

**Testimony of Carmelyn P. Malalis
Commissioner and Chair
New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
March 26, 2018**

Good afternoon, Chairperson Eugene and members of the Committee on Civil and Human Rights. Thank you for convening this afternoon's hearing. My name is Carmelyn P. Malalis, and I am the Commissioner and Chairperson of the New York City Commission on Human Rights ("Commission"). Today I am joined by Brittney Saunders, Deputy Commissioner for Strategic Initiatives, and Lauren Elfant, my Chief of Staff.

February marked my third year as Commissioner and Chairperson at the Commission, and I am excited to be with you today to share some of what we've accomplished over the course of 2017. In a year that saw the City, like jurisdictions across the country, attempting to orient itself to a new and troubling federal reality, I am happy to report that the Commission has continued to build upon its legacy of leadership in civil and human rights, and has fought, every day, to meet the challenges of our times.

Note that I am focusing my comments – unless otherwise noted – on the Commission's work and accomplishments during calendar year 2017, consistent with our testimony in prior budget hearings. With the enactment of Local Law 63 of 2018, which passed on December 19, 2017, the Commission is transitioning to reporting on a fiscal-year basis, in line with the Mayor's Management Report. Though we are not required to publish a report during this transition period, we are in the process of developing one in an effort to showcase all that my dedicated staff has accomplished by working with different communities throughout the City in 2017.

Staff and Personnel

Thanks to the support of the Administration and the Council, the Commission has nearly tripled its headcount. This is thanks to the investments that the Administration and Council have made in our agency, most recently with the base-lined investment in the FY 18 Adopted Budget of just over \$1.8 million to expand our law enforcement capacity and \$750,000 to support the agency's critically important communications efforts. We are immensely grateful for these investments.

When I began my tenure in February 2015, we had a headcount of 56. As of today, the Commission has a headcount of 156 with 145 of these lines currently occupied. I am pleased to note that as we have hired into these positions, there have been many people dedicated to fighting for human rights who are eager to bring their experience and talents to the Commission. Some applicants approach the work from a very personal place, as they come from communities or families that have experienced discrimination or harassment firsthand. Others come from careers demonstrating a deep commitment to inclusion, and fostering dignity and respect amongst the City's most vulnerable communities. Still others are using the skills they developed within the private sector or other spaces to answer the call to public service now, at this time when the responsibility for protecting vulnerable communities is falling more heavily upon the

shoulders of local government. As a result, most of our new staff are themselves representative of the communities we have been reaching out to or come with well-developed relationships to those communities. Across the agency, our staff speak more than 35 languages, up from six just three years ago and are well positioned to work closely with impacted communities.

As noted above, we were thrilled to receive funding for 26 new lines as part of the Fiscal Year 2018 Adopted Budget. Those additional lines are allowing us to expand our general case management capacity in LEB as well as to create new units dedicated to streamlining intake, addressing discrimination on the basis of lawful source of income, investigating discriminatory harassment reports more expeditiously, and handling alleged violations of the Fair Chance Act.

The Law Enforcement Bureau

In 2017, inquiries from members of the public to the Commission continued to increase. Front line staff, fielded 9,772 inquiries via e-mail, phone calls and letters over the course of the year. Since 2015, the number of inquiries the agency receives annually has increased by nearly 85% (from 5,296 in 2015 to 9,772 in 2017). This includes 888 inquiries communicated in 18 languages other than English. The Law Enforcement Bureau (“LEB”) filed complaints in 747 cases alleging a range of discriminatory practices. Fifty percent (50%) of those cases were in employment and thirty-five percent (35%) were in housing. Disability-related claims were the most common protected class implicated, with twenty percent (20%) of claims residing in that category. Race discrimination was the next most common claim at sixteen percent (16%), with gender following at thirteen percent (13%) and national origin at ten percent (10%).

Strengthening the Commission’s capacity to undertake affirmative investigations has been a priority since my appointment in 2015. With recent shifts in civil rights enforcement and a retreat from the ethos of inclusion at the federal level, our focus on affirmative investigations at the local level is as important as ever. LEB is empowered to open such investigations into violations of the City Human Rights Law through information provided anonymously by members of the public or when the media or community stakeholders report information about general trends of discrimination. In 2017, the Commission initiated 450 Commission-initiated investigations into potential violations, an increase from 426 in 2016. As in the previous year, the greatest number of Commission-initiated investigations – 228 – were in the area of employment, and within that category, Fair Chance Act protections were the most frequently raised. Commission-initiated investigations into housing were the next most common, with 203 investigations in this area, and the overwhelming majority focused on discrimination on the basis of lawful source of income. Where Commission-initiated investigations into public accommodations were concerned, the most frequently implicated protected class was disability.

The Commission has also deployed its enforcement resources to address blatant acts of discrimination and harassment by those who have been emboldened by the recognized emergence of white supremacy in our national discourse. Such was the case last August, when the Commission announced an investigation into allegations of tenant harassment at a Queens building where Nazi and Confederate imagery, swastikas and other hate symbols had been displayed in the lobby. The investigation followed reports from a Council member’s office that

tenants and condo owners were being subjected to a hostile environment and tenant harassment by their property manager. In launching this investigation, which was resolved by February of this year, the Commission sent a powerful signal that discrimination and harassment would not be tolerated.

Testing remains an important investigative tool for LEB, allowing the Bureau to understand whether landlords, real estate brokers, restaurants, stores, hospitals and other public accommodations treat individuals differently on the basis of their membership in a protected class. In 2017, LEB performed 577 tests, compared to the 557 that were conducted the previous year. In 2017, 335 tests were conducted to investigate discrimination on the basis of conviction or arrest record, race, or salary history in the area of employment. In the housing context, 206 tests were carried out to investigate discrimination on the basis of source of income, race, presence of children, disability and immigration status. And in the public accommodations context, 36 tests were carried out to investigate discrimination on the basis of disability or gender.

Another priority of the Commission in the last three years has been establishing the agency as an equivalent venue for justice to state or federal court. As I have noted in the past, doing so required raising the standard for investigations, conducting in-depth investigations to identify pattern and practice violations, and obtaining respondents' full compliance with all areas of the City Human Rights Law. The Commission also remains committed to ensuring that complainants' recoveries, through settlement, conciliation, or litigation, are equivalent to what they would receive if they chose to litigate their claim in state or federal court. As a result, LEB in some cases chooses to hold cases open longer to garner a broader impact. This has caused the case processing time to slightly increase from 536 days in 2016 to 581 days in 2017. This average time reflects the fact that the Commission continued to see an increase in reporting from the public for the second year in a row. At the same time, LEB continued its approach of conducting in-depth investigations into discrimination to ensure entities were fully complying with the City Human Rights Law, spending more time reviewing policies and interviewing witnesses and victims to determine whether there were additional violations. Notably, the Commission closed significantly more cases in 2017 than in previous years—609 cases—up from 436 in 2016 and 354 in 2015.

The Community Relations Bureau

The Commission's Community Relations Bureau ("CRB") is charged with cultivating understanding and respect among the City's many diverse communities. At a time when the forces of hate and division seem to be disturbingly empowered, CRB is working to counter these forces through education, outreach and relationship building. Our CRB Community Service Centers ("CSCs"), located in all five boroughs, work actively with local communities, community leaders, community boards, houses of worship, elected officials, small businesses, community-based organizations, and schools to provide vital know-your-rights and know-your-obligations information. CRB hosts quarterly trainings and workshops in our CSCs and strives to deliver programming and services that reflect the needs of the surrounding communities. In 2017, Commission's newly formed Bias Response Team responded to 86 bias incidents,

primarily arising from incidents of targeting based on perceived gender identity and religion. The Bias Response Team contacted victims to inform them of their rights, provided instructions on how to file complaints, and engaged in community-based actions, including literature drops, local events and days of action. Instances of Bias Response Team intervention reflect the disturbing trends we have all observed in recent years. For example, the team responded to tenant harassment in Queens. It conducted workshops for Bronx Community Board 7 in the wake of anti-Semitic incidents at a local institution. The team also provided our Know Your Rights training at an Islamic Center in Bay Ridge following an incident of Islamophobic vandalism.

The Commission has also developed programming that is responsive to bias incidents, racism, and xenophobia. In 2017, racial justice emerged as an important focus for some of these efforts. In May, for example, after an immigrant street vendor from Burkina Faso was brutally assaulted in the South Bronx, the Commission hosted its first annual forum for African immigrant communities at the Metropolitan College of New York. CRB staff educated participants about their rights under the City Human Rights Law, and over 20 community-based organizations and City agencies were on hand to provide information on government resources and legal protections for African immigrants. The Commission also hosted a series of events focused on racial justice. These included a panel discussion on the impact of gentrification in Bed-Stuy, a mobile legal services clinic at a neighborhood church in Bed-Stuy, and a community response effort that included providing know-your-rights information and legal screenings to Brooklyn community members following reports of racial discrimination in a local restaurant. In Harlem, we have begun partnering with community-based organizations with a similar focus in order to identify how the Commission's outreach and enforcement resources can support community residents. We look forward to even deeper engagement in Bed-Stuy, Harlem and other parts of the City in 2018 as part of our racial justice efforts.

CRB also has an important role to play in the Commission's efforts to combat housing discrimination. In 2017, the agency continued to educate housing providers and community groups on their rights and obligations under the law, offering 263 fair housing workshops and presentations and hosting its fifth annual Fair Housing Symposium at Hostos College in the Bronx. Commission staff provided our Know Your Rights workshops to over 200 tenants, advocates, service providers, attorneys, and tenant organizations with a special focus on combating lawful source of income discrimination. As is our practice, we also brought our Law Enforcement Bureau's mobile intake lawyers to this community event, ensuring attorneys were on site to address questions and take housing complaints on the spot from attendees.

CRB's Project Equal Access ("PEA") is central to the agency's efforts to address discrimination faced by individuals with disabilities. PEA identifies barriers to accessibility in housing, workspaces, and public accommodations, resolving them prior to intervention by LEB. In situations where immediate intervention – rather than going through a litigation process – allows people to engage in basic life functions, like leaving one's home, PEA is invaluable. PEA staff regularly conduct workshops and engage in collaborative discussions with relevant parties to address accessibility issues and encourage quick resolutions. In 2017, PEA successfully negotiated 216 modifications across the City. These included accessibility improvements like the

addition of ramps and automatic door openers in restaurants and apartment buildings, the creation of accessible supermarket checkout lanes, and the addition of lifts in medical facilities. As a result of PEA's work, not only are access issues addressed on a faster timeline, but cases are diverted from the LEB pipeline saving valuable enforcement resources.

Office of the Chairperson

In the three years since I established the Office of the Chair, it has grown into a critically-important department. It is the point of contact for the Commission's inter-agency and external partnerships; it negotiates legislation and promulgates rules and legal guidance; it convenes our appointed Commissioners on a quarterly-basis; and serves the Commission's adjudicatory functions, including issuing decisions and orders. Increasingly, the Office of the Chair has been responding to legal inquiries from the public regarding the Commission's work, often about newly-implemented changes to the law.

Building upon its work in the last two years, the Office of the Chair was intensely active in 2017. The Commission issued new rules on the Fair Chance Act, which requires employers to consider an applicant's qualifications and extend a conditional offer of employment before inquiring into their criminal history, and new rules on the Stop Credit Discrimination in Employment Act, which prohibits consideration of an applicant's credit history for most jobs in New York City. Both sets of rules represent the first substantive rulemaking by the Commission in decades.

In 2017, two new protections were added to the City Human Rights Law. As of October 31, 2017, the law prohibits employers from asking job applicants about their salary history during the hiring process. To provide transparency on the Commission's enforcement of the new provision, we issued an FAQ and materials advising applicants and employers of their respective rights and obligations under the law. Consistent with the Commission's commitment to transparency and public education, the agency also convened a roundtable with employers and met with hundreds of employment lawyers to help inform the City's employers and business communities about the law's new salary history protections. Also, in partnership with the Department for Veterans' Services, the Commission published educational materials to inform the public about new protections for current and former members of the military against discrimination in employment, housing, and public accommodations, which went into effect on November 19, 2017. The Office of the Chair also provided guidance about preexisting protections that frequently impact veterans, including protections based on disability and lawful source of income.

I am especially proud of the efforts the Commission has made this year to both drive and be responsive to the public dialogue on civil and human rights. One such effort was another project coordinated by the Office of the Chair, the Commission's 2017 survey of Muslim, Arab, South Asian, Jewish and Sikh New Yorkers, which was conducted at a time when reports of hate and bias-based attacks against these groups were on the rise. The agency collected data from members of these communities across the five boroughs in order to understand their experiences with discrimination, bias, and bias-motivated harassment and violence. More than 3,000 New Yorkers completed the survey, which was available in Arabic, Bengali, English, French, Hindi,

Punjabi, Russian, Urdu, and Yiddish, among other languages. The data collected will inform a report to be published in 2018. Our hope is that the recommendations therein will inform the Commission and other City agencies about how to better address and combat bias-motivated harassment, discrimination, and violence against Muslim, Arab, South Asian, Jewish, and Sikh communities in New York City.

Months before the #MeToo movement achieved its current prominence, the Office of the Chair began planning a public hearing on sexual harassment in the workplace. On December 6, 2017, the Commission convened the citywide hearing, which was the first Commission hearing on gender discrimination since one of my predecessors, now-Congressperson Eleanor Holmes Norton, held the country's first public hearings on sexual harassment in the workplace over forty years ago. The December hearing furnished an opportunity for workers, advocates, and activists from a wide range of industries – among them construction, fashion, media, domestic work, tech, finance, hospitality, and others – to speak about the harassment and discrimination they or others in their fields have experienced. People also testified regarding the challenges—whether related to byzantine policies, unsupportive employers or outright retaliation – involved in addressing the behavior. The Commission heard testimony from some of New York City's most vulnerable workers, including women in male-dominated industries, women of color, immigrant workers, low wage workers, workers in isolated workspaces, and LGBTQ workers. We also continued to receive written testimony through the end of the year. The agency is currently analyzing all the submissions and this analysis will form the basis for a report and policy recommendations that will be released later this year.

The Commission published seven Decisions and Orders after a hearing in 2017. These cases involve gender discrimination and retaliation in employment, lawful source of income discrimination in housing, disability-based discrimination and harassment among other issues. In these Decisions and Orders, we have mandated tens of thousands of dollars in damages as well as fines and civil penalties. We are proud of the role that each of these findings plays in reinforcing that discrimination and harassment will not be tolerated by the Commission.

Communications and Marketing

In 2017, the Office of Communications and Marketing (“OCM”) at the Commission worked to amplify not only the work of the Commission but the values that distinguish this city. In 2017, the Commission garnered some 700 earned media hits (publicity gained through promotional efforts other than paid media advertising) across print, online, TV, and radio. This is nearly double its press coverage from 2016. OCM has managed to do this while also prioritizing reaching vulnerable New Yorkers who need our resources most. In 2017, almost half of all press hits (358) were in ethnic and community media providing accessible means for New Yorkers to learn about their rights, regardless of language, religion, or national origin.

In 2017, we built upon our previous experience fielding compelling, timely campaigns such as #BeYouNYC and #IAMMuslimNYC to launch a new effort. In June, the Commission launched a citywide anti-discrimination campaign, “You DO Have the Right NYC,” to affirm every New Yorker's right to live, work, and pray free from discrimination and harassment. The campaign,

which was accompanied by the hashtag #YouHaveRightsNYC, helped to further establish the Commission as a venue for justice for three target audiences: New Yorkers of faith, people of color, and immigrants. These target audiences were selected based on data from complaints and bias-based incidents occurring across the City. With powerful eye-catching imagery and text, the campaign conveyed a simple yet powerful message: no New Yorker deserves to be subjected to discrimination or harassment and those who do, can count on the Commission for support. Over the course of the six-week campaign, more than 3,400 placements were made citywide. Advertisements appeared in 25 ethnic and community newspapers and radio stations, and 77 million impressions generated through online and outdoor media. Campaign videos garnered nearly a million views on Facebook, Hulu, and YouTube.

The Commission has continued its focus on investing in New York City's rich ethnic and community media outlets. Through these outlets, the Commission provides essential information to our City's most vulnerable and hard-to-reach communities. In 2017, 100% of our radio and print advertising budget was either in community or ethnic media. The Commission regularly produces and places advertisements on its initiatives and programs in ethnic media and social media in various languages other than English including Arabic, Spanish, Chinese, Korean, and Urdu.

The Office also played an instrumental role by developing and disseminating materials to educate New Yorkers about changes to the City Human Rights Law, including the ban on salary history inquiries and protections for members and veterans of the uniformed services.

Budget

The Commission's annual budget for Fiscal Year 2018 was \$14,856,979 in City tax-levy money and grants, and approximately \$350,000 in additional grant funding through a contract with the EEOC pursuant to our workshare agreement. The Mayor's Preliminary Budget (tax-levy) for Fiscal Year 2019 provides for a budget of \$14,137,300.

As I review our accomplishments in 2017, I am extremely proud of both the good we have been able to do in the service of the people of New York and the ways in which we have strengthened an agency consistent with its legacy. With the support of the Administration and the Council, we have demonstrated the power of strategic enforcement, as well as the flexibility to dynamically adjust to the changing political environment. We have expanded and deepened our relationships with New Yorkers and their understanding of their rights and obligations to one another. We have leveraged the agency's policymaking capacity and partnered with our sister agencies and offices for deeper impact and we have lifted our voices across a variety of platforms to stand up for the values that make this city great. While our current landscape is a challenging one, I am grateful to this work each day and deeply appreciate your continued partnership.

* * * * *

Thank you for convening this hearing, and thank you for your support of the Commission as we continue to rebuild and reinvigorate it. I look forward to your questions.



Presenter: Jelani Anglin

Contact Information: jelani@goodcall.nyc, (347) 495-1758

Good Call is a nonprofit tech startup that runs a totally free 24/7 arrest hotline, enabling anyone who is arrested, and their loved ones, to instantly connect to a public defender. Our service facilitates much needed support for individuals and families dealing with arrests, enables better legal representation, and helps prevent people from ending up in jail for the wrong reasons. The hotline is currently active in the Bronx, enabled by partnerships with The Legal Aid Society and The Bronx Defenders. In the past year, Good Call has connected over 500 people with legal support, with an average hold time of under one minute and a caller satisfaction rate of over 90%.

Access to legal support when confronted by the criminal justice system is a basic right guaranteed by the constitution. However, those who cannot afford a private attorney are put at a disadvantage because they have practically no way to access legal help in the critical time period following an arrest. Good Call is an effective and pragmatic way to provide folks the legal support they deserve, when they need it most.

Support from City Council will enable Good Call to provide legal access at a critical time to residents across the entire city. Immigrants, low income people, young people, women, the LGBTQ community, and communities of color are disproportionately impacted by the criminal justice system, and the support provided by Good Call can help prevent long-term and collateral consequences caused by an arrest.



Good Call Fiscal Year 2019

Citywide Speaker Funding Request

Good Call seeks to expand our legal support hotline to serve all five boroughs of NYC, through \$500,000 in support from City Council in fiscal year 2019. Funding for this citywide initiative will allow Good Call to facilitate improved legal support for thousands of New Yorkers dealing with the criminal justice system, and advance the City's goals of increasing fairness, decreasing the pretrial jail population, and moving towards the closing of Rikers Island.

Program

Good Call is a service that enables anyone who is arrested, and their loved ones, to instantly connect to a public defender. Good Call runs a free 24/7 hotline that anyone can call if they, or a loved one, are arrested, and Good Call's software automatically connects them with an attorney at one of Good Call's legal partner organizations. This allows public defenders give arrested individuals advice and information at a critical moment, contact their loved ones, and begin preparing for their client's arraignment days in advance. During our pilot in the Bronx over the past 16 months, Good Call has demonstrated that this early legal intervention and community support helps mitigate the negative impact of an arrest, ensures fairer outcomes, and helps prevent people from being sent to unnecessary pretrial jail.

Expansion

Good Call's hotline is currently staffed by attorneys at Good Call's legal partners, The Bronx Defenders and The Legal Aid Society, and is available exclusively in the Bronx. Funding from City Council will allow Good Call to expand its area of coverage from the Bronx to all five boroughs, and execute an ongoing community outreach campaign to inform impacted communities throughout all districts of NYC.

We look forward to developing a partnership with City Council, and bringing this critical support to all of New York City together.

For more information, please contact Gabriel Leader-Rose at gabe@goodcall.nyc or 617-640-6832

Dear Chair, Members of the Committee

Thank you for your time this afternoon. My name is Zoltan Boka. I am here to outline for you the state of civil rights enforcement particularly through the lens of disabled individuals.

Presently, a New York City resident seeking civil rights protections has three tiers of government that are ostensibly available for this purpose. Let's take them one by one.

At the federal level, the government is led- and I use that word with the utmost generosity- by a man who pretended to have cerebral palsy on television, embraces something called "the racehorse theory" which likens people to racehorses breeding and says that only the strongest racehorses--I mean people- should reproduce. Said government is stacked with winners like attorney general Jeff Sessions, a gentleman whose confirmation hearing produced extended discussions over whether he supported hate groups and education secretary Betsy DeVos, whose own hearing featured her magnanimously offering to consider whether charter schools should be held to federal disability rights standards- standards she subsequently rescinded.

But New Yorkers are not out of luck. After all, we have the New York State Division of Human Rights, which is geared towards enforcing state level civil rights laws- or at least it would be, if the New York Court of Appeals hadn't stripped it of jurisdiction over public schools six years ago. Our governor and legislature, both nominally Democratic, have not seen fit to restore state level human rights protections to public school students and employees since then. This means that if you are a student at Fordham, you can get state level protections, but if you're a few blocks north at Lehman College, the NYSDHR is prohibited from assisting you. As I mentioned, this ludicrous state of affairs has been the norm in New York for the past six years.

But there is one last refuge for New York City dwellers seeking civil rights remedies: We have the New York City Human Rights Law and NYC Human Rights Commission. You may at this point breathe a sigh of relief. After all, the NYC HRL is touted as one of the most progressive in the nation and the commission as one of the most vigilant. In theory this should be good news: the Commission and the Law are sorely needed and in fact the firm Outter and Golden chronicled a sixty percent rise in complaints to the commission from 2015 to 2016 and another 30% rise from 2016 to September 2017. However, before we celebrate it is worth asking how the NYC HRC is handling the claims that come before it. If my experience is any guide, the answer is, not well.

I am disabled due to a childhood brain injury. I nevertheless was accepted at CUNY's Graduate Center for a Ph.D. program. It was known at all times that I'd need accommodations to succeed, something CUNY readily agreed to provide. These turned out to be spectacularly empty promises and I feared I'd be expelled. Hence, I sought out the NYC HRC, which advised- contrary to the text of the human rights law- that I wait longer and see if I continue to be adversely affected. With this, they closed my file. When, as expected, CUNY took the path of expelling me instead of accommodating my needs, they produced the stellar legal analysis that it appeared to be an academic decision without making any further inquiries. This shallow, perfunctory reply contradicts the rigorous analysis the text of the human rights law requires: the drafters of the Human Rights Law knew that many institutions would respond to claims by

saying that they acted to uphold their standards: Hence, they place the burden of demonstrating that accommodations would alter the requirements of the program at hand on the institution. It is not the job of the NYC HRC to declare, without investigating or even making inquiries, that relief is foreclosed to a disabled person for this reason.

The Commission made clear at that time that it had no interest in acting. Note that Outter and Golden chronicled the number of cases presented to the commission- not how those cases were treated. If they are all dismissed in such a shallow manner, the commission effectively nullifies itself and demonstrates that it has no reason to exist.

Some time later, I asked the Commission for copies of any memos chronicling their decision making process in my case. That request led to the following, remarkable exchange between myself and Clifford Mulqueen, the Deputy Commissioner and General Counsel:

From: Zoltan Boka [<mailto:zoltan.boka@gmail.com>]

Sent: Tue 2/19/2013 5:06 PM

To: Mulqueen, Clifford

Subject: Re: Inquiry

Dear Mr. Mulqueen

An opposing party is defined as one who **actively** asserts a claim against another party. (See e.g. Augustin v. Mughal, 521 F. 2d 1215 8th Cir. 1975; Stahl v. Ohio River Company, 424 F.2d 52 3rd Cir. 1970). I presume we can agree that I have not made any claims and do not meet the definition of an opposing party. Kindly provide the memos in question.

Thank you
Zoltan Boka

On Tue, Feb 19, 2013 at 4:55 PM, Mulqueen, Clifford <CMulqueen@cchr.nyc.gov> wrote:
You are contemplating suing us. We are now opposing parties.

Cliff Mulqueen
Deputy Commissioner/General Counsel
New York City Commission on Human Rights
40 Rector Street: 10th Floor
New York, New York 10006
(212) 306-7741

From: Zoltan Boka [<mailto:zoltan.boka@gmail.com>]

Sent: Tue 2/19/2013 4:53 PM

To: Mulqueen, Clifford

Subject: Re: Inquiry

Dear Mr. Mulqueen,

Attorney work product privilege applies only to opposing parties. Myself and the commission are not opposing parties and this exception does not apply. Kindly provide the memos in question.

Thank you

Zoltan Boka

On Tue, Feb 19, 2013 at 4:36 PM, Mulqueen, Clifford <CMulqueen@cchr.nyc.gov> wrote:
There are no determinations. There are only memos that explain our action, which are not discoverable since they are attorney work product.

Cliff Mulqueen
Deputy Commissioner/General Counsel
New York City Commission on Human Rights
40 Rector Street: 10th Floor
New York, New York 10006
(212) 306-7741

From: Zoltan Boka [mailto:zoltan.boka@gmail.com]

Sent: Tue 2/19/2013 4:35 PM

To: Mulqueen, Clifford

Subject: Re: Inquiry

Thank you. Kindly provide written determinations, if any, by the commission, as to why they did not file.

In other words, the Deputy Commissioner and General Counsel of the New York City Human Rights Commission claimed that the work they produced on my behalf was privileged and shielded from me and began divulging information only because I had the ability to find case law explicitly negating their position. Were I not temperamentally inclined to explicitly demonstrate to the Deputy Commissioner that his position lacked any merit or legal rigor, I would never have gotten the information sought- ponder that for a moment, especially in the context of any agency allegedly dedicated to servicing vulnerable populations.

They had good reason to be defensive: The memos I gathered contained not a whit of legal analysis and not a hint of any investigatory tools being utilized. They had no exhibits, no witness statements, no legal analysis of any sort and contained only a bare outline of our interactions.

Over the following months, I endeavored to fill in the considerable gaps in the commission's work. This was made more difficult by the fact that they were openly hostile, belligerent, lazy, oftentimes non communicative and lacked any grasp of human rights laws. After the change of Commission leadership, precipitated by the Mayor's recognition that, as I believe he put it, the Commission was "moribund", I was hopeful that a new day would dawn at 22 Reade. It was not to be. Deputy Commissioner Pfitsch made contact with me last October, which necessitated that I once again fill in an agency employee about the history of this matter. Unsurprisingly, Deputy Commissioner Pfitsch disappeared a few days later, and neither she nor the commission were ever heard from again: Ghosting - it's not just for tinder, it's also for city government.

We, as a nation, are at a crossroads. We- and I include the government of the city of new york- have to decide whether we want to enforce civil rights laws or whether, for the sake of social respectability, we want to appear as though we want to enforce civil rights laws, without the inconvenience of actually doing so. My experiences are surely not unique. As it is currently structured, the New York City Human Rights Commission is a cruel sham designed for bragging rights in Iowa caucus rooms, not for assisting disabled individuals.

I ask that this committee seriously consider a thorough, on going, external audit of the commission: the implementation of reporting requirements: Stringent open file rules so claimants can follow the progress of their cases: Requirements that each lawyer be a specialist in civil rights law with training in enforcing the NYC Human Rights Law itself: Requirements that each lawyer keep track of and be ready to respond, in writing, to inquiries about each claim: and an invitation that any attorney who is simply killing time at the Commission- in my experience this would be most of them- find other forms of employment: And finally, a temporary ten year statute of limitations to allow individuals who were shunted aside during the Commission's extended vacation from law enforcement to get a measure of relief. The mission of the commission should not be treated with disdain by those employed by it.

Malcolm X said that what you allow will continue: What I described is what has thus far been allowed. It has created a climate where federal, state and municipal disability protections are gutted in both theory and practice. One consequence of this attitude is that Matthew Goldstein, the CUNY Chancellor whom I begged for years to fulfill CUNY's obligations- pleas he turned a deaf ear to- feels comfortable with raising money for and advertising a scholarship program for disabled students. His pitch to donors hilariously describes him as "a devotee of access and opportunity for CUNY's students with disabilities ", unless of course they approach him directly. Goldstein's hustle is an indecent act that demonstrates, in case anyone had any doubt, that the bottom does not exist. I ask that this committee make a choice in the coming weeks and decide to truly enforce human rights at the municipal level with a strong and dedicated human rights commission at the helm, one which is actually a "devotee of access and opportunity"- in practice this time.

Thank you.

CITY COMMISSION ON HUMAN RIGHTS

Carmelyn P. Malalis, Commissioner/Chair



WHAT WE DO

The New York City Commission on Human Rights (the Commission, or CCHR) is the agency charged with enforcing the New York City Human Rights Law (NYCHRL), which is one of the most comprehensive anti-discrimination laws in the country. It includes protections in public accommodations, housing, and employment based on race, religion/creed, color, age, national origin, alienage or citizenship status, gender, gender identity and expression, sexual orientation, pregnancy, disability, and marital or partnership status. Additional protections are included in employment based on arrest or conviction record; status as a victim of domestic violence, stalking and sex offenses; caregiver status; unemployment status; and credit history. More protections are afforded in housing based on lawful occupation, lawful source of income, and the presence of children, domestic violence, stalking and sex offenses. The Commission is empowered to investigate and prosecute NYCHRL violations, including those that raise systemic violations. The Commission educates New Yorkers about their rights and responsibilities under the NYCHRL; provides pre-complaint intervention and dispute resolution; and promotes positive intergroup relations through conferences, workshops and training sessions, among other initiatives conducted by its Community Relations Bureau (CRB). The Commission also offers post-complaint mediation services through its Office of Mediation and Conflict Resolution (OMCR).

FOCUS ON EQUITY

Three years after a new Commissioner and Chair took office at the City Commission on Human Rights, the agency continues to grow and restructure strategically to effectively address significant public demand. CCHR has added staff to its Law Enforcement Bureau (LEB) as inquiries and complaints increased. In addition, in response to the needs of the City's most vulnerable communities and their advocates, CCHR increased the investigations and complaints it initiated through testing and other investigative means. CCHR also added staff to CRB and continued to expand key operational areas. The NYCHRL is meant to ensure all those who live in, work in, or visit New York City are treated fairly and with dignity and respect, regardless of race, color, age, religion/creed, national origin, disability, gender identity and expression, sexual orientation or any other protected class. CCHR is committed to expanding the reach of the NYCHRL to the City's underserved communities and most vulnerable residents through a creative intersectional approach to outreach and programming, with an emphasis on restorative justice.

In response to the ongoing challenges in the national sociopolitical climate, the Commission has focused its efforts on reaching City communities potentially most affected, which included CCHR's survey to capture information on incidents of hate and bias experienced by Arab, Jewish, Muslim, Sikh, and South Asian communities in New York City. CRB has significantly expanded and deepened its investment in these communities by appointing lead advisors with the expertise and cultural competence to provide dedicated outreach and education services. CCHR continued to invest additional resources in enforcement by adding staff to LEB, which enabled it to establish units specializing in intake and early intervention as well as source of income. During this period, CCHR's Communications and Marketing team executed successful media outreach efforts (including the creation of new outreach materials and citywide ad campaigns) across various media platforms, including digital and mobile, citywide, ethnic and community radio and newspapers, and public transportation and neighborhood storefront ads. The main areas and protected categories of media outreach focus were disability, sexual orientation and gender identity, source-of-income discrimination in housing, the new salary history ban in employment and the CCHR survey project.

OUR SERVICES AND GOALS

SERVICE 1 Enforce the NYC Human Rights Law.

Goal 1a Investigate, prosecute and resolve complaints of discrimination, discriminatory harassment, and bias-based profiling in a timely and efficient manner.

SERVICE 2 Educate the community on the NYC Human Rights Law.

Goal 2a Increase community awareness of the NYCHRL through know-your-rights presentations aimed at the general public; know-your-obligations presentations aimed at housing providers, employers and small businesses; and other initiatives.

HOW WE PERFORMED

- In the first four months of Fiscal 2018, 214 new complaints were filed with LEB. At the end of this reporting period, LEB's total caseload of filed complaints under investigation was 1,679.
- LEB continued to conduct in-depth investigations to identify pattern and practice violations and evaluate respondents' full compliance with the NYCHRL. This process lengthens investigation time, as illustrated by the increase in the average age of the caseload to 514 days in the first four months of Fiscal 2018, from 375 days in the same period of Fiscal 2017.
- In order to work towards maintaining a sustainable caseload while also conducting in-depth investigations, LEB successfully increased case closures to 238 cases the first four months of Fiscal 2018, continuing last year's significant increase in case closures. This year closures are up by 40 percent over 170 in the same time period of Fiscal 2017.
- To that same end, LEB continued the use of a provision in the NYCHRL authorizing the Commission to dismiss complaints when prosecution of the complaint will not serve the public interest. During the first four months of Fiscal 2018, LEB was able to preserve resources by identifying cases in which probable cause is unlikely and closing those cases with a dismissal that preserves the complainant's right to bring their claim in another forum (see NYCHRL § 8-502(b)).
- These strategies helped maintain a sustainable caseload, allowing LEB to do deeper and broader investigations in meritorious cases, with greater impact. For example, LEB referred four times as many cases to the Office of Administrative Trials and Hearings (OATH) in the first four months of Fiscal 2018 than in the same time period of the previous year, and tripled the percentage of cases in which a probable cause determination was issued. The average value of cash settlement went up significantly, to \$34,951. In addition, the average civil penalty remained high, at \$49,500, which is an important factor in deterring violations of the NYCHRL.
- LEB also continued to dedicate resources towards strategic enforcement. In the first four months of Fiscal 2018, LEB performed 110 tests in housing, 21 tests in public accommodations, and 70 tests in employment. The areas of discrimination tested include source of income, race, and presence of children in housing; criminal record, gender and race in employment; and gender identity and race in public accommodations. In the first four months of Fiscal 2018, LEB opened 130 Commission-initiated investigations and filed five Commission-initiated complaints alleging pattern or practice violations.
- In the first four months of Fiscal 2018, CRB offered New Yorkers 924 conferences, workshops and training sessions, fairly consistent with the 964 provided in the same period of Fiscal 2017, and the target of 1,000, although four percent less than it provided in the earlier period.
- The number of school-based training sessions offered in the first four months of Fiscal 2018 increased by 125 percent, to 45 from 20 a year earlier. This change reflects CRB's increased focus on human rights education and outreach to New York City youth, its investment of resources in a new division of Education, Restorative Justice, and Development, and its continued overhaul of the Commission's school-based peer mediation program.
- CRB staff also provided 6,127 individuals with technical assistance, which entails answering specific questions on discrimination in housing, employment, and public accommodations, completing preliminary intakes of potential claims and making referrals to the Commission's LEB and/or other resources. Because of CRB's newly-expanded approach to human rights outreach and education, its technical assistance indicator does not comprehensively reflect all of CRB's work. For example, during the first four months of Fiscal 2018, CRB also offered 15,571 units of service to New Yorkers, a 26 percent increase from 12,328 in the comparable period of Fiscal 2017. During the first four months of Fiscal 2018, CRB offered 91,484 units of public outreach to New Yorkers, an 18 percent increase from 77,276 in the same period of the previous year.

SERVICE 1 Enforce the NYC Human Rights Law.

Goal 1a

Investigate, prosecute and resolve complaints of discrimination, discriminatory harassment, and bias-based profiling in a timely and efficient manner.

Performance Indicators	Actual			Target		4-Month Actual	
	FY15	FY16	FY17	FY18	FY19	FY17	FY18
Cases successfully mediated	0	0	0	*	*	0	0
Pre-complaint resolutions	165	200	310	*	*	91	38
★ Cases filed	697	908	805	*	*	291	214
★ Cases closed	608	336	536	*	*	170	238
– Cases closed (%) - no probable cause determination	43%	5%	7%	*	*	6%	2%
★ – Cases closed (%) - probable cause determination	15%	6%	4%	*	*	2%	6%
– Cases closed (%) - administrative cause	20%	62%	65%	*	*	67%	73%
★ – Cases closed (%) - settlement	22%	27%	24%	23%	23%	25%	19%
Cases referred to the Office of Administrative Trials and Hearings	89	21	21	*	*	4	16
★ Average value of cash settlement for complainant (\$)	\$10,755	\$34,775	\$20,680	*	*	\$18,960	\$34,951
Modifications for accessibility for people with disabilities	155	191	307	*	*	87	40
★ Average age of complaint caseload (days)	250	340	468	300	300	375	514
Caseload	667	1,318	1,643	474	474	1,457	1,679
Cases pending by age - less than one year	505	837	728	414	414	818	635

★ Critical Indicator "NA" Not Available ⇅ Directional Target * None

SERVICE 2 Educate the community on the NYC Human Rights Law.

Goal 2a

Increase community awareness of the NYCHRL through know-your-rights presentations aimed at the general public; know-your-obligations presentations aimed at housing providers, employers and small businesses; and other initiatives.

Performance Indicators	Actual			Target		4-Month Actual	
	FY15	FY16	FY17	FY18	FY19	FY17	FY18
Conferences, workshops and training sessions	1,394	2,397	2,947	1,000	1,000	964	924
Community-based technical assistance	56,016	37,896	32,607	40,000	40,000	16,545	6,127
School-based training sessions conducted	326	79	173	250	250	20	45

★ Critical Indicator "NA" Not Available ⇅ Directional Target * None

AGENCY CUSTOMER SERVICE

Performance Indicators	Actual			Target		4-Month Actual	
	FY15	FY16	FY17	FY18	FY19	FY17	FY18
Customer Experience							
Letters responded to in 14 days (%)	100.0%	98.0%	86.7%	*	*	91.2%	93.5%
E-mails responded to in 14 days (%)	100.0%	100.0%	97.3%	*	*	99.7%	96.3%
Completed customer requests for interpretation	1,126	1,671	1,425	*	*	388	577
Average wait time to speak with a customer service agent (minutes)	10	11	9	*	*	5	5
CORE customer experience rating (0-100)	98	100	98	*	*	NA	NA

★ Critical Indicator "NA" Not Available ⇅ Directional Target * None

AGENCY RESOURCES

Resource Indicators	Actual			Sept. 2017 MMR Plan	Updated Plan	Plan	4-Month Actual	
	FY15	FY16	FY17	FY18	FY18 ¹	FY19 ¹	FY17	FY18
Expenditures (\$000,000) ²	\$5.8	\$8.8	\$10.4	\$14.8	\$14.9	\$14.1	\$3.4	\$4.5
Personnel	66	89	108	161	161	161	103	118
Overtime paid (\$000)	\$9	\$7	\$5	\$11	\$11	\$11	\$2	\$1
¹ February 2018 Financial Plan	² Expenditures include all funds			"NA" - Not Available				

SPENDING AND BUDGET INFORMATION

Where possible, the relationship between an agency's goals and its expenditures and planned resources, by budgetary unit of appropriation (UA), is shown in the 'Applicable MMR Goals' column. Each relationship is not necessarily exhaustive or exclusive. Any one goal may be connected to multiple UAs, and any UA may be connected to multiple goals.

Unit of Appropriation	Expenditures FY17 ¹ (\$000,000)	February 2018 Financial Plan FY18 ² (\$000,000)	Applicable MMR Goals ³
Personal Services - Total	\$7.8	\$11.1	
001 - Personal Services	\$3.0	\$5.6	All
003 - Community Development	\$4.8	\$5.5	All
Other Than Personal Services - Total	\$2.6	\$3.8	
002 - Other Than Personal Services	\$0.7	\$1.8	All
004 - Community Development	\$1.9	\$2.0	All
Agency Total	\$10.4	\$14.9	
¹ Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ended June 30, 2017. Includes all funds of chapter. ² Includes all funds. ³ Refer to agency goals listed at front			

NOTEWORTHY CHANGES, ADDITIONS OR DELETIONS

None.

ADDITIONAL RESOURCES

For more information on the agency, please visit: www.nyc.gov/cchr.



FOR THE RECORD

New York City Anti-Violence Project
116 Nassau Street, 3rd Floor
New York, New York 10038
212.714.1184 voice | 212.714.2627 fax
212.714.1141 24-hour hotline

Good afternoon, Chair Eugene and thank you to the whole Civil and Human Rights Committee for hearing my testimony today. My name is Virginia Goggin and I am the Director of Legal Services at the New York City Anti-Violence Project (AVP).

For almost 40 years AVP has empowered LGBTQ and HIV-affected survivors of violence through counseling, education, advocacy, and organizing. **We have worked closely with the Human Rights Commission** over the years to keep our communities safe and raise awareness when violence and discrimination occurs, for example:

- AVP publishes **Community Alerts** when an incident of violence occurs, and follows up with relevant Council Members and City agencies. The Human Rights Commission is often the first to reach out to us after an alert, and they have even joined us when we follow up with **street-based outreach, passing our safety resources**.
- AVP conducts a wide range of **trainings** across NYC for a variety of agencies, including the Human Rights Commission. This includes know-your-rights trainings, and trainings on how to be LGBTQ inclusive and legally compliant.
- We also help **direct our community members to the Commission** when they experience discrimination, and help them follow up on their complaints.
- We thank the Commission as well as a number of City agencies for supporting our groundbreaking **Trans Forum series**, which brought together over 500 transgender and gender nonconforming New Yorkers from all 5 boroughs to discuss issues of safety as it relates to jobs, education, immigration, and more.

AVP hopes to also work closely with the **Equal Employment Practices Commission**. AVP recognizes that survivors of violence are often at-risk for financial instability and crisis, and low-income LGBTQ people are even more at-risk. A study recently showed¹ that for transgender people in particular, "**pervasive discrimination and a lack of legal protections** mean that transgender people struggle to find work and safe housing" and "make less on the job."

AVP is working to address this discrimination. We recently conducted a **citywide survey** of transgender and gender nonconforming New Yorkers on job discrimination. AVP's many services include our Economic Empowerment Program, and our transgender and gender nonconforming Leadership Academy, which provides **job readiness skills and paid internships**.

The Anti-Violence Project's programs also include:

- **A 24 hour Spanish/English crisis intervention hotline**. Our calls went up 34% in FY17 (4,500 calls) over FY16 (3,350 calls), reflecting the turbulent times impacting LGBTQ communities.

¹ Paying an Unfair Price: The Financial Penalty for Being Transgender in America, Movement Advancement Project

- **Counseling:** one-on-one and support groups, reaching over 1,100 community members in all 5 boroughs.
- **Economic Empowerment:** including tax workshops, credit & debt, resumes & cover letters.
- **Legal Services:** AVP represents LGBTQ survivors of violence in all civil legal matters, including immigration, family, housing, and public benefits. We have seen a 24% increase in overall clients seeking legal services since the election.
- **Leadership Development:** including job readiness and paid internships, Speakers' Bureau, Leadership Academy, and more.
- **Community Organizing:** Our community organizing and public advocacy activities reach more than 43,000 people each year in all 5 boroughs with information on staying safe. This includes know-your-rights trainings, bystander intervention trainings, and more.
- **Policy Advocacy:** work with City Council on community forums and policy solutions to violence.

I respectfully ask that you continue the City Council's support of AVP, and that the Committee work with us on these issues so that New York City can become a safer place where our LGBTQ and HIV-affected communities can thrive.



March 27, 2018

Re: Fiscal Year 2019 Funding for the New York City Commission on Human Rights

Dear Chairman Eugene:

We are writing you today as the New York City Human Rights Law Working Group, a coalition of advocacy organizations that represent individuals who are facing discrimination and harassment, both in court and at the New York City Commission on Human Rights (“the Commission”). Our clients are members of a broad range of protected classes, and face discrimination and harassment on the basis of their age, arrest and conviction records, caregiver status, credit history, disability, gender, gender identity, marital or partnership status, national origin, pregnancy, race, religion, salary history, sexual orientation, status as a victim of violence, unemployment status, and status as a veteran or active military service member.

We write to ask that the City Council grant the Commission’s Fiscal Year 2019 funding request in full. From its robust community engagement and education efforts to its aggressive enforcement of the New York City Human Rights Law, the Commission is an invaluable resource to our clients and to the thousands of other New Yorkers who benefit from its services each year. As you know, the New York City Human Rights Law is one of the strongest civil rights statutes in the country – but the letter of the law is meaningless if it is not vigorously enforced.

Thanks to generous funding from the City Council last year, the Commission was able to add 26 new positions to the staff of its Law Enforcement Bureau. The onboarding of this legal staff has greatly increased the Commission’s capacity to evaluate and adjudicate complaints. However, given the large number of complaints that are filed each year, the turnaround time for the adjudication of each complaint is still too long. If the Commission’s request for funding for its Community Relations Bureau for Fiscal Year 2019 is granted, the Bureau will be able to shore up its pre-complaint intervention work, which allows for the resolution of cases before a complaint is ever filed. This will conserve resources and reduce the number of cases that reach the complaint stage, thus allowing for a faster turnaround time for those that do.

Along with supporting the Commission’s funding requests, we ask that the City Council increase funding for the Commission’s Office of Mediation and Conflict Resolution. The role of this office is to resolve a case after a complaint has been filed, but before it has been fully investigated. Like pre-complaint intervention, post-complaint mediation allows for fast-track resolution of cases, allowing for quicker turnaround for those cases that do require a full investigation. The Office of Mediation and Conflict Resolution is currently staffed by only one attorney and one administrative assistant. This bare-bones level of staffing makes it virtually impossible for the Office to effectively perform its crucial role. More attorneys must be funded in order to ensure that this office is able to carry out its mandate.

As we all know, justice delayed is too often justice denied. Even when our clients' cases are adjudicated in their favor, the remedy often arrives far later than when it is most urgently needed. Furthermore, as the vast majority of cases at the Commission are filed pro se, pre-complaint resolution and mediation allow individuals the opportunity to seek justice on a more even playing field, before having their claims adjudicated in a hearing where the respondent is likely to be able to afford and retain sophisticated legal representation. In an age when New Yorkers' rights are under constant attack from the federal government, it is more important than ever that our City government remain a leader in civil rights enforcement. By fully funding the Commission's pre-complaint intervention and post-complaint mediation work, the City Council can help to ensure that discrimination and harassment complaints are addressed with vigor and with haste.

Thank you for your attention to this request.

Sincerely,

New York City Human Rights Law Working Group

The following organizations join this letter: A Better Balance, Community Service Society, Gender Equality Law Center, Legal Action Center, Legal Aid Society, Mobilization for Justice, Inc., New York Lawyers for the Public Interest

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Andrey Hemmings

Address: 2 Conklin Ave

I represent: 3rd Railman MTA Metco North

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Gabriel Leader Rose

Address: 320 Greene Ave Apt. 1

I represent: Good Call

Address: 150 Court St STE 2, Brooklyn, NY, 11201

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. NGHRC Res. No. _____

☐ in favor ☐ in opposition

Date: 3/26/18

(PLEASE PRINT)

Name: ZOLTAN BOKA

Address: 250 ASHLAND PL

I represent: SELF

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Lavien Elfant

Address: _____

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: _____

(PLEASE PRINT)

Name: Brittany Saunders

Address: _____

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

☐ in favor ☐ in opposition

Date: 3/24/18

(PLEASE PRINT)

Name: Virginia Goggin

Address: 116 NASSAU ST, 3rd FL NY, NY 10038

I represent: NYC Gay and Lesbian Anti-Violence

Address: Project

Please complete this card and return to the Sergeant-at-Arms