatum to the third-ranked candidate. NancyLee accepted the friendly amendment.

Discussion was then held on the motion. Bob observed that with respect to the highest-ranked candidate, undoubtedly the candidate has high integrity and ability. However, Bob observed that the candidate might not be qualified or suited for the position. Specifically, Bob pointed to the advertisement for the position, which contained the requirement that the applicant and the successful candidate possess comprehensive knowledge of civil rights statutes, thorough knowledge of legal practice and procedure, as well as a degree in civil rights or a closely related field. Bob observed that the highest-ranked candidate does not fulfill these requirements, and Bob suggested that the Commission must follow the criteria set forth in the advertisement, or else the hiring might undermine the mission of the Commission.

NancyLee responded that the criteria listed on the advertisement may merely be desired attributes, and not necessarily absolute requirements. Bob responded that the advertisement used

the word “requirement.” NancyLee then observed that if the criteria listed on the advertisement were absolute requirements, then none of the three finalists met all the requirements. For example, none of the three candidates has the requisite certifications. Tara voiced agreement with Bob, and Tara concerns with the highest-ranking candidate’s education and experience (or lack thereof). Conni observed that the postings are akin to a job description, and the City does not necessarily assume that each and every successful candidate fulfills each and every requirement. Rather, it is the Commission’s judgment as to how all or some or none of those requirements must be fulfilled. Roy observed that even though Bob has raised some good points, any further re-evaluation will likely delay the employment process, to the detriment of the Commission and the City. Rick mentioned that during the November meeting, the Commissioners did discuss the learning curve issue, but the learning curve concern was balanced by the other strengths and skills of the highest-ranked candidate. Also, Rick observed that the successful candidate should have familiarity with the community and its culture, and at least in part the highest-ranked candidate received the highest ranking precisely because of the candidate’s familiarity with the community. Tara observed that during the open house at which community members were present, the candidate who now is ranked number one (highest) was actually ranked number 3 by the community (lowest). Kavi concurred with Conni’s comments, and observed that very rarely will an employer ever achieve a 100 percent fit between the successful candidate and the published criteria. It is generally up to the employer to make the judgment call as to the degree of fit, and there is clearly a distinction between the desired requirements and the absolute requirements. Momodu observed that each candidate possessed different strengths and weaknesses, but ultimately the Commission looked at the candidate that most particularly fits the Commission’s needs, particularly the need to project a positive public image. Momodu commented that while Bob did raise an excellent observation, Bob should have brought up that observation during the November 5 discussions. It is now too far into the process to re-invent the wheel. NancyLee reminded the Commissioners of the 9-point profile sought by the Commission, such as leadership, people skills, commitment to civil rights, management, budgetary experience, community organization, etc., and the highest-ranked candidate obviously received the highest fit with respect to the profile. Bob again expressed no quarrel with each candidate’s attributes. The problem, according to Bob, is that we may expose the Commission to unnecessary negative comment if the selection criteria do not match up with the published criteria. In other words, if we now say that the published requirements were merely preferences, then what about those who did not apply because they thought the published requirements were absolute criteria and not merely preferences.

After discussion, the chair called for a vote. Eric tendered his own vote, and also the vote of Commissioner Holmes by proxy. Eric reported that he has a written proxy from Commissioner Holmes, and Commissioner Holmes could not be present because of an illness. Roy objected to the use of proxy, and observed that in City Council meetings, proxy was not used. NancyLee observed that on other boards, proxies are frequently used. Upon inquiry from Roy, Eric reported that the proxy given to him by Commissioner Holmes was a general proxy, without specificity. Roy again objected to the use of such blanket proxy. There was discussion that proxy voting was not authorized by or mentioned in Commission’s Operating Rules. The chair eventually ruled that Commissioner Holmes’ proxy may be voted by Eric, because Commissioner Holmes’ voice needs to be heard. The vote was seven in favor of the motion, and three against. The chair did not vote. The motion therefore passed.

**B. Administrative Assistant Search.** Darryl introduced Stephanie Robinson as the new administrative assistant. Stephanie related to the Commissioners her experience, including eight years of administrative assistance history. The Commissioners welcomed Stephanie.

**C. ALJ Order in *In re Ting*.** Laura moved to adopt the ALJ order in the *Ting* matter. Roy seconded the motion. Darryl provided a brief synopsis of the ALJ ruling. Roy asked if the training cost were to be included in the monetary judgment, and Darryl answered yes.

The ALJ proposed a \$1,500 judgment. Tara observed that the monetary amount of the judgment was too low. The event occurred approximately two years ago, and it has dragged on for a long time. The cost of future therapy and counseling will exceed the monetary fine of \$1,500. Miriam expressed the same concern. Miriam asked if the ALJ used any particular guidelines to arrive at the monetary judgment amount. Michelle reported that while there were no guidelines, reference was made to the dollar amount of past awards, particularly at the State commission level. Darryl observed that the Commission can adopt, modify, or reject the ALJ proposed order. Michelle observed that the Commission attorney did not ask for a specific dollar amount of monetary award. Rather, the complainant and/or his parents asked for the specific dollar amount. Laura observed that the amount of the ALJ award should be sufficient. Tara suggested that we should not excuse the respondent's behavior. Miriam concurred that the complainant suffered humiliation, as did the parents. Eric asked Tara to suggest a dollar amount. Tara suggested \$25,000. Rick observed that while obviously the action of the respondent was insensitive and inappropriate, we should focus on the complainant and not on how the social worker who accompanied the complainant reacted to the respondent's actions. Miriam mentioned that she knows the family, and therefore she will reclude herself from voting. Darryl observed that the complainant did not appear at the hearing, precisely because the parents did not wish the complainant to re-live the event. NancyLee agreed that while counseling costs will exceed \$1,500, the \$25,000 figure suggested by Tara is too high. Roy mentioned that based on the history of awards issued in public accommodation violation cases, a \$5,000 award might be in line with the historical amounts, and therefore sought to introduce a \$5,000 monetary award, as a friendly amendment to the motion. The movant did not accept the friendly amendment. Momodu then wondered if there might be further appeal, and Bob observed that the higher the dollar amount of the award, the higher the likelihood of appeal. Bob also observed that the award had an additional \$2,500 cost component, and so therefore the total award package is not an insignificant sum. Miriam wondered if a \$10,000 total award might be appropriate. Kavi observed that our role should not be one of attempting to quantify pain and suffering. Indeed, any other dollar amount than the suggested award by the ALJ will be difficult for the Commissioners to justify or rationalize. Eric observed that we should give deference to the ALJ, and we should not micro-manage the process, and therefore Eric voiced support for Laura's motion. Otherwise, as observed by Kavi, we might then be picking a dollar amount out of thin air. Michelle commented that in two previous cases, the amounts of the award were \$7,500 and \$12,000 respectively.

After discussion, Miriam called for a vote on a motion to adopt the ALJ's proposed finding. A motion was made and duly seconded. Miriam abstained. The motion carried by the requisite number of votes. The ALJ proposed order and judgment was therefore adopted in toto.

**D. City Ordinance Chapter 69 Revision.**

Eric introduced Professor Sandler and Lauren and Jayne. Additional materials were distributed. Eric observed that the three foci of the presentation will be (a) whether to adopt "lawful source of income" as a criterion for protection; (b) venue at which complaints may be filed; and (c) the role of the Commission vis-à-vis the staff. In light of a recent decision from the Iowa Supreme Court, Professor Sandler mentioned that a fourth issue will be discussed, *i.e.* when does the statute of limitation begin to run.

Jayne and Lauren and Professor Sandler then make presentations. With respect to the role of the Commission vis-à-vis the staff, Jayne recommended model #1, *i.e.* the staff performs investigation, etc., and the commissioner does not play an inordinately active in the investigation. Jayne also briefly discussed the venue issue, and simply recommended that we follow the State model. Lauren discussed the addition of "lawful source of income" as a protected class. Finally, Professor Sandler made a presentation on the statute of limitation issue.

Scott Seibert provided insight on the §8 application process, and the waiting list. Various questions were posed, from Laura, Momodu, Rick, Eric, Michelle, and Rush. Darryl and Michelle also provided insights and comments.

Miriam expressed a desire to conduct a special meeting, the sole focus of which will be to discuss the suggested changes. Because of the schedule of the Iowa law school, Jayne asked that the special meeting be conducted in December, and no later.

The Commissioners then took a 10-minute break.

**NEW BUSINESS**

**A. Gazette Request.** Miriam reported that the Cedar Rapids Gazette has requested release of an internal report with respect to the complaint that former Executive Director White has lodged against Miriam. Rather than making a decision herself, Miriam sought a Commission vote on the matter. Eric asked if the Commission is required by law to release the internal report. Miriam reported no, and in fact City Attorney Flitz observed that at least parts of the report are protected by the attorney-client privilege, and should remain confidential. Eric therefore moved to not honor the request from the Cedar Rapids Gazette, and to keep the entire report confidential. Tara seconded the motion. Discussion was then held. Rick wondered about the implications of releasing the report. Miriam responded that releasing the report will open old wounds, and the matter should be put to rest, because the independent investigator found no probable cause. Eric again expressed the concern with waiving the attorney-client privilege, if the report were not kept confidential. Bob commented that we should have sunshine and transparency. Eric responded that sunshine and transparency are important, but those concerns must be balanced with the concern of waiving any attorney-client privilege, and Eric would

rather err on the side of not waiving the privilege. Momodu and Kavi observed that the matter needs closure, and therefore not releasing the report will likely lead to closure of the matter sooner rather than later.

After discussion, a vote was taken. Roy, Bob, and Miriam abstained. The motion carried.

### **COMMITTEE REPORTS**

**A. Outreach Committee.** Tara on behalf of the Outreach Committee reported she has sent an e-mail to the Cedar Rapids Gazette concerning this meeting, and Tara merely reminded Stephanie that in the future, we should try to notify the Gazette earlier. This meeting was also noticed via e-mail to NAACP c/o CJ, but because of the flood problems, there was e-mail difficulty. Nonetheless, Tara did let CJ and Mr. Doolin know about the meeting.

**B. Director's Report.** Darryl distributed materials.

**C. Public Response.** Miriam called for public response. There was none.

**D. Adjournment.** Eric moved to adjourn. The motion was duly seconded, and the motion passed.

The next special meeting will be held at the Commission's headquarters in downtown Cedar Rapids on December 3, 2008, at 5:30 p.m., so as to discuss the proposed changes to Chapter 69 of the City Ordinance.