

JIM GIBBONS
Governor

LARRY J. MOSLEY
Director

DENNIS A. PEREA
Administrator



COMMISSIONERS
Dennis Shipley, Chair
Lee Plotkin
Aileen Martin
Nadia Jurani
Tiffany Young

Minutes

Of the Nevada Equal Rights Commissioners'

Meeting on April 1, 2009

I. Call to Order

Dennis Shipley, Chair, called the meeting to order at 2:35 p.m.

II. Roll Call and Confirmation of Quorum

Norma Delaney, Administrative Assistant III, called role and confirmed that a quorum was present.

Members present: Dennis Shipley, Chair; Lee Plotkin, Tiffany Young; and Nadia Jurani

Staff present: Dennis Perea, Administrator, Nevada Equal Rights Commission (NERC); Maureen Cole, Deputy Administrator, NERC; Rose Marie Reynolds, Deputy Attorney General (DAG); and Norma Delaney, Administrative Assistant III, NERC.

III. Verification of Posting

Norma Delaney verified that the agenda had been posted and that certificates of posting are available.

IV. Introduction of Guests

None in attendance; Gary Peck, ACLU, and Patrick Patin, Nevada Stonewall Democrats, participated in the conference call.

V. Discussion and possible action regarding the Commission's participation in matters before the 2009 Nevada Legislature that may affect the field of equal rights, including but not limited to whether to select Commissioner(s) as legislative liaison(s) or hold periodic teleconference Commission meetings

Mr. Perea advised that based on the Commissioners' meeting of March 18, 2009, there was a request to look into options for communicating to the Commissioners on pending legislation that was previously voted on by the Commissioners. He added that in discussion with Ms. Reynolds (DAG), the following two options/solutions were addressed:

- 1) The Commissioners elect a non-quorum single Commissioner, or two Commissioners, to act as a liaison(s) for legislative matters that have already been voted on; or
- 2) Post an agenda and schedule numerous meetings on one agenda and have weekly meetings via teleconference.

Mr. Perea advised that either choice is available, money is available, and once the decision is made, NERC would start implementing that plan. He added that there is travel money if that is the option the Commissioners' choose, but to actually communicate/keep Commissioners informed with what is happening regarding legislative bills, that the information would be forwarded to the Commissioners for informational purposes only, no action to be taken, and to schedule a meeting if needed.

Mr. Plotkin stated he does have flexibility in his schedule and that if there is a hearing on legislative items that are significant to NERC, he can adjust his schedule if that is the pleasure of the Commission; added that Commissioner Young is located in Northern Nevada.

There was open discussion regarding the liaison and what that person(s) roll would be; would the person(s) relay/make decisions on behalf of the Commissioners – only if the other Commissioners empower him/her to do so; open meeting law discussed that the liaison could not discuss with other Commissioners the information as that would be in violation of the open meeting law – possibly option 2 is the better choice; that it is almost a combination of the two options – liaison(s) makes appropriate contact with legislators and/or others, information passed on to Commissioners to review and if it is determined that a meeting is necessary to discuss the information, then a meeting and/or special meeting could be called/scheduled according to the open meeting law.

There was discussion that information in the past was received/passed onto the Commissioners by either the NERC Administrator and/or the Director of DETR, but that it was done **after** (emphasis added) the fact – what they are discussing now is getting information in a timely manner so that the Commissioners may be able to have some impact on what **is**

(emphasis added) going to happen. Caution was again indicated that the information passed on to the Commissioners could **not** (emphasis added) be discussed amongst the Commissioners – there would need to be proper posting to the public, noted as an action item, and a quorum for any decisions that may be made. Discussion also included that even though statute calls for compensation at any public meeting, that if cost is a factor, the Commissioners could agree that there be no per diem for the special meetings.

Ms. Reynolds advised that Ms. Jurani has done a very good job in reminding everyone about the requirements of the open meeting law and avoiding serial communications; that it would be more appropriate to have one Commissioner as opposed to two, as currently there are four active members and two members could constitute a quorum if two Commissioners were appointed as liaisons; that if there were to be two members as liaisons, it would be best if each was responsible for different bills as opposed to having both doing the same activity.

There was open discussion regarding absent member Aileen Martin as to her position as Commissioner; that in the last public meeting Ms. Martin attended, September 9, 2008, she advised the Commissioners that it would be her last meeting as her term expired the end of October 2008; it was unclear if Ms. Martin resigned her position with the Governor's Office; discussion that when a member's term expires, they continue in that role until they are replaced; the DAG advised she had not seen a letter of resignation and is unsure what Ms. Martin's status is and to err on the side of caution, with four active members, two members could become a quorum.

Mr. Shipley stated that based on comments/suggestions, he agrees that having one individual as the liaison, it eliminates the possibility or a concern whether two Commissioners meeting together would or would not constitute a quorum; Ms. Jurani, Ms. Young, and Mr. Plotkin also agreed. Mr. Plotkin also commented that in having a liaison, the purpose would be to support staff so that staff is no longer held out as the one and only decision maker with no input on any legislative item.

Mr. Shipley stated that he previously suggested that Mr. Plotkin be the liaison and is now changing his suggestion to a motion; Ms. Jurani seconded the motion; the motion carried unanimously in vote.

Mr. Shipley asked Mr. Plotkin if he is interested in being the Commissioners' liaison, to which Mr. Plotkin stated he would be and that is he very happy to see the bill drafts/issues pass out of Committee which was not a given a couple of weeks ago when the Commissioners met in-person; that to the degree he has the flexibility to appear either in front of the legislature or via telephone, or with staff, and to the degree that there can be an advocate for issues that the Nevada Equal Rights Commission has put forth, he is more than willing to do so.

Mr. Shipley advised Mr. Plotkin that when he sees a need for the Commissioners to get together, to advise him so that adequate notice requirements are met and the Commissioners can get together to discuss items for forward looking input rather than historical; Mr. Plotkin agreed.

Mr. Shipley asked Mr. Perea if he had any comments; Mr. Perea advised that NERC will move forward with the plan.

VI. Public Comments

Gary Peck identified himself from the ACLU and advised that it is his understanding that the NERC bills have **not** (bolded for emphasis) been voted out of Committee; that the bills are sunk/log jammed, no movement on the bills; that from the ACLU's standpoint, even though there are pieces of the bills where the ACLU might disagree or areas they might seek to push the boundaries further than NERC and/or the Commissioners would be interested in pushing, the ACLU would like to see those bills get unjammed so they would be a vehicle for having a broad conversation about such issues as sex discrimination in public accommodation, an issue that he knows the Commission cares deeply about, gender identity, and discrimination in both employment/housing arenas based on gender identity, and the whole housing bill.

Mr. Perea stated that for clarification, AB43 is the conforming bill which NERC is trying to straighten out in the statutes and BDR 1169 is the housing bill.

Mr. Shipley advised Mr. Peck that he would like to interrupt him and asked Ms. Cole for an update on the status of the NERC bills.

Ms. Cole advised that AB43 is in the Committee and has not been scheduled as of this date/time; that BDR1169 is still with the Legislative Counsel Bureau (LCB) bill drafting staff and has not been issued publicly with a bill number.

Mr. Peck stated that what has been voted out of the Committee, Senate Labor & Commerce, is a very simple public accommodations bill, SB207, that adds sexual orientation to the list of protected classes, that the Committee **declined** (bolded for emphasis) to vote out the proposed amendments of that bill which would also have added gender identity in public accommodation.

Mr. Peck added that AB184 would add gender identity to NDAA as a protected class – in other words, it would prohibit and make unlawful discrimination in the employment context based on gender identity; the other bill, which has nothing to do with NERC but somehow was grouped together with the others in a very high profile way, is the domestic partner registry bill which is separate and apart from the business of the Commission.

Mr. Peck advised that there are two bills, aside from NERC, that he hoped NERC would weigh in on - SB207 and the amendment to add gender identity as a protected class and AB184 to add gender identity; stated he understands any reluctance on the part of the Commission, but it would have been great. He added that he was advised by a top executive at Harrah's and they have weighed-in, in support of adding gender identity in both contexts.

Mr. Plotkin advised that this is public comments and no action can be taken unless it is on the agenda/future agenda; added that public comment is always well received, and that Commissioners and the DAG understand that the Commissioners cannot take any action on public comment.

Mr. Peck concluded that the ACLU is rooting for NERC to get their bills unjammed and out there so NERC can have a full and fair hearing in the appropriate Committee.

Patrick Patin identified himself with Nevada Stonewall Democrats and stated he wanted to echo Mr. Peck's comments in regards to SB207, AB184, and to a lesser extent SB283 which he does not believe the Commission has a part in. He added that he also hopes that on a future agenda, the Commission would consider potentially supporting and testifying in favor of SB207 in a fully inclusive manner and if not possible, in its current form. Mr. Patin added that Nevada Stonewall Democrats is on public record to say it does not support SB207 unless it is fully inclusive, but would leave the Commission to its own decision as to what version it would support.

Mr. Patin stated that he hopes that on a future agenda, the Commission would consider supporting and testifying in support of AB184 should it get out of the Assembly and into the Senate; that NERC would be primarily responsible for enforcing those protections. Mr. Patin stated he agrees with what Mr. Peck says as to what the public sees as the NERC bills are AB43 and BDR1169.

Mr. Patin concluded by advising that it is established that April 1, 2009 and April 10, 2009 are the deadlines for bills to get out of the first Committee and the House of Origin; he indicated that the Commission has 10 days to get AB43 a hearing and out of Committee; and added that everyone knows that nothing is never dead in the legislature, but the deadline is very close.

Mr. Plotkin, in addressing Mr. Patin of Nevada Stonewall Democrats, stated that it is his understanding that Stonewall Democrats will oppose SB207 if it does not include gender identity. Mr. Patin responded that he will not speculate publicly on the record on any future action that Nevada Stonewall Democrats is taking; stated he will state what has been stated in the press, that Nevada Stonewall does not support the bill unless it is fully inclusive and the board/public can take that at face value.

Mr. Peck commented that community stakeholders who testified on SB207 all **strongly** (emphasis added) supported the fully amended version that was fully inclusive; as to the degree of support for the streamlined bill, he stated it is fair to state that different groups took different tags but for purposes of speaking to this Commission so that people understand how the community feels - it was very strong, unambiguous, and unwavering support for the amended version that included gender identity and very strong support for AB184 which would add gender identity to the NDAA law. Mr. Peck added that for those who were around for the NDAA fight, it was taken for granted that gender identity would be added at some point; that it was just presumed to be an inevitable consequence of progress.

Mr. Plotkin advised that NERC has a certain purview that is dictated by statute; that if the statute is broadened, it has to be by legislative directive; that if the future statute is amended or broadened, then the Commissions have that purview to approach issues by.

Mr. Peck commented that he had attended an internal ACLU discussion about a proposed bill that would prevent government agencies from

paying staff to lobby at the legislature; that at the federal level, EEOC representatives appear regularly before Congress to advocate for all sorts of changes to federal anti-discrimination laws; that he is assuming there would be nothing to prevent NERC and/or the Commissioners from also appearing to advocate for changes to the law that go beyond cleaning up one provision with another to bring into conformance; stated he does not see anything in the law that would prevent Commissioners from appearing and testifying either as individual or as Commissioners for changing the law and expanding the protections that are not currently under the law; that there is a difference from political constraints versus legal constraints; there may be a legal obligation as an employee but it is not a legal obligation that runs to the agency.

Ms. Reynolds advised that the Administrator has constraints and that those same constraints may be on the Commissioners as they are also in appointed positions.

Ms. Cole stated that the role of staff is more in line of enforcing the laws and the policy as set forth by the legislature; that by proposing the bills as NERC has done, it was simply meant to open the doors of discussion and if there is an appetite to expand, that is wonderful; that what she is hearing from the Commissioners is that there is an appetite among the Commissioners to take a more active role, to take a more active role in setting that policy and in taking up coverage to three/four unprotected classes.

Mr. Shipley advised that in regards to Ms. Cole's comments, he believes that the Commissioners are in full agreement to be more actively involved in legislation that is being proposed and more actively involved in promoting that legislation; that if the past could be recreated, it is more in the purview of the Commissioners to propose legislation modifying the laws or adding new laws than staff – Ms Cole, Mr. Plotkin and Ms. Jurani were all in agreement with Mr. Shipley.

VII. Schedule Next Meeting (location/time) and Agenda Items

Mr. Perea advised that another meeting had not been scheduled yet, but as Mr. Patin from Nevada Stonewall Democrats stated, April 10, 2009 is the drop dead date for bills and he would like to schedule a meeting about four days out to see if it is necessary for Mr. Plotkin to speak on behalf of the Commission on the bill or push it forward.

Mr. Shipley agreed and added that there could further discussion regarding Mr. Plotkins's role; Ms. Jurani and Ms. Young both agreed.

VIII. Adjournment

Mr. Shipley adjourned the meeting at 3:28 p.m.

Respectfully submitted

Lee Plotkin
Secretary/Commissioner

Date