State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
Legal Division ~ 450 Columbus Boulevard, 3rd Floor, Hartford, CT 06103
Promoting Equality and Justice for all People

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Walter Glomb
Executive Director
Connecticut Council on Developmental Disabilities
460 Capitol Ave.
Hartford, CT 06106
walter.glomb@ct.gov

Re: CHRO's Scope and Services

This memorandum serves to outline the Commission on Human Rights and Opportunities' ("CHRO" or "Commission") authority, scope, and jurisdiction over claims of discrimination in Connecticut, with a focus on its services available to individuals with developmental disabilities. This memorandum is not to serve as legal advice, but instead merely to highlight the services the Commission can offer and its procedures.

I. The Commission's Authority and Jurisdiction

The Commission is a state agency created by the legislature for the purpose of investigating and remedying discrimination. With this purpose, the legislature permits the Commission to employ staff to investigate complaints of discrimination, subpoena witnesses and documents, and to prosecute such claims through its administrative processes. The Commission is also empowered to intervene in other legal actions that a complainant has opted to remove from the Commission's process, with the Commission's focus to vindicate the state's interests in remedying discrimination.

A. What Constitutes Discrimination—Legally

What constitutes "discrimination" under Connecticut law varies—albeit slightly—depending on the context in which the claim is raised. Connecticut's anti-discrimination laws generally cover seven areas over which the Commission retains jurisdiction: (1) employment discrimination, (2) discrimination in places of public accommodation, (3) housing discrimination, (4) discrimination in credit practices, (5) discrimination in education, (6) discrimination by state agencies, and (7) a general "catch-all" provision for discrimination not otherwise covered.

1. Employment Discrimination

For employment discrimination—codified in Conn. Gen. Stat. § 46a-60 as the Connecticut Fair Employment Practices Act ("CFEPA")—an employer is prohibited to "refuse to hire or employ or to bar or to discharge from employment any individual or to discriminate against any individual in compensation or in terms, conditions or privileges of employment because of the individual's . . . present or past history of mental disability, intellectual disability, learning disability, physical disability,

including, but not limited to, blindness, status as a veteran or status as a victim of domestic violence." The CFEPA is broader than Title VII of the Civil Rights Act of 1964, in that it applies to any employer with "one or more persons in such person's or employer's employ," as opposed to Title VII, which applies only to those entities that have fifteen or more employees.

2. Discrimination in Places of Public Accommodation

For discrimination in places of public accommodation, Conn. Gen. Stat. § 46a-64 defines several ways that discrimination can occur. As a preliminary matter, the statute defines a "place of public accommodation" as "any establishment which caters or offers its services or facilities or goods to the general public, including, but not limited to, any commercial property or building lot, on which it is intended that a commercial building will be constructed or offered for sale or rent." This definition is broad and encompasses many establishments throughout the state, including schools, policing, and—although arguable and subject to litigation at this time—prisons.

Regarding how such discrimination can occur, first, the statue sets forth that it is a discriminatory act to "deny any person . . . . full and equal accommodations in any place of public accommodation, resort or amusement because of . . . intellectual disability, mental disability, physical disability, including, but not limited to, blindness or deafness. . . ." Second, it is a discriminatory act to "discriminate, segregate or separate on account of . . . intellectual disability, mental disability, learning disability, physical disability, including, but not limited to, blindness or deafness. . . ." Third, it is discriminatory to "refuse entry to a person with a disability who is accompanied by a service animal" or "to deny any person with a disability or any person training an animal as a service animal to assist a person with a disability, accompanied by such service animal, full and equal access to any place of public accommodation, resort or amusement."

3. Housing Discrimination

For discrimination in housing, Conn. Gen. Stat. § 46a-64c provides specific provisions for disabilities that expands protections to those caring for such person or associated with such person. Namely, it is prohibited to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a learning disability or physical or mental disability of: (i) Such buyer or renter; (ii) a person residing in or intending to reside in such dwelling after it is so sold, rented, or made available; or (iii) any person associated with such buyer or renter." It is also prohibited to discriminate regarding the "terms, conditions or privilege of sale or rental of a dwelling," to the same persons.

The statute also provides specific definitions for "discrimination" as it applies to those with disabilities; namely, discrimination is defined as "[a] refusal to permit, at the expense of a person with a physical or mental disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises. . . ."; "a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling"; and "in connection with the design and construction of covered multifamily dwellings for the first occupancy after March 13, 1991, a failure to design and construct those dwellings in such

manner that they comply with the requirements of Section 804(f) of the Fair Housing Act or the provisions of the state building code . . . whichever requires greater accommodation."

4. Discrimination in Credit Practices

Although historically not litigated as frequently as other types of discriminatory practices, Conn. Gen. Stat. § 46a-66 makes it a discriminatory practice for a creditor to "discriminate on the basis of . . . intellectual disability, learning disability, blindness, [or] physical disability . . . against any person eighteen years of age or over in any credit transaction." A "credit transaction" is defined as "any invitation to apply for credit, application for credit, extension of credit or credit sale."

5. Discrimination in Education

A more nuanced area of discrimination law, the Commission is empowered to remedy discrimination made illegal by Conn. Gen. Stat. § 10-15c. This statute requires public schools in Connecticut to provide "equal opportunity" to students "without discrimination on account of . . . disability." Although not contained with the Commission's normal anti-discrimination statutes in Title 46, our Supreme Court has held that the Commission does have authority to prosecute such claims.

Note, however, that the Commission *does not* have jurisdiction over claims alleging a denial of the free appropriate public education provisions of the Federal Individuals with Disabilities Education Act ("IDEA"). Instead, these claims are filed with the state department of education, although the line between claims of individual discrimination and systemic violations of the IDEA can be blurred at times.

6. Discrimination by State Agencies

Conn. Gen. Stat. § 46a-71, along with subsequent sections concerning licenses and state professional occupational associations, prohibits discrimination of "[a]ll services of every state agency." Note that although this section appears at first glance to carry its own independent power, generally there has to be some discriminatory treatment existing separately before a state agency can be subject to this section, that is, there must be some act found discriminatory as a place of public accommodation, housing, or employment and *then* it be a state agency for this section to apply.

7. "Catch-All" Provision

Aside from our state anti-discrimination statutes, Conn. Gen. Stat. § 46a-58(a) provides a general provision outlawing acts that are a "deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States. . . ." The Commission has interpreted this section as granting it the authority and jurisdiction to investigate and prosecute claims not otherwise specified in the state statutes but arising elsewhere, such as the Americans With Disabilities Act, the Age Discrimination in Employment Act, and the Federal Fair Housing Act, among others. Accordingly, many claims are filed with and processed by the Commission as *both* violations of a state statute *and* a federal statute *through* § 46a-58(a).

B. Intersection with Other State Agencies

Under Conn. Gen. Stat. § 46a-77, all state agencies are required to cooperate with the Commission in "their enforcement and educational programs." This extends to any request for information concerning various practices, and also requires that they consider the Commissions' recommendations for implementing policy.

There are some agencies that have jurisdiction over claims that the Commission does not. For example, the free appropriate public education provisions of the Federal Individuals with Disabilities Education Act are enforced by the state department of education rather than the Commission. The Commission does, however, have jurisdiction over claims of specific instances of discrimination against students set forth in Conn. Gen. Stat. § 10-15c. As another example, "whistleblower" activities under Conn. Gen. Stat. § 4-61dd are not filed with the Commission but instead filed directly with the Commission's Office of Public Hearings.

C. Intersection with the Office of the Attorney General

Although the state anti-discrimination statutes often refer to the Commission actions through *either* the office of the Attorney General *or* Commission legal counsel, in practice almost all claims and actions concerning the state's anti-discrimination statutes arise from the Commission's own own legal counsel without any input from the office of the Attorney General. This arrangement is almost one of necessity given the position of the parties: the Commission can and often does handle complaints *against* the state, for which the office of the Attorney General would be representing.

That is not to say that the Commission is always antagonistic towards the office of the Attorney General; there must necessarily be a type of working relationship between the offices given the statutory requirement for state agencies to work cooperatively with the Commission. Further, the legislature recently enacted Conn. Gen. Stat. § 3-129g, which permits the office of the Attorney General to intervene or file its own civil action in the name of the state to remedy acts of discrimination. Regardless, the office of the Attorney General is separate and apart from the Commission legal counsel and they are often on opposite sides of the "litigation table."

D. Intersection with Other Federal Agencies

The Commission works closely with several federal agencies, including the Equal Employment and Opportunity Commission ("EEOC"), as well as the office of Housing and Urban Development ("HUD"). Further, Connecticut is a "dual filing state," such that a complaint filed with one of these federal agencies or the Commission is automatically filed with the other, with the Commission taking the lead on most cases arising in Connecticut.

Separate and apart from the EEOC and HUD, the Commission has not historically worked with other federal agencies. For example, although the Commission has previously worked with the Department of Justice on education initiatives, claims filed with the Department of Justice or other federal agencies are not concurrently filed with the Commission. Otherwise, the Commission does not work closely with other federal agencies, and it is unknown what vindication individual complainants may have in such forums.

II. Relief Available through the Commission

Conn. Gen. Stat. §§ 46a-86(b) and (c) establish the remedies available for discriminatory employment practices prohibited by Conn. Gen. Stat. § 46a-60(b)(1) and for discrimination prohibited by Conn. Gen. Stat. § 46a-58(a). These damages include back pay, compensatory damages (such as emotional distress), interest on the above, and attorneys' fees. Note, however, that attorneys' fees are not to be calculated on a contingency basis, i.e., attorneys' fees are to be calculated based on a reasonable amount on an hourly basis.

For other types of discrimination, such as housing and public accommodation discrimination, Conn. Gen. Stat. § 46a-86(c) is the sole source of remedies. This statute permits the recovery of compensatory damages, including but not limited to the cost for "obtaining alternate housing or space, storage of goods and effects, moving costs and other costs actually occurred." Further, our Supreme Court has interpreted this section to also allow the award of emotional distress damages for such violations.

With all types of discrimination, the referee may also make such other orders beyond monetary payment as necessary to ameliorate the discrimination. These orders may include training for respondents, changing of policies, or other types of non-monetary relief.

Note that any payment received as compensation from these claims of discrimination is not to be treated as "income" for purposes of calculating income assistance, such as social security disability or Medicaid. That being said, such damages *may* be considered "income" for purposes of calculating a person's taxable income for that tax year, which should be taken into consideration.

III. The Commission's Complaint Process

For a claim alleging discrimination in one of the areas over which the Commission retains jurisdiction, a complaint should be filed at the regional office where the discrimination occurred within three-hundred (300) days of the alleged discriminatory act. If the discriminatory acts are ongoing or continuing in nature, then the date for filing continues to run while the discrimination occurs.

The location and contact information for the regional offices can be found on the Commission's website located here. Contact with the regional office can be made by phone, and a time arranged to meet with an investigator to perform an "intake." The investigator can speak with the complainant and determine the relevant facts, and then reduce those facts to a written form that is filed with the agency. Note that the investigator cannot provide legal advice during these intake sessions, and just because an investigator receives the complaint does *not* mean it is valid or has merit. Of course, an individual can also retain an attorney to represent them and file the appropriate forms.

Once the complaint is filed, the Commission serves the complaint on the Respondent, and then provides the Respondent with the opportunity to respond. By statute, such response is due within thirty days of service. Once the Respondent files an answer, the complainant may—if they so choose—within fifteen days of service of the answer file a rebuttal to the answer. A Respondent may also request "pre-answer conciliation," which allows for a voluntary mediation session with the

Commission to try and resolve the complaint prior to the Respondent expending time and resources answering. Not all Respondents do make such an election, but it is an option.

Should the complaint not be resolved at the pre-answer conciliation and instead an answer is filed, the case is sent to Commission legal counsel to review and determine whether the case should proceed further. This stage is referred to as “Case Assessment Review,” and is conducted solely to determine whether there are jurisdictional barriers to proceeding with the matter, to weed out frivolous complaints, or to dismiss cases for which there is no reasonable likelihood of finding a discriminatory act occurred.

If a case is dismissed at this stage, the complainant is provided with a “release of jurisdiction,” which allows them to file their claim with a court within ninety days of dismissal. Note that at any stage up until a final notice of investigative decision is issued, a Complainant may request a release of jurisdiction to pursue their claim in a judicial forum rather than the Commission’s process.

If the case is retained for further processing, it is first assigned to a mediator to try and resolve the matter. Although this mediator may be legal counsel, Commission investigators often conduct the mediations. These mediators will only have the information available to them through the filing of the complaint, the answer, and the rebuttal if available, and are not there to adjudicate facts or determine liability, but instead to see if settlement can be made before further resources are expended. Although no one is required to settle, it is *mandatory* to attend this mediation session.

If the mediation is unsuccessful, then the case proceeds to the investigation phase. This is the opportunity for the investigator to interview witnesses and obtain documents relevant to the case. This is *not* the opportunity to argue or present evidence regarding damages; instead the sole question for the investigator is whether there is a “reasonable cause for believing that a discriminatory practices has been or is being committed as alleged in the complaint.” This is a somewhat low standard, requiring a minimum showing that some act occurred that could be viewed as discriminatory. Accordingly, if there is a finding of reasonable cause at this stage it *does not* mean that the complaint is vindicated or correct, only that there is that minimal showing necessary for the case to proceed further.

If the investigator determines that there is *not* reasonable cause, then the case is dismissed. At this point, there is no release of jurisdiction issued, and instead the only recourse for complainants is to either request reconsideration of the decision within fifteen days or file for an administrative appeal with the superior court.

If the investigator determines that there *is* reasonable cause, then there is another attempt to mediate the case at what is called post-cause conciliation. The position of the parties at this stage is different from earlier attempts to mediate: the respondent is now subject to further legal action and litigation, and there is the potential for the Commission to become an additional party to prosecute the matter. This often leads to cases being settled rather than proceeding further.

If the investigator is unable to resolve the matter at post-cause conciliation, then the matter is certified to the Office of Public Hearings for further action. Once at the Office of Public Hearings, the matter is started anew: there is new discovery with additional motion practice as needed, and the Commission

becomes a separate party with the Commission's legal counsel litigating the matter. Of course, the Commission's legal counsel only represents the state, and *does not represent the individual complainant*. Accordingly, the complainant will still have to appear either representing themselves or with their own attorney.

The proceedings at the Office of Public Hearings continue as in any other court case. There is written discovery,[1] and then there is a hearing on the merits before a human rights referee. The parties present witnesses and evidence, and then the presiding referee issues a decision regarding the liability of the Respondent and the amount—if any—of damages. Should any party disagree with the referee's findings, they may appeal to the superior court, but only after the referee issues a "final order" that fully disposes of the matter.

IV. Conclusion

We hope that this guidance is helpful to you going forward. Although there are more nuances and variabilities in proceedings filed with us, this should provide a general framework of the Commission's authority and proceedings. If you have any questions, please contact us as needed.

Sincerely,

Gregory A. Jones

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cc. Kimberly Jacobsen

[1]Discovery at the Office of Public Hearings is limited to written requests for production. There are no written interrogatories permitted, and depositions are generally not allowed absent extenuating circumstances.