

OREGON COUNCIL ON CIVIL RIGHTS
(OCCR)

DRAFT
Meeting Minutes
July 16, 2009

Portland State Office Building, 800 NE Oregon St, Portland OR Room 1-B

Attendees

James Mason, Co-chair
Connie Ashbrook, Co-chair
Lucy Baker
Rick Bennett
Mary Botkin
Linda Burgin
Kendall Clawson
Jeana Frazzini
Cal Henry
Dawn Holt
Michael Johnson
Rep. Tina Kotek
Sara Mensah
Lupita Maurer
Marcus Mundy
Celia Nunez
Cynthia Pappas
Louie Pitt
Carmen Urbina
Carol Suzuki
Stephen Ying
Carl Wolfson

Excused

Sen. Frank Morse
John Van Landingham
Kilong Ung

Others Present

Edward Garren
Mary Daly-Piehl
Dr. LeRoy Haynes
Lucinda Hites-Claybaugh
Linda Mason
Sara Mirk
Sarah Murphy
Dan Pierce
Richard Jones
Everette L Rice
Tina Turner-Morfitt
Kathleen Saadat
Nadia Sindi
Robin Wright

BOLI Attendees

Comm. Brad Avakian
Rudy Asunsolo
Ben DuPree
Lety Ellis
Doug McKean
Amy Klare
Christine Lewis
Kate Newhall
Sue Jordan
Marijke Schouten

I. Introduction

Labor Commissioner Brad Avakian opened the first meeting of the Oregon Council on Civil Rights (OCCR) by welcoming members and audience and gave an overview of the mission and purpose of the OCCR. He described a need for a diverse council to help advise the Bureau and the state generally and to build relationships between diverse communities and with the state. He emphasized that while Oregon needs strong laws and enforcement, real progress cannot happen without changes in the hearts and minds of people and communities, and that process will depend on citizen participation and an advisory group like this one.

Commissioner Avakian envisions OCCR advising him on issues brought up by him or of its own accord and creating their own agenda to advance civil rights protections in Oregon and eliminate discrimination.

Co-chairs Connie Ashbrook and James Mason introduced themselves. It was noted that the current co-chairs will serve temporarily until co-chairs can be formally elected by the full council. Co-chair (CC) Ashbrook gave an overview of the agenda.

II. Discussion of the Bureau of Labor and Industries (BOLI) Civil Rights Division (CRD)

Commissioner Avakian introduced Amy Klare, CRD Administrator. Ms. Klare described the mission of the Civil Rights Division and gave an overview of CRD's roles and areas of jurisdiction, including the various state and federal protected classes, and BOLI's partnership with the Equal Employment Opportunity Commission and the U.S. Department of Housing and Urban Development. These partnerships enable BOLI to investigate and enforce federal law on behalf of their federal counterparts. She also provided statistics on inquiries, case filings, settlements and mediations and gave the council an overview of the complaint process. She noted that a number of new laws have increased BOLI's civil rights jurisdiction and have had an impact on the number and types of cases the division investigates.

Deputy Commissioner Doug McKean gave an overview of BOLI's contested case hearing process. He outlined the roles of hearings unit staff and administrative law judges and the types of resolution available through the hearings unit, including Final Orders on Informal Dispositions (FOID). He said that hearings are very trial-like, including briefs, arguments, etc. Proposed Orders and Final Orders include opinions which describe how the law applies to the situation and damages. He noted that a Final Order has the same authority as a judgment in State Circuit Court. If appealed, BOLI's Final Orders go directly to the Oregon Court of Appeals.

Following Deputy Comm. McKean, Legislative and Communications Director Kate Newhall gave an overview of recent legislative changes affecting civil rights and employment law from the 2009 legislative session. Highlights included House Bill 2744, which provides leave for military spouses in times of deployment, and HB 2600, which addresses providing lift systems for people with disabilities in hotels with 175+ rooms. . Some of the recent changes became effective immediately upon passage and others will go into effect on January 1, 2010 (For a full list and effective dates, see [Legislative Bills](#) handout).

Ms. Newhall went on to give an overview of the OCCR member binder and its contents (all binder materials can also be found on the OCCR website: <http://www.oregon.gov/BOLI/CRD/OCCR.shtml>). She went through the tabs and mentioned the intent is to build on the sections. Of note, tabs 5-6 include CRD background, statistics, protected classes, Oregon Administrative Rules and Oregon Revised Statutes (ORS).

Member and Audience Questions:

What is the process/role of mediations?

Amy Klare explained that the CRD has six staff trained in mediation procedures, including herself, CRD managers and some investigators. Mediation includes formal rules and procedures and some actions are confidential. The formal mediation process serves as a firewall between the investigation and the settlement process. There are also informal conciliations, which are more common. Possible remedies can include letters of apology and training up to monetary amounts. CRD also monitors the terms of an agreement and may investigate alleged breaches of the agreement. Deputy Comm. McKean also mentioned that until recently, BOLI had two Administrative Law Judges (ALJs), and has

been able to assign one judge to the case and, if the parties wanted to begin mediation, the other ALJ could mediate. BOLI hopes to continue to have mediation be an option at the hearings level despite the Hearings Unit being reduced to one ALJ as a result of budget reductions.

When a law or foundation provision changes, e.g. the ADA or when a new protected class is added, how long does it take to make the change and provide external training?

Ms. Klare explained that the CRD starts enforcing as soon as the law is in effect. Ms. Klare acknowledged that sometimes, when the effective date of a new law is immediate, there is a scramble to interpret and apply the new law as written and intended. However, new laws are scrutinized while under legislative consideration and the agency tries to play an active role in the development of new civil rights legislation. After passage, administrative rules are written to clarify and best implement the new law. This process includes extensive research, communication with the Attorney General's office, legal opinions and interpretations. Public notice of rulemaking and testimony is also an important component of implementing the new law effectively and writing administrative rules.

Deputy Comm. McKean mentioned that as this process is taking place within CRD, outside training is done through BOLI's Technical Assistance for Employers Program (TA). He noted that TA works to continuously update their FAQs, training seminars, and other materials to educate employers about recent changes and new laws. Employers are also able to call and email TA with questions.

Is there anything on-line, a database or digital format way for a claimant to find out they have a legitimate complaint? Something else easier or more simplified besides calling and waiting for a call back? What are the options for first contact for complaints?

Ms. Klare responded that potential complainants can call, come to a BOLI office or email CRD to ask questions, get information and/or file a complaint. Additional information about the complaint process, protected classes and intake questionnaires, which are necessary to initiate a formal complaint, can be found on the Bureau's website. All of these contacts are documented by the division and evaluated for timeliness and expedited if necessary for jurisdictional purposes.

But the complaint filing itself is not on-line?

Amy Klare explained that formal complaints cannot be filed on-line since prior to a complaint filing, a formal charge must be drafted. Instead BOLI uses an intake questionnaire, which can be found on line, to initiate the complaint filing process. Responses on this questionnaire help BOLI draft a formal charge to file the complaint, which must be signed and notarized by the complainant. Ms. Klare explained that intake staff and intake interviews help focus on the issues that CRD has jurisdiction over and are used in the drafting of a complaint.

Are CRD determinations/rulings confidential? Do we keep records that are accessible to both employers and employees?

Ms. Klare explained that formal charges and complaints are public records. She went on to say that BOLI can also respond to specific data requests, including inquiries about complaints filed against a particular company or how many complaints BOLI receives on a particular complaint filing basis, such as sexual harassment, age discrimination, etc. She clarified that the content of the investigative file is not disclosable until after the case has closed. Additionally all public records are subject to

HIPAA regulations and other protections which make some materials (e.g., medical records and personal information) undisclosable.

What about the determinations and rulings?

Amy Klare responded that agency determinations are part of the case file, but are not available as public records until the case is closed. All case filing information and case outcomes are kept in our database and can be made available through a public records request. Deputy Comm. McKean added that all agency Final Orders are available on-line and are completely public.

What is the authority/process difference between BOLI and the Department of Justice (DOJ)/Attorney General (AG) in enforcing civil rights law?

Deputy Comm. McKean explained that the majority of civil rights laws are under ORS Chapter 659A, which gives BOLI specific jurisdiction/enforcement authority. ORS Chapter 659A includes all civil rights protections relating to employment, housing and public accommodations. The AG handles protections not found in ORS Chapter 659A, such as free speech issues or criminal matters, like hate crimes. DOJ also plays a role in BOLI's enforcement of civil rights law as the legal representative for all executive branch state agencies. The DOJ represents BOLI as its attorney if decisions made by BOLI are appealed to the Court of Appeals or BOLI needs to seek formal legal advice on an issue.

In the recent legislative session when the AG's office advocated for the authority and funding for a civil right unit, the Legislature recognized the limited civil rights enforcement authority vested in DOJ. In approving the AG's request, the Legislature limited the AG's civil rights unit to enforcing civil rights law outside of BOLI's jurisdiction.

What role does the Governor have in enforcing the law?

Deputy Comm. McKean responded that the Governor has no statutory role. He explained that while the Governor is the head of the executive branch, BOLI is the agency that enforces state civil rights law. The Governor can be involved and can refer matters to BOLI but the Governor's office does not have any specific statutory role in enforcing civil rights laws.

III. Discussion of Commissioner Assignments, Operations and Future Meetings

Commissioner Avakian said that he does not expect that the council will become involved with the minutiae and processes of CRD. Also, until the council can discuss their own processes and address the issue, BOLI will provide staffing for the group. He emphasized that he is not a member of the group, nor is he in charge and will not make decisions for the group. The council is a distinct entity from the Bureau. He just has the legal authority to create such independent groups. He will come when requested.

He posed a question leading to the formation of the council's goals: What do you want to do? Not just what you want, but what does Oregon need? Things may be influenced by new law, social change, etc. He emphasizes not limiting thinking of ideas.

Commissioner Avakian gave an overview of the first issue he would like the council to look at and address: Equal Pay for Equal Work. He explained that currently, women earn about 78 cents for every dollar a man earns. He emphasized that the figure is even worse for a racial minority. He charged the

council with creating an action plan to stop pay inequity. He encouraged the council to address how to encourage a cultural shift and change the dynamic, including educating employees and employers and increasing outreach and awareness.

CC Ashbrook inquired about the tools the council has available to work with and how the Commissioner envisioned the council addressing this issue.

The Commissioner encouraged the council to partner with CRD and to combine efforts with the division to research the impacts of the issue, actual disparity and to identify when/how employers 'fall into the trap'.

Council Member (CM) Wolfson inquired about the Equal Pay Act and the protections it provides against pay inequity. The Commissioner explained that enforcement is limited to events that have already occurred. It doesn't address changing society to prevent the events in the first place. He also stated that the Equal Pay Act only covers gender discrimination and that wage disparity is not just gender disparity, but an issue that affects all protected classes (e.g., race, age, marital status).

Guest Ed Garren stated that in his observation, in Oregon there is a culture focused on orderliness, fitting in and getting along which keeps people from speaking up for fear of social consequences.

CC Ashbrook & Commissioner Avakian spoke further about outreach ideas. Public hearings and testimonies. Appointing sub-committees with outside specialists and specific goals.

Procedures

CC Ashbrook proceeded to address the operation procedures of the OCCR, as detailed in the binders – mission, goals, background, appointments, leadership, agenda, staffing, compensation, meetings (quarterly at first), and availability of information on the website. She asked Commissioner Avakian about the operation policies under Tab 4.

Commissioner Avakian said they are operating guidelines to help the Council set up their own.

CC Mason stated that many of the procedures in the draft operating procedures were added at his request in an attempt to avoid some of the operational problems he has faced in other, similarly dynamic groups. Creating procedures and defining roles is a good way to head them off 'at the pass'. He said that while conflict is inevitable, we can use it to move forward instead of holding us back. He wanted the group to consider how to work together, argue effectively, make decisions and still 'love each other', avoid the 'zero-sum' mentality – where one group profits and another group suffers - and remember the responsibility of representing the entire state.

CM Burgin mentioned she got the procedures through the mail and they are OK. She recommended "Robert's Rules of Order" (a guide for conducting orderly meetings and conventions available from <http://www.robertsrules.com/>). CM Baker made a motion to adopt the temporary rules until something else comes up. The motion was seconded by CM Burgin.

Motion was adopted. No 'nay' votes.

Future meetings

Members discussed holding a retreat in the future and setting regular council meetings. The council agreed to have the Co-chairs and BOLI staff coordinate the next venue and agenda, taking into consideration the practicality of locations for various members. Having meetings open to the public was also mentioned. All CM's were invited to help with the coordinating.

CM Pappas suggested a roster with contact information. Commissioner Avakian said one will be e-mailed to all to facilitate communication.

CM Henry emphasized member participation in creating the agenda.

CM Pitt spoke about the sovereign relationship between the State and Native American tribes. His participation is not for one group or another. He emphasized that Native Americans are not a minority, but are treated as such. He suggested that some time be spent on a reservation, in a meeting or as an exposure experience. There needs to be more awareness of sovereignty issues. There needs to be more awareness of the Native American relationship to the rest of the state and country.

Guest Ed Garren said that there are many ways to organize groups and strongly suggests avoiding hierarchical structures which are too rigid to allow everyone to participate as equals.

Guest Tina Turner-Morfitt asked the council and staff to please consider commute time and work time of people who may be attending (including the public) when scheduling meetings.

A comment came up about duration and to please consider all hours (evenings, etc) and different venues, not just Portland.

Guest Nadia Sindi raised the issue that only one Arab/Muslim was in the audience and had no representation on the council.

Guest Kathleen Saadat, member of City of Portland Commission of Human Rights, congratulates on the creation of the council and encouraged collaboration outside the group.

CM Urbina stated that while the operating policies are linear she would like to have procedures that address conflict management that values different perspectives and cultures. The current culture wants expediency and wants things now, but this council should also utilize deeper conversations. Should take time to consider, slow down.

CC Mason agrees, we seem to want to hit the ground running instead of doing some social deflating first, but process is important. The council's tools may need to be diverse.

CM Baker inquires about electing co-chairs as outlined in the operating procedures. She asked when new co-chairs would be elected. CC Ashbrook responded by saying that she and CC Mason will serve as chairs for a few sessions, then a vote will be taken to elect.

CM Botkin requested a copy of the Indian Civil Rights Act.

IV: Introductions

Council members introduced themselves, gave some background information on their professional and personal lives, their goals and focus. A common focus was cultural shift.

V: Break for Socializing and Networking

VI: Closing Remarks

Commissioner Avakain thanked OCCR and audience members for their participation and to say that he looks forward to the work and insights the council will provide.